

Talk isn't cheap

Making consultants' reports publicly available via Senate order

The Commonwealth Government spends over \$1 billion annually on consultancies. The advice and reports created by these consultancies should be made publicly available using a Senate order for the production of documents.

Discussion paper

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Summary

We should stop having secret reviews. Australia Post is an asset for all Australians.

– Christine Holgate¹

The Australian Government is spending dramatically more on contracts with consultancies than it did a few years ago. The more than \$1.1 billion spent on consultants last year could instead employ an additional 12,000 public servants, which would allow the skills and knowledge to be brought within the public service.

When the Government does spend public money on consultancy reports and research, that advice should be published so it can be weighed up and assessed by the public.

To help ensure that consultancy work is made public, the Senate could issue a continuing order for the production of documents, covering all requests for tender/contracts for consultancy work and all reports and written advice provided by consultancies.

¹ Durkin (2021) *Secret BCG report is key to Christine Holgate saga*,
<https://www.afr.com/companies/retail/secret-bcg-report-key-to-holgate-saga-20210414-p57j7j>

Introduction

The Australian Government spends hundreds of millions or billions of dollars every year on consultants. Because spending on consultants is inconsistently reported, the exact total cannot be calculated. The Australian Government identified \$647.0 million as being spent on consultancy contracts in 2018–19, although the value of contracts with the eight “significant providers of consultancy services” exceeded \$1.1 billion in that year.² The amount spent on the “Big Seven” consultancies has about tripled since the Rudd–Gillard Government.³

Australia’s consulting industry (public and private) is the fourth largest in the world. By population, Australia’s spending on consulting is greater than that of any other country, and about double that of comparable countries like Canada or Sweden.⁴

The Australian Government is introducing a centralised procurement panel for consultancy services that will be partially active from the middle of this year.⁵ In the meantime, the lack of consistent data on government spending on consultants is disappointing.

Governments frequently call upon research and advice from consultancies to justify their decisions. However, this research and advice is rarely made public.

A recent example is the Boston Consulting Group (BCG) report into Australia Post, which was finalised in 2019 but remains secret. The Commonwealth Government refused to release the report on the grounds of “Cabinet confidentiality”, but the report is key to claims from Christine Holgate about how she was treated by the Government in late 2020. Holgate used parliamentary privilege to make parts of the report public in April.⁶

² Australian National Audit Office (2020) *Australian Government Procurement Contract Reporting Update*, pp. 43–46, <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting-update-2019>

³ Consultancy.com.au (2021) *Federal government spend on big 7 consulting firms tops \$1 billion*, <https://www.consultancy.com.au/news/3213/federal-government-spend-on-big7-consulting-firms-tops-1-billion>

⁴ Of the 18 countries that make up 80% of the consulting market: Consultancy.com.au (2020) *Australia’s consulting market punching above its weight*, <https://www.consultancy.com.au/news/1802/australias-consulting-market-punching-above-its-weight>; IMF (2021) *World Economic Outlook database: April 2021*, <https://www.imf.org/en/Publications/WEO/weo-database/2021/April/weo-report>

⁵ McIlroy & Tadros (2020) *Federal Budget 2020: Bureaucrats forced to come clean on consulting spend*, <https://www.afr.com/politics/federal/bureaucrats-forced-to-come-clean-on-consulting-spend-20201007-p562q7>

⁶ Durkin (2021) *Secret BCG report is key to Christine Holgate saga*

The BCG report was expected to influence the direction of Australia Post, including feting a “full or partial divestiture” (privatisation) of the parcels division.⁷ While couched delicately, the instructions from the Government to the Australia Post board “envisage[d] that BCG’s finding should be taken into account”.⁸

The BCG report cost the Australian public \$1.32 million, although it took less than four months to complete. Representatives of BCG “tiptoe[d]” around a question from Senator Bridget McKenzie as to which parts of the report should not be in the public domain, finally saying that there was a “reasonableness” that the report was not published in full due to commercially sensitive information about Australia Post in the report.⁹

