

The Auditor-General  
Audit Report No.49 2006–07  
Performance Audit

## **Non-APS Workers**

Australian National Audit Office

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of Australia 2007

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Canberra ACT  
25 June 2007

Dear Mr President  
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in across agencies in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit and the accompanying brochure. The report is titled *Non-APS Workers*..

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name.

Ian McPhee  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

## AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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# Abbreviations

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ANAO	Australian National Audit Office
APS	Australian Public Service
AQIS	Australian Quarantine and Inspection Service
CPGs	Commonwealth Procurement Guidelines
DFAT	Department of Foreign Affairs and Trade
Health	Department of Health and Ageing
IT	Information Technology
MAC	Management Advisory Committee
PS Act	<i>Public Service Act 1999</i>

# Glossary

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APS employee	A person engaged under section 22, or a person who is engaged as an APS employee under section 72, of the <i>Public Service Act 1999</i> .
Consultant	A consultant provides an intellectual output that assists with agency decision making, with the output reflecting the independent views of the service provider. See further Department of Finance and Administration <i>Guidance on Identifying Consultants for Annual Reporting processes Financial Management Guidance No.12</i> , Canberra, 2004.
Management Advisory Committee (MAC)	The MAC is a forum of Secretaries and Agency Heads established under the PS Act to advise the Australian Government on matters relating to the management of the APS.
Non-APS worker	Any person who provides his or her labour in return for remuneration from APS agencies excluding APS employees, and for the purposes of this report excluding agency staff and consultants.
Workforce Planning	A continuous process of shaping the workforce to ensure it is capable of delivering organisational objectives now and in the future.



## **Summary and Recommendations**



# Summary

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## Background and Context

1. The majority of the workforce supporting Australian Public Service agencies (agencies) are Australian Public Servants (APS) whose employment is governed by the *Public Service Act 1999* (PS Act).<sup>1</sup> There is also a significant number of non-APS workers who contribute to this workforce. Non-APS workers, when used effectively in appropriate circumstances, can provide significant benefits to agencies in assisting them achieve their outcomes. This audit examines the use of non-APS workers by agencies.
2. The term 'non-APS workers' spans a wide range of individuals who are engaged by agencies. In the most generic form, a worker is any person who provides his or her labour in return for remuneration. The type of work performed by non-APS workers can be in many fields including, information technology; finance, management; audit; business support service; or corporate support. The non-APS workforce can take various forms including casual employees; fixed-term employees; labour hire employees; consultants; and contractors.
3. Within the various categories of non-APS workers, this audit did not examine consultants because the definition of consultants and the nature of the work they perform can be distinguished from other non-APS workers. This audit also did not examine workers engaged by agencies under their own enabling legislation, which provides for the appointment of additional staff for temporary purposes.<sup>2</sup> Workers engaged under enabling legislation are designated 'staff' of the agency and their appointment is specifically excluded from the *Commonwealth Procurement Guidelines* (CPGs).<sup>3</sup>

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<sup>1</sup> As at 17 April 2007, there were 86 *Financial Management and Accountability Act 1997* agencies whose employment was governed by the PS Act and 15 *Commonwealth Authorities and Companies Act 1997* entities whose employment was governed by the PS Act.

<sup>2</sup> For example, those additional workers engaged by the Australian Bureau of Statistics who assist in carrying out activities relating to specified functions only and temporary staff engaged by the Australian Electoral Commission to assist in conducting an election.

<sup>3</sup> Department of Finance and Administration, *Commonwealth Procurement Guidelines, Financial Management Guidance No. 1*, Canberra, 2005, paragraph 2.5.

## How are non-APS workers engaged

4. Procurement requirements for APS agencies are governed by the CPGs.<sup>4</sup> Under the CPGs agencies are individually responsible for determining their need for non-APS workers and how they will acquire their services. The CPGs emphasise that 'Value for money is the core principle underpinning Australian Government procurement'.

5. Getting value for money from the use of non-APS workers is dependent upon defining and justifying the need for non-APS workers, efficient and effective procurement processes, and periodic assessment of contract performance. The price alone should not be the sole criterion; the overall fit with requirements is equally important.