When consultancy reports are publicly available, they can be subject to proper scrutiny. A case in point is the analysis Mick Peel conducted for the Australia Institute of a 2014 report done by BCG, again into Australia Post’s operations. Because the 2014 report was publicly available, Peel could identify six specific problems with it and discuss the “selective”, “arbitrary” and “exaggerat[ed]” claims that it made.¹⁰

With parts of the 2019 BCG report now public thanks to Holgate’s exercise of parliamentary privilege, there is evidence that this report also warrants analysis and criticism. A former Australia Post director has said:

Christine [Holgate] was right to oppose the BCG report. The brief they were given was with a preconceived answer in mind. She wasn’t asked to contribute, and the data was rubbery.¹¹

Reports by consultancies are paid for by the public, influence government decision making and contain information that citizens should be informed of. They should be made public by default, and to the maximum extent possible. This report investigates the growth of consultancy spending and makes the case for dramatically greater transparency about the results of consultancy spending.

⁷ McIlroy (2021) *Christine Holgate: Entire Australia Post board called before Christine Holgate inquiry*, <https://www.afr.com/politics/federal/entire-australia-post-board-called-before-christine-holgate-inquiry-20210421-p57116>

⁸ Carr (2021) *Pipped at the Post: How the government tried to sell Australia Post*, <https://johnmenadue.com/pipped-at-the-post-how-the-government-tried-to-sell-australia-post/>

⁹ Wootton (2021) *Coronavirus Australia UPDATES LIVE - Taxpayers footed \$1.38 million bill for BCG advice*, <https://www.afr.com/politics/federal/call-to-vaccinate-australians-in-india-20210503-p570a8>; (2021) *Senate scrutinises BCG’s \$1.32m AusPost work*, <https://www.afr.com/companies/professional-services/senate-scrutinises-bcg-s-1-32m-auspost-work-20210504-p570nz>

¹⁰ Peel (2014) *Review of the Boston Consulting Group’s report to the Minister for Communications Briefing for the CWU on Australia Post’s operations*, <https://australiainstitute.org.au/report/review-of-the-boston-consulting-groups-report-to-the-minister-for-communications-briefing-for-the-cwu-on-australia-posts-operations/>

¹¹ Durkin (2021) *Secret BCG report is key to Christine Holgate saga*

Orders for documents

The Australian Parliament can order the production of documents by the executive, a power that has its origins in the traditional rights of the Parliament of the United Kingdom.¹² While both houses have this power,¹³ it is the Senate that has made extensive use of it. As such, the discussion below focuses on the Senate.

The Senate can order the production of any document, although it does not “usually” enforce an order when the government claims the document is covered by a “public interest immunity”.¹⁴

The “potentially acceptable grounds” for a claim of public interest immunity consist of prejudice to legal proceedings or law enforcement investigation, damage to commercial interests, unreasonable invasion of privacy, disclosure of cabinet deliberations, prejudice to national security, prejudice to Australia’s international relations, prejudice to relations between the Commonwealth and the states, and other limited grounds.¹⁵

The Senate can order the production of documents that do not yet exist – in other words, require them to be created or compiled.¹⁶

If a Senate order is not complied with, the Senate can treat that as contempt and use its punitive powers to fine or imprison offenders. However, in practice the Senate uses other tools – including censure, impeding government legislation, removing the government’s procedural advantages, drawing attention to the government’s failure to comply or having the government’s claims investigated – in order to achieve a remedy.¹⁷

¹² Department of the Senate (1999) *Business of the Senate 1901-1906*, p. vii, <https://nla.gov.au/nla.obj-2017026227>; Laing (2016) *Odgers’ Australian Senate Practice*, pp. 643–644, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice

¹³ Elder & Fowler (2018) *House of Representatives practice (7th edition)*, pp. 626–627, https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7

¹⁴ Laing (2016) *Odgers’ Australian Senate Practice*, pp. 643–645, 662–667

¹⁵ Laing (2016) *Odgers’ Australian Senate Practice*, pp. 643–645, 662–667

¹⁶ Laing (2016) *Odgers’ Australian Senate Practice*, pp. 581–582

¹⁷ Laing (2016) *Odgers’ Australian Senate Practice*, pp. 643–676

Some Senate orders for the production of documents have remained in force for years and changed the culture and practice of government departments. Of the 18 orders for documents of continuing effect,¹⁸ two are particularly noteworthy:

- Senator Brian Harradine’s 1994 motion requires all federal Australian government departments and agencies to produce an indexed list of files every six months for tabling before Parliament.¹⁹ Knowing what documents an agency or department has produced assists with freedom of information requests and makes the operation of government more transparent.
- Senator Andrew Murray’s 2000 motion requires all departments and agencies to produce an indexed list of all contracts valued at \$100,000 or more that have been entered into during the previous 12 months.²⁰

The Murray motion is satisfied by the AusTender site, which publishes business opportunities, annual procurement plans and contracts awarded for the Australian Government.²¹ While the information published on AusTender is important and widely used in aggregate, the amount of information given for each contract is limited. It is often impossible from the AusTender data alone to identify what kind of consultancy work is being paid for – new research, literature reviews, market research, marketing and branding, and so on – let alone more finely-grained detail.

¹⁸ As of July 2021. See the full orders at Parliament of Australia (2020) *Orders for documents*, https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/d00/~link.aspx?_id=E09AEB5B759B4E55955A8F00B6D7C017&_z=z#Procedural-orders_13

¹⁹ Attorney-General’s Department (2020) *Senate Order for the production of indexed lists of departmental and agency files*, <https://www.ag.gov.au/about-us/publications/senate-order-production-indexed-lists-departmental-and-agency-files>

²⁰ For some of the background to the motion and the Senate’s considerations before passing the motion, see Parliament of Australia (2000) *Accountability to the Senate in relation to government contracts (Murray motion)*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed%20inquiries/1999-02/acnt_contract/report2/tor; Senate Standing Committees on Finance and Public Administration (2000) *Accountability to the Senate in relation to government contracts (Murray motion)*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/1999-02/dept_agency_contracts/report2/index

²¹ Department of Finance (2020) *Meeting the Senate Order for Entity Contracts (RMG 403)*, <https://www.finance.gov.au/publications/resource-management-guides/meeting-senate-order-entity-contracts-rmg-403>

A new continuing order

The Australia Institute recommends that the Senate issue a new continuing order for the production of documents, modelled on the existing successful continuing orders. Such an order would allow taxpayers and other stakeholders to learn about, reflect upon and – where appropriate – challenge the claims made by consultancies.

This new order would require the appropriate minister for each Commonwealth Government department or agency to:

- Table details about requests for tender/contracts with consultancies, covering the purpose, scope and anticipated elements of the consultancy’s report or advice.
- Table the final reports and/or written advice received from a consultancy.

The order would identify major consultancies by name, as well as consultancy work more generally, since the “consultancy flag” on AusTender is used so inconsistently.

As with other orders for the production of documents, the Government could argue a public interest immunity on a case-by-case basis.

One question to be addressed is how soon or how often these documents should be tabled. Some existing orders set the timeframe based on calendar months or years, the parliamentary sitting calendar, or a time period such as “at least 14 days before signing” a treaty or “within 5 sitting days of the Senate after the project is approved”.

Details of requests for tender/contracts could be published on the same schedule as the Murray motion; the final consultancy reports and advice could be required to be tabled within 5 sitting days after the Government receives the report or advice.

The Senate would also have to discuss whether a threshold would apply. For example, two orders use the value of \$100,000 as the threshold above which a contract or project is subject to the order. However, the overall number of contracts and projects is much greater than the number of consultancy reports. It would be impracticable for the public service to disclose a purchase of \$60 of A4 paper or a \$300 electrician visit, for example.²² Consultancy reports are discrete, substantial and directly influence policy. If any threshold were applied, it should be much lower than \$100,000.

²² Note that government contracts below \$80,000 are not (typically) required to be put to market. Hehir (2017) *Australian Government Procurement Contract Reporting*, <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting>

Limitations of a continuing order

How effective this proposed standing order would be depends on the government of the day's respect for the Senate's orders and the Senate's willingness to seek remedies if the government does not fully comply with the order.