## Audit Objective and methodology

6. The objective of the audit was to assess the management practices undertaken by APS agencies to achieve value for money and transparency in dealing with contracts for non-APS workers. The focus of the audit was on circumstances where agencies had a significant reliance on a non-APS workforce to assist in achieving their core functions. Regular reporting by agencies of expenditure on non-APS workers was outside the scope of this audit.

7. Following scoping discussions with ten agencies, the audit was conducted in the following APS agencies:

- the Department of Agriculture, Fisheries and Forestry—with a focus on Australian Quarantine and Inspection Service;
- the Department of Health and Ageing;
- the Department of Foreign Affairs and Trade; and
- Centrelink.

8. The audit also included an online survey of all APS agencies employing 20 or more APS employees as at 10 April 2006. The survey covered 84 APS agencies and was conducted to collect usage and expenditure data on the engagement of non-APS workers across APS agencies.

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<sup>4</sup> As at 17 April 2007, there were 7 Statutory Agencies under the PS Act not subject to the CPGs. *Commonwealth Authorities and Companies Act 1997* agencies that are not subject to the CPGs are encouraged to adopt some or all of the requirements of the CPGs, recognising they represent good practice.

9. The audit recommendations are framed to have general application, and the audit findings are reported to Parliament in generic terms, without being attributed to particular agencies. Where appropriate, references to sound and better practices have been included in this report.

## Overall Conclusion

10. The makeup and demographics of the Australian employment landscape is undergoing significant changes. The *Intergenerational Report 2007* highlighted that 'Total labour force participation rates (aged 15+) are projected to fall, reflecting the rapid increase in the proportion of the population aged 65 and over.'<sup>5</sup> Further 'These demographic changes will lead to a reduction of the proportion of the population of traditional working age, 15–65 years.'<sup>6</sup>

11. The broader changes to the Australian workforce are beginning to have a significant impact on the makeup of the workforce of APS agencies. It is likely that the engagement of non-APS workers as an embedded element, as distinct from an ad-hoc adjunct, in the workforce of APS agencies will be an ongoing feature in public administration.

12. Changes to workforce demographics require different approaches to human capital engagements. APS agencies are increasingly using a non-APS workforce to assist in achieving their outcomes. In particular, non-APS workers are being used to provide specialist skills and to supplement the APS workforce in peak times in business cycles. However, the use of non-APS workers, whether as casuals or contractors, brings different risks and opportunities for APS agencies to manage.

13. The ANAO considers that an agency's requirements for non-APS workers should be set at both the strategic and operational levels. The ANAO Audit Report No.55 2004–05 *Workforce Planning* highlighted that a fundamental element of workforce planning, in the context of meeting the agency's outcomes into the future, is consideration of both the demand for labour and of the supply of people with appropriate competencies to fulfil that need. The ANAO concluded that there is significant scope for agencies to integrate their use of non-APS workers into their workforce planning processes, especially where they have a significant reliance on the non-APS workforce. This is particularly relevant as agencies have indicated that the use of non-APS

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<sup>5</sup> Commonwealth of Australia, *Intergenerational Report 2007*, Canberra, April 2007, p.xi.

<sup>6</sup> *ibid.*, p.x.

workers is a growing trend, yet they do not gather or analyse data relevant or pertaining to that area of their workforce.

**14.** The ANAO found that there were numerous deviations from the CPGs in the engagement of the non-APS workers. These related to the adequacy of: processes designed to achieve value for money; documentation of the selection and approval processes; and contract evaluation. There were certain practices in the engagement of non-APS workers that assisted agencies in achieving value for money—these included the use of panel arrangements and bulk recruitment rounds that delivered significant efficiencies and consistency of processes. There are, however, significant opportunities for agencies to review, and amend where appropriate, their arrangements to better align their engagement of non-APS workers with the CPGs.