As a case in point, the proposed continuing order would not in and of itself result in the 2019 BCG report into Australia Post being disclosed because the Government has already refused to comply with a request from senators for the document to be tabled.

The Government made a public interest immunity claim on the grounds that the report "was used to inform Cabinet deliberations" and "It is a longstanding practice that information about the operation and business of the Cabinet is not disclosed publically [sic], as to do so would potentially reveal the deliberations of the Cabinet which are confidential."²³

This seems to be an overstatement of the extent of the cabinet confidentiality immunity. *Odger's Australian Senate Practice* writes:

This ground [disclosure of Executive Council or cabinet deliberations], however, relates only to disclosure of deliberations. There has been a tendency for governments to claim that anything with a connection to cabinet is confidential. A claim that a document is a cabinet document should not be accepted; as has been made clear in relation to such claims in court proceedings, it has to be established that disclosure of the document would reveal cabinet deliberations.²⁴

The resolution of the impasse between Senate and executive depends on the Senate's appetite to pursue the remedies within its powers. The same would be true for consultancy advice withheld under the proposed continuing order.

²³ Australian Government (2021) *Response to the Senate Environment and Communications Legislation Committee report: The Future of Australia Post's Service Delivery*, https://www.infrastructure.gov.au/department/ips/government_responses/government-response-future-auspost-service-delivery.aspx

²⁴ Laing (2016) *Odgers' Australian Senate Practice*, pp. 645, 649, 665–666

The rise of consultancies

It is worth reflecting on the rise of consultancy spending by the Commonwealth Government more generally. Making the work done by consultancies public would be an improvement on the status quo, but it does not address the underlying issue that consultancies are doing an unprecedented amount of public work.

The growth in consultancy spending seems to correspond to limits on Australian Public Service (APS) employment. The growth in Government spending on consultancies from 2013–14 onwards is in line with the steep fall in APS staff levels from the 2012–13 peak.

In most cases, the reason given by the public service for contracting with a consultancy is “Need for specialised or professional skills”, not that the skills are unavailable within the agency or that independent research or assessment is required.²⁵ But without the option to employ more staff, the public service is forced to contract out – including to consultancies. When it uses consultants instead of permanent staff, the public service loses skills and experience at the end of the contract instead of retaining that expertise long-term.²⁶

The Australian Bureau of Statistics reports Commonwealth spending on wages and salaries and the number of public sector employees. Last year, 246,000 Commonwealth Government employees were paid \$22,414.3 million in cash wages and salaries.²⁷

In other words, the \$1.1 billion spent on the biggest consultancies last year could have employed an additional 12,346 public servants.

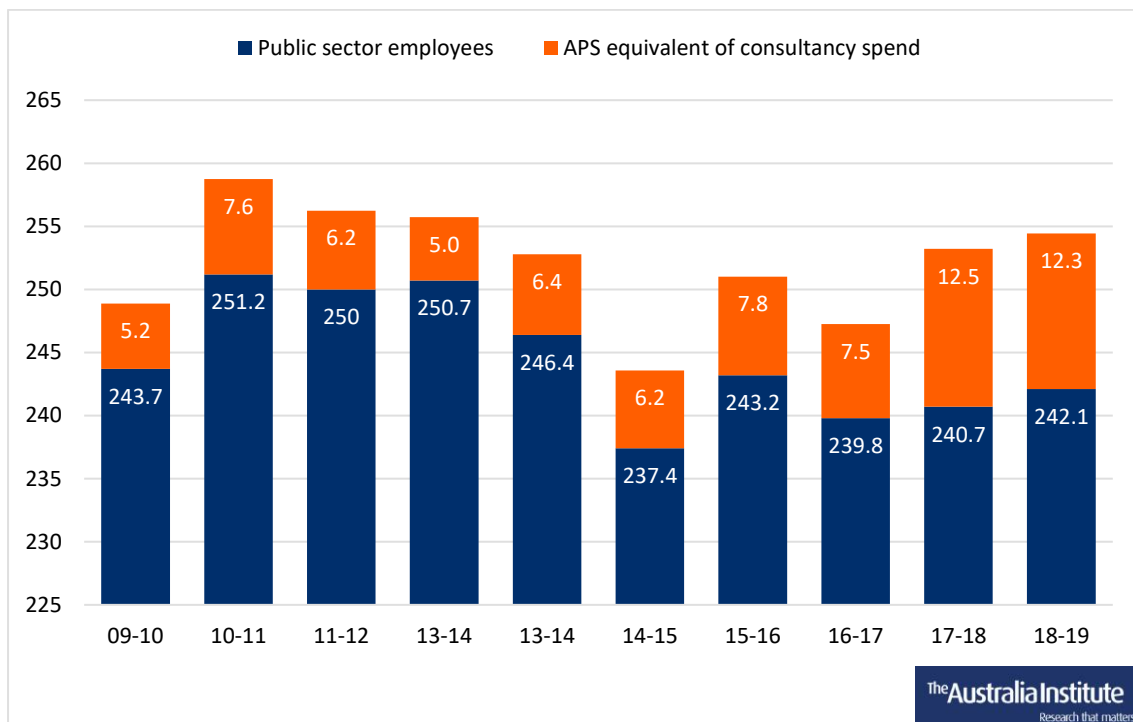
Figure 1 shows this relationship over the last decade. In navy are the actual number of Commonwealth public sector employees. In orange is the number of additional public sector employees that could have been employed if the Government’s spending on eight consultancy companies for that year had been spent on public sector employees.

²⁵ Australian National Audit Office (2020) *Australian Government Procurement Contract Reporting Update*, p. 44

²⁶ Community and Public Sector Union (2021) *Submission 24 to the Inquiry into the current capability of the Australian Public Service*, pp. 37–42, <https://www.aph.gov.au/DocumentStore.ashx?id=bb1f5abd-9db7-4c81-bf46-33722d1059da&subId=705195>

²⁷ ABS (2020) *Employment and Earnings, Public Sector, Australia, 2019-20 financial year*, <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/employment-and-earnings-public-sector-australia/latest-release>

Figure 1: Actual APS employment and equivalent in consultancy spend (,000 employees)



Source: ABS (2020) *Employment and Earnings, Public Sector, Australia, 2019-20 financial year*, <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/employment-and-earnings-public-sector-australia/latest-release>; Australian National Audit Office (2020) *Australian Government Procurement Contract Reporting Update*, <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting-update-2019>

The figure demonstrates that the APS Average Staffing Level (ASL) cap did little or nothing to reduce government spending, just directed it to less accountable and profit-taking companies that lack the public service’s ethical commitment to “frank and fearless” advice.

Many of the consultancies that benefit from public contracts are donors to political parties, which also raises concerns.²⁸

This analysis has focused on contracts with consultancies, which represent a minority of the Government’s total spending on “external staff” of \$4.7 billion per year. If this money were redirected, about 50,000 additional public servants could be employed.²⁹ As well as consultancies, external staff spending includes labour hire – which does not count towards the ASL cap even though, in some cases, contractors work alongside salaried public servants

²⁸ Dingwall & Mannheim (2019) *Govt nearly triples spend on big four consultancies as donations rise*, <https://www.smh.com.au/politics/federal/govt-nearly-triples-spend-on-big-four-consultancies-as-donations-rise-20190220-p50z22.html>

²⁹ “External staff” figure from Mannheim (2020) *Federal Government spending \$5 billion per year on contractors as gig economy grows inside public service*, <https://www.abc.net.au/news/2020-09-10/contractors-and-the-public-service-gig-economy/12647956>

doing “core” public sector work.³⁰ Departments and agencies have estimated that labour hire contractors can cost up to half as much again as internal staff.³¹

Lifting the Average Staffing Level cap immediately was a recommendation of the Senate Standing Committee on Legal and Constitutional Affairs in its 2020 report on the administration and running of government programs, with multiple stakeholders identifying the cap as driving privatisation and outsourcing.³²

Following the 2021–22 Budget, the Morrison Government has said it is expecting “modest underlying ASL growth” in the medium and longer term.³³ While initially interpreted as an end to the ASL cap, *Canberra Times* senior political reporter Harley Dennett says that this is not the case:

Selectively lifting the staffing cap in some public administration portfolios has not changed this government's fundamentals around the public service.