# Key Findings

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## Status on the use of non-APS workers (Chapter 2)

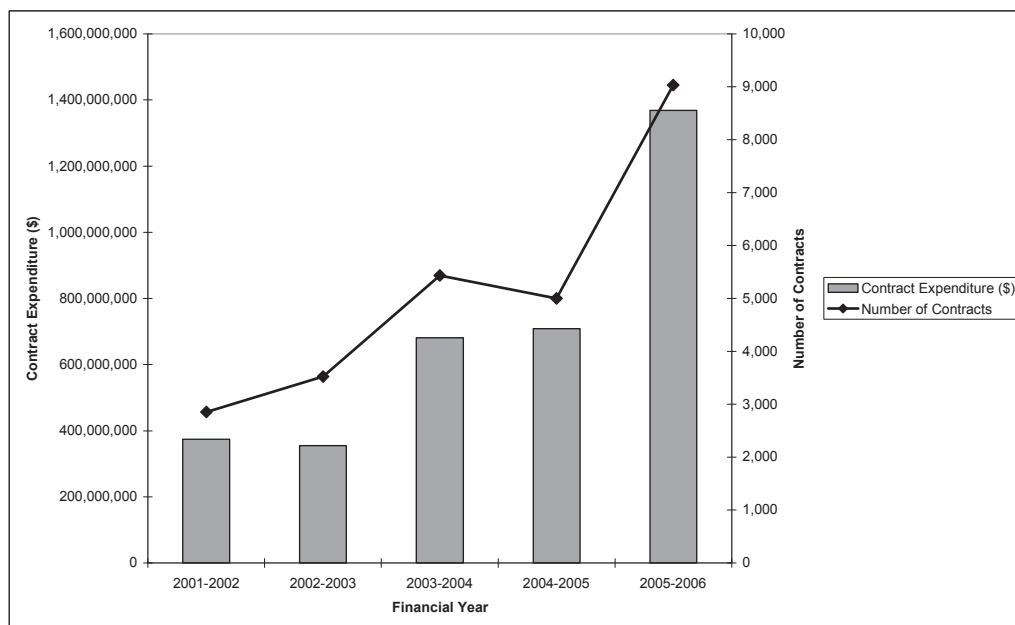
15. The ANAO survey found that some 19 000 non-APS workers were engaged by APS agencies as at 30 June 2006. At the same time there were approximately 146 000 APS employees—92% employed as ongoing employees, 8% employed as non-ongoing employees. On this basis the total workforce supporting APS agencies was some 165 000 persons, with non-APS workers representing more than 11% of this total workforce.

16. Agencies estimated their total expenditure on non-APS workers was \$2.197 billion in 2005–06. Over \$709 million of this total was for longer term contracts for specified personnel. This particular category of non-APS workers are otherwise known as contractors, or dependant contractors; workers who are engaged on a commercial contract but with significant elements of their work arrangements consistent with agencies' engagement of APS employees.

17. In the survey, agencies were further asked to provide historical data on their use of non-APS workers in terms of expenditure and number of contracts. Figure 1 represents the survey results for the 30 agencies that were able to answer this question. The ANAO notes that the cross section of agencies (small, medium and large) that were able to respond to this survey question was proportional to the cross section of all agencies asked to participate. This sample suggests a clear trend in the increased use of non-APS workers within the last five years, both in terms of expenditure and number of contracts.

**Figure 1**

**Expenditure and number of contracts for non-APS workers 2001–02 to 2005–06**



Source: ANAO survey 2006.

18. Agencies were also asked to indicate their predominate reason for engaging non-APS workers for contracts that commenced in 2005–06. The most frequent reason given for engaging non-APS workers was the need for specialist skills (52% of all contracts) followed by skills currently unavailable in the agency (33% of all contracts) and need for independent research or assessment (12%). Agencies indicated there were additional reasons for the engagement of non-APS workers including:

- to provide a flexible alternative to the model of full time or part time work with intermittent and irregular shifts over a period of time;
- to supplement the APS workforce in peak times over a business cycle;
- in circumstances where there was a legacy system in place;
- when a prompt response was required to a newly announced government initiative; and
- when a program or project had a finite lifespan.



19. Agencies also provided specific justifications for contract renewals and extensions, including: the need for business continuity through the retention of knowledge; and the associated cost of retraining new individuals.

20. The survey results combined with agency comments are reflective of the changing nature in how agencies conduct business. Over the last five years agencies have increased their reliance on non-APS workers by both spending more and engaging a higher number of non-APS workers than ever before. The Australian Public Service Commission *State of the Service Report 2005–06*, further highlights that the nature of the work performed by APS agencies has changed, ‘...there has been a general consolidation of trends towards a more skilled workforce’.<sup>7</sup> These changes to the APS workforce bring different risks that APS agencies need to manage.

21. The ANAO considers that at a minimum, agencies should be maintaining trend data on the use of the non-APS workforce and the main functions for which they are being used to better understand their reliance and fluctuations in their use. Agencies should seek to understand the demographics of the non-APS workforce which is drawn from the same ageing population as the permanent workforce and may not be necessarily relied on if staff skill shortages occur in the longer term. Workforce planning strategies should consider ways to develop innovative long-term responses to identified operational needs which in some cases may necessitate reducing or eliminating the reliance on the non-APS workforce.

22. The ANAO asked agencies to indicate the method of procurement used for non-APS workers for all new contracts in 2005–06. As defined by the CPGs, an agency’s procurement is required in certain circumstances to be conducted using one of the following methods: open tender, select tender or direct source. The CPGs state that value for money is enhanced in Government procurement through encouraging competition, by ensuring non-discrimination in procurement and using competitive procurement processes. The CPGs also have particular guidelines that restrict the use of a direct sourcing approach for certain arrangements, to enhance the competitive process.<sup>8</sup> There is also an underlying presumption that there will be an open approach to the market for procurements above a prescribed threshold.

<sup>7</sup> Australian Public Service Commission, *State of the Service Report 2005–06*, Canberra, 2006, p. 2.

<sup>8</sup> Department of Finance and Administration, *Commonwealth Procurement Guidelines, Financial Management Guidance No. 1*, Canberra, 2005, paragraph 8.65.

23. Agencies advised that some 48% of contracts for non-APS workers were awarded through a direct sourcing arrangement. The convenience of direct sourcing arrangements was often a significant factor in the re-engagement of non-APS workers, especially given the specialised work often performed by non-APS workers. While not all engagements of non-APS workers are above the prescribed threshold, the ANAO considers agencies should review their procurement practices surrounding the engagement of non-APS workers to ensure they are using a competitive procurement process that will assist in obtaining value for money.

24. The ANAO survey also sought information from each agency regarding the length of relationship the non-APS worker had had with the agency. This was for workers engaged as at 30 June 2006. Agencies advised that 49% (9 821) of these non-APS workers had been engaged by agencies for a period longer than one year. However, 83% of all new contracts for non-APS workers were for a period of less than one year. The survey results indicating the initial intent relating to the engagement of a non-APS worker do not necessarily reflect the ongoing nature of the relationship between the agency and the worker given the high proportion of subsequent re-engagement. The ANAO considers that if agencies maintained and recorded trend data on their non-APS workforce, they will be better able to scope their requirements for non-APS workers. Appropriately, scoping contracts for non-APS workers should similarly be an important consideration when contracts are 'rolled-over' on completion of the initial contract period. The ANAO considers that agencies need to formally and realistically ensure time frames for expected engagements are appropriate.

### **Strategic Planning for non-APS Workers (Chapter 3)**

25. An important aspect to the engagement of non-APS workers is how agencies plan for and rely on their use. A key consideration for agencies that have a significant reliance on a non-APS workforce is that their requirements for non-APS workers should be established at both the strategic and operational levels. This is particularly relevant when non-APS workers perform core functions in an agency, and where these core functions are performed by contractors, a subset of non-APS workers. A reliance on contractors as part of an agency's workforce requires conscious planning in terms of expected tenure, knowledge and skills transfer, and performance assessment. The strategic planning for such contractors should be a part of an agency's workforce planning framework.

### *Workforce Planning*

26. Workforce planning is a process that aims to ensure that the workforce within the organisation is capable of delivering the organisation's objectives especially over the medium to long term. Having an effective workforce plan, which is flexible enough to adapt to the ever-changing environment contributes towards strengthening the agency's organisational capability, as it assists in anticipating the staffing and skill requirements of the changing environment.

27. While workforce planning practices will be influenced by the size of the agency, its complexity and the context in which it is operating, all agencies rely on specialist skills in certain areas and organisational capability may be adversely impacted by not having appropriately skilled staff available when they are required. With the ageing population, and consequent demographic changes to the Australian workforce, agencies will need to be increasingly aware of the impact this has on the APS workforce, and also the different risks, advantages and disadvantages this has on the non-APS workforce, in particular the contractor workforce.

### *Observations in agencies*

28. Agencies noted the tightening labour market is having a significant impact on their use of contractors. Firstly, agencies noted that contractors have traditionally been engaged to fill vacancies unable to be met by the APS workforce; hence the growing reliance on contractors. Secondly, the difficulty in recruiting appropriately skilled persons was also currently extending to the contractor workforce; that is, agencies are finding it increasingly difficult to engage the right contractor when needed, directly exposing agencies to market fluctuations and variations. In particular this is currently a major issue with the use of contractors in highly specialised areas, notably in the accounting and information technology (IT) disciplines.

29. Agencies noted that this reliance on contractors can have significant flow on effects and risks including:

- becoming highly dependent on the retained knowledge of contractors with limited means of managing exposure to loss of this knowledge under commercial tri-party labour hire arrangements;
- being directly exposed to pressure on hourly rates, particularly in a tight labour market. Dependency on retained knowledge compounds this exposure to increased costs of services;

- equity of remuneration and allocation of work that can lead to problems of retention of valuable ongoing employees; and
- impact on morale amongst APS workers who may perceive contractors to be higher paid but with less responsibility.

30. Overall, the ANAO observed a general lack of strategic planning for the contractor workforce, despite an acknowledgment within some agencies of their reliance on this workforce. While contractors are used as a flexible alternative to APS employment, under the current tight labour market conditions, agencies are exposed to a significant reliance on a contractor workforce to achieve their outcomes. Against this background, there is scope for agencies to more formally monitor the use of contractors and use this information to inform their workforce planning processes and resultant strategies.

31. The ANAO observed examples of where the use of a contractor workforce had been successfully integrated into the strategic planning process in circumstances where the contractors provided ad-hoc and temporary relief to the permanent workforce. In such circumstances it was more the specialist requirements of the agency that resulted in their significant reliance on a contractor workforce.

#### *Integration of non-APS workers into workforce planning*

32. Non-APS workers provide a range of critical services to agencies. With the ageing population, and consequent demographic changes to the Australian workforce, such workers cannot be assumed to always be available. While some agencies were aware of their reliance on the non-APS workforce, there was limited inclusion of this segment of the workforce into workforce planning considerations, or any other strategic planning process. Where active workforce planning was in existence within the audited agencies, there was little or no data about workers other than APS employees. The ANAO considers that a useful element of an agencies' workforce planning processes should include accurate and relevant information on the entire workforce of an agency, including non-APS workers.

### **The Engagement of non-APS workers (Chapter 4)**

33. There is a range of legislation and government policy relevant to the engagement of non-APS workers. The main legislation directly affecting procurement for agencies is either the *Financial Management and Accountability Act 1997* (FMA Act) or the *Commonwealth Authorities and Companies Act 1997*

(CAC Act). The most significant policy requirements are contained in the Commonwealth Procurement Guidelines (CPGs),<sup>9</sup> issued by the Finance Minister. The CPGs establish the procurement policy framework within which agencies determine their specific procurement practices.

34. In reviewing the practices surrounding the engagement of non-APS workers the ANAO reviewed a selection of contracts within each audited agency based on criteria of length, total cost, and value per day. The ANAO assessed whether the procurement surrounding each contract was conducted within the agencies' policies and legislative requirements, and the CPGs.

35. While agencies' procurement policies were sound, there were numerous deviations between the implementation of these policies and the CPGs. There was a particular weakness across all audited agencies where contracts for non-APS workers were extended or renewed. Deviations from the CPGs' related to the adequacy of:

- documentation of the selection and approval processes;
- appropriate value for money considerations (especially for long term contractors); and
- the evaluation of the performance of the services rendered under the contract.

36. In light of these findings, agencies engaging non-APS workers, especially those agencies doing so on a regular basis, should review their current practices and processes to ensure their compliance with the CPGs. In situations where there is a likely ongoing requirement for particular services, the ANAO considers it appropriate to structure the initial approach to market to foreshadow this possibility and to include appropriate provision to extend the initial contract.

### *Contract Performance and Monitoring*

37. Contractors should be actively managed throughout the tenure of their engagement to ensure performance is satisfactory and that all contract requirements are appropriately met. Managing contractor performance should also assist agencies in ensuring they are obtaining value for money. Effective contractor management provides a mechanism to systematically improve

<sup>9</sup> Department of Finance and Administration, *Financial Management Guidance No.1*, January 2005. As at 17 April 2007, there were 7 Statutory Agencies under the PS Act not subject to the CPGs. CAC agencies that are not subject to the CPGs are encouraged to adopt some or all of the requirements of the CPGs, recognising they represent good practice.

organisational capability by linking and aligning individual, team, and organisational objectives and results.

38. The ANAO observed that for the most part there was a relatively high degree of specificity of tasks and responsibilities within most contracts as a means of measuring performance. There was, however, little evidence of agencies performing contract evaluation or formal assessment of non-APS workers' performance under the contract.

39. For the majority of engagements, the contractual terms were not supported with any framework for performance measurement or assessment. While many of the non-APS workers were treated in a similar manner to APS employees, there was generally little formal assessment of how the contractor met the contractual terms.

## Agency responses

40. Each of the audited agencies responded positively to the audit report and agreed with each of the recommendations.<sup>10</sup>

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<sup>10</sup> Agencies general comments are provided in Appendix 2.

# Recommendations

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**Recommendation No. 1**  
**Para. 3.21**

The ANAO *recommends* that APS agencies that have a significant reliance on non-APS workers ensure the planning and management of non-APS workers is identified, acknowledged and built into implementation strategies as part of APS agencies’ broader workforce planning processes.

*Agencies responses*

Each of the audited agencies *agreed* with the recommendation.

**Recommendation No. 2**  
**Para. 4.21**

The ANAO *recommends* that agencies review, and amend where appropriate, the necessary arrangements to align their engagement of non-APS workers with the legislative and policy procurement framework.

*Agencies responses*

Each of the audited agencies *agreed* with the recommendation





## **Audit Findings and Conclusions**



# 1. Background and Context

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*This Chapter defines non-APS workers and explains how they are engaged. It also outlines how we undertook this audit.*

## Background

**1.1** The majority of the workforce supporting Australian Public Service agencies (APS agencies) are Australian Public Servants (APS) whose employment is governed by the *Public Service Act 1999*. There is also significant numbers of non-APS workers who contribute to this workforce. Non-APS workers, when used effectively in appropriate circumstances, can provide significant benefits to agencies in assisting them achieve their outcomes. This audit examines the use of non-APS workers in agencies.

**1.2** The changing nature of employment arrangements within the wider employment landscape has been highlighted by recent Parliamentary and Australian Government reports. In 2005 The House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation released an inquiry entitled *Making it work: Inquiry into independent contracting and labour hire arrangements*. This inquiry highlighted that ‘The growth of independent contracting and labour hire employment (in the last fifteen years) clearly indicates that it has become a preferred employment of choice for many Australians.’<sup>11</sup>

**1.3** The Productivity Commission in May 2006 released the research paper *The Role of Non-Traditional Work in the Australian Labour Market*. The paper commented ‘....that non-traditional work has grown in recent times in Australia, challenging the dominance of traditional, ongoing employment.’<sup>12</sup>

**1.4** There has also been increased focus within the Australian Government public sector of the changing nature of employment arrangements. The Management Advisory Committee (MAC) has also discussed the growing need for a change in the way the Australian Government does business, and finding alternative ways to deliver Government objectives. In the report *Managing and Sustaining the APS Workforce*, the MAC commented that the

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<sup>11</sup> The House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation, *Making it work: Inquiry into independent contracting and labour hire arrangements*. August 2005, Canberra, p. ix.

<sup>12</sup> Productivity Commission, *The Role of Non-Traditional Work in the Australian Labour Market*, 2006, Canberra, p. xix.

‘...APS workforce will continue to need to be supplemented by staff with specialist skills and qualifications.’<sup>13</sup> The report further noted that:

The Australian Public Service (APS) faces a challenge in attracting and retaining skilled and talented staff in an employment environment very different to that of the past. In this new environment, agencies will need to adopt strategic and dynamic approaches to managing and sustaining the APS workforce, taking account of its increasingly diverse career paths and aspirations.<sup>14</sup>

**1.5** The Australian Government accounts for approximately 2.5 per cent of all wage and salary earners within Australia.<sup>15</sup>

## **What are non-APS workers**

**1.6** The term ‘non-APS workers’ spans a wide range of individuals who are engaged by agencies. In the most generic form, a worker is any person who provides his or her labour in return for remuneration.<sup>16</sup> The type of work performed by non-APS workers can be in many fields including: information technology; finance, management; audit; business support service; or corporate support. The non-APS workforce can also take various forms including casual employees; fixed-term employees; labour hire employees; consultants; and contractors.

**1.7** Within the various categories of non-APS workers, this audit did not examine consultants<sup>17</sup> nor workers engaged by agencies under their own enabling legislation which enables the appointment of additional staff.

**1.8** The definition of consultants and the nature of the work they perform can be distinguished from other non-APS workers. A consultant provides an intellectual output that assists with agency decision making, with the output reflecting the independent views of the consultant. By comparison, all other non-APS workers can be said to provide day-to-day services and are usually under the direct supervision of the agency.

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<sup>13</sup> MAC, *Managing and Sustaining the APS Workforce*, 2005, p. ix.

<sup>14</sup> *ibid.*, p. x.

<sup>15</sup> Australian Parliament, *Budget Paper No. 1*, 2006-07, p. 12-4.

<sup>16</sup> Productivity Commission *The Role of Non-Traditional Work in the Australian Labour Market*, May 2006, definitions page.

<sup>17</sup> As defined in the Department of Finance and Administration *Guidance on Identifying Consultants for Annual Reporting processes Financial Management Guidance No.12*, Canberra, 2004.

**1.9** This audit also did not examine workers engaged by agencies under their own enabling legislation which provides for the appointment of additional staff for temporary purposes. The engagement of these workers can be distinguished from other non-APS workers as these workers are designated 'staff' of the agency and their appointment is specifically excluded from the *Commonwealth Procurement Guidelines*, (CPGs).<sup>18</sup> Examples of these circumstances include the:

- *Australian Bureau of Statistics Act 1975* which enables the Australian Bureau of Statistics to engage additional workers to assist in carrying out functions of the Australian Statistician for specified functions only; and
- *Commonwealth Electoral Act 1918* which can be used by the Australian Electoral Commission to engage temporary staff to assist in conducting an election, referendum, ballot or Roll review.

**1.10** Case Study No.1 provides some examples of agencies' use of non-APS workers.

### **Case study No.1—Examples of agencies use of non-APS workers**

**Clerical support** workers usually provide short term relief for agencies to cover vacancies within the APS workforce. This typically could arise for example when a replacement is sought for an employee who is about to go on extended maternity or paternity leave. An advantage for agencies in engaging non-APS clerical support is that they can typically be recruited and terminated in a much shorter time period than APS employees.

**Call Centre** workers can be engaged to provide assistance to agencies with one-off projects in response to government policies. For example, when an agency has demand for customer feedback, non-APS workers can be provided by a labour hire firm at relatively short term notice with flexible working arrangements.

**IT Contractors** are commonly used as an alternative to APS employees to provide highly specialised knowledge to an agency. IT contractors are engaged for a variety of reasons but often because of a lack of required skills within the APS workforce. The use of an IT contractor workforce is convenient when a program has a finite lifespan.

Workers with **business specific skills**. For example within the Australian Quarantine and Inspection Service (AQIS) a number of veterinary officers are engaged on contract to provide assistance to the APS staff on an ad-hoc basis. These contractors have specialised skills which would be costly to maintain on a more permanent basis. The use of contract veterinary officers in this situation enables AQIS to provide a cost-effective solution to their business needs and to minimise costs within an industry 'cost recovery' framework.

<sup>18</sup> Department of Finance and Administration, *Commonwealth Procurement Guidelines, Financial Management Guidance No. 1*, Canberra, 2005, paragraph 2.5.

## How are non-APS workers engaged

**1.11** Procurement requirements for agencies are governed by the CPGs.<sup>19</sup> Under the CPGs, agencies are individually responsible for determining their need for non-APS workers and how they will acquire their services. The CPGs states that 'Value for money is the core principle underpinning Australian Government procurement'.<sup>20</sup>

**1.12** Getting value for money from the use of non-APS workers is dependent upon defining and justifying the need for non-APS workers, efficient and effective procurement processes, and periodic assessment of contract performance. The price alone should not be the sole criterion; the overall fit with requirements is equally important.

**1.13** The CPGs also establish a set of Mandatory Procurement Procedures for 'covered procurements'. Covered procurements are procurements, other than those which the Government has exempted, which exceed a prescribed threshold.<sup>21</sup> Many longer term engagements of non-APS workers are covered procurements.

**1.14** 'Contracts for labour hire' as defined by Finance Circular 2005/14 are subject to the CPGs but are exempted from the Mandatory Procurement Procedures. A contract for labour hire is defined as:

A contract under which an agency engages an individual to provide labour, where the individual is engaged either directly or through a firm which primarily exists to provide the services of only that individual.<sup>22</sup>

**1.15** The ANAO notes that a common method of engagement for non-APS workers is through a tri-party agreement where a labour hire firm provides individuals to work for an agency. These are not 'contracts for labour hire', as defined by Finance Circular 2005/14, because the labour hire firm exists to provide the services of numerous individuals. Such contracts are not exempt

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<sup>19</sup> As at 17 April 2007, there were 7 Statutory Agencies under the PS Act not subject to the CPGs. CAC agencies that are not subject to the CPGs are encouraged to adopt some or all of the requirements of the CPGs, recognising they represent good practice.

<sup>20</sup> Department of Finance and Administration, *Commonwealth Procurement Guidelines, Financial Management Guidance No. 1*, Canberra, 2005.

<sup>21</sup> The current thresholds are as follows: for procurements in FMA agencies, other than procurements of construction services, the procurement threshold is \$80 000; for procurements in relevant CAC Act bodies, other than procurements of construction services, the procurement threshold is \$400 000; or for procurements of construction services, the procurement threshold is \$6 million.

<sup>22</sup> Department of Finance and Administration, Finance Circular 2005/14 *Procurement Policy Framework—Contracts for Labour Hire*, Canberra, 2005.

from the Mandatory Procurement Procedures. The exemption under Finance Circular 2005/14 has quite limited applicability to most engagements of non-APS workers.

## The Audit

### Audit Objective

**1.16** The objective of the audit was to assess the management practices undertaken by agencies to achieve value for money and transparency in dealing with contracts for non-APS workers. The focus of the audit was on circumstances where agencies had a significant reliance on a non-APS workforce to assist in achieving their core functions. The reporting by agencies expenditure on non-APS workers was outside the scope of this audit.

**1.17** The ANAO identified three key areas for review that are examined in the following chapters:

- Chapter Two—*Status on the use of Non-APS Workers*—provides an overview on the use of non-APS workers within agencies. This is based on survey results and includes