This week's federal budget was not an end to the hard limits on average staffing level numbers, as perhaps was initially assumed, but an evolution.

Finance Minister Simon Birmingham's admission that sometimes it might be more "efficient and effective to use ongoing staff" is only a shift in degrees, not a capitulation or even a retreat.³⁴

Concerns remain that there will be an over-reliance on consultants and labour hire contract. For example, despite the Government's \$1.2 billion digital economy strategy, cuts in staffing levels were announced in the Budget for Services Australia and the Digital Transformation Agency.³⁵

³⁰ Community and Public Sector Union (2021) *Submission 24 to the Inquiry into the current capability of the Australian Public Service*, pp. 15–18

³¹ Community and Public Sector Union (2021) *Submission 24 to the Inquiry into the current capability of the Australian Public Service*, pp. 18–22

³² Australian Senate (2020) *Impact of changes to service delivery models on the administration and running of Government programs*, pp. vii, 15–18, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ServiceDelivery

³³ Australian Government (2021) *2021-22 Budget Paper No. 4*, pp. 14–15, https://budget.gov.au/2021-22/content/bp4/download/bp4_2021-22.pdf; see also Mannheim (2021) *Federal budget 2021: Has the Coalition finally ended its war on the Australian Public Service?*, <https://www.abc.net.au/news/2021-05-13/has-federal-budget-2021-ended-coalition-war-on-public-servants/100133980>

³⁴ Dennett (2021) *Tight controls on public service size are sure to stick around*, <https://www.canberratimes.com.au/story/7250069/tight-controls-on-public-service-size-are-sure-to-stick-around/>

³⁵ Sadler (2021) *Agency cuts lead to tech outsourcing fears*, <https://www.innovationaus.com/agency-cuts-lead-to-tech-work-outsourcing-fears/>

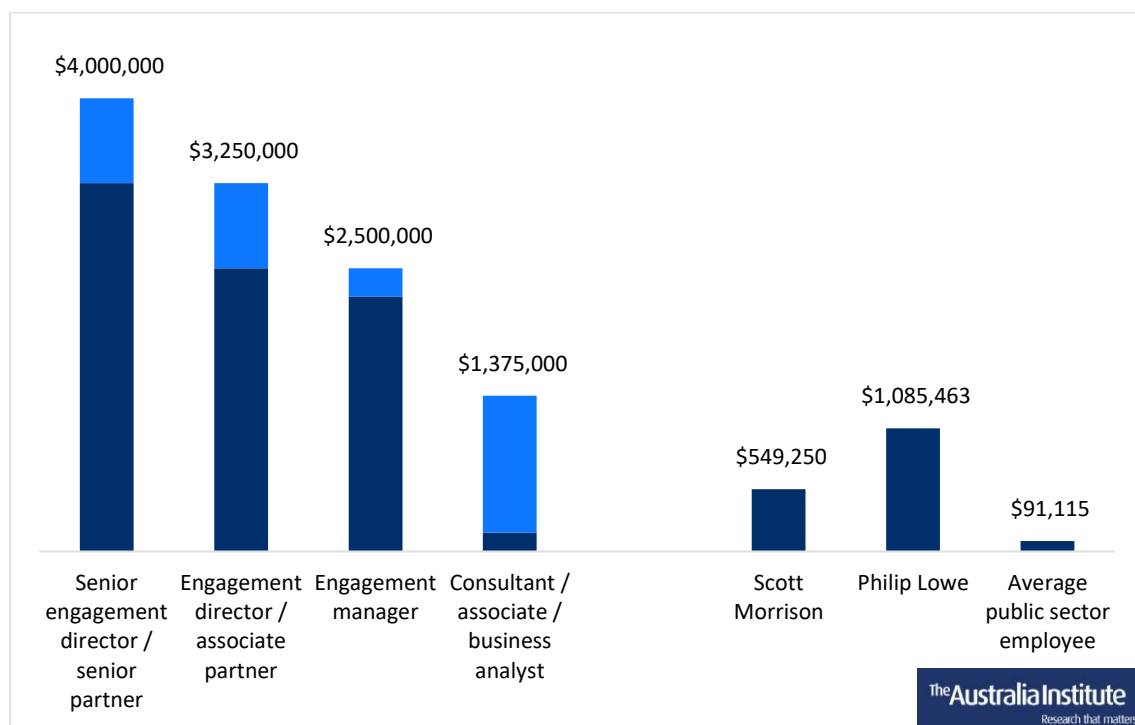
WORKING HOURS AND JOBS

While this analysis has used number of public servants employed as a way of illustrating consultancy spending, in practice consultancy spending would be unlikely to employ nearly as many people or produce nearly as much work as hiring public servants directly.

Unfortunately, reporting on consultancy employment is limited. Some illuminating evidence came in 2019, when the *Australian Financial Review* reported the “standard daily fees” for consultancy McKinsey. The reporters converted these fees into annual costs by multiplying them by 250 days.³⁶

Figure 2 shows the extreme difference between McKinsey’s standard fees and the salaries paid to Prime Minister Scott Morrison (\$550,000), Reserve Bank head Philip Lowe (\$1.1 million) or the average public sector employee (\$91,115). The McKinsey standard fees were given as ranges, so the dark bar shows the “minimum” and the light blue the “maximum”.³⁷

Figure 2: McKinsey standard fees for 250 days compared to annual salaries



Source: ABS (2020) *Employment and Earnings, Public Sector, Australia, 2019-20 financial year*; Ministerial and Parliamentary Services (2020) *Salary*, <https://maps.finance.gov.au/guidance/remuneration/salary>; Tadros & McIlroy (2019) *Revealed: McKinsey partners charge \$16,000 a day (before discounts)*,

³⁶ Tadros & McIlroy (2019) *Revealed: McKinsey partners charge \$16,000 a day (before discounts)*, <https://www.afr.com/politics/federal/revealed-mckinsey-partners-charge-16-000-a-day-before-discounts-20190808-p52f2a>

³⁷ Although since a plus symbol appeared next to every range (e.g. “\$13,000 to \$16,000+”), technically there was no maximum given.

<https://www.afr.com/politics/federal/revealed-mckinsey-partners-charge-16-000-a-day-before-discounts-20190808-p52f2a>

Another way of looking at it is that the Government potentially pays three times as much for a McKinsey “consultant” as it does for the Prime Minister’s salary. The Governor of the Reserve Bank costs one quarter to one third as much as a McKinsey “senior engagement director”. Of course, the McKinsey employee’s salary would be significantly lower than the amount the Government pays for their services.

It should be noted that these numbers are before discounts, which were almost 66% in the 2019 bid. While McKinsey said that the discount was altruistic, the reporters heard that “the initial work is being treated as a loss leader by the firm and will put them in the box seat to pitch for, and win, the subsequent stages of work in what will be a mammoth program”.³⁸

In addition, when a consultant is hired the consultancy is presumably responsible for management, administration and other overhead.

Nonetheless, the extreme difference in cost between the Commonwealth contracting work out versus hiring someone to do the work internally suggests that enormous value could be created by a change in hiring philosophy.

³⁸ Tadros & McIlroy (2019) *Revealed: McKinsey partners charge \$16,000 a day (before discounts)*

Conclusion

A continuing order for the production of consultancy reports and written advice from the Senate would go a long way to ensuring that the work that taxpayers pay for is available to them. Given the risk that consultancy work is skewed or unreliable, it is also necessary for transparency and so claims can be debated in the marketplace of ideas.

Such an order would not resolve all problems with the continued use of consultancies. It would depend on the executive engaging with the order in good faith, or the willingness of the Senate to hold the Government responsible for any failure to engage. It also would not, in itself, resolve the over-reliance on consultancy contracts which are a symptom of the hollowing out of the public service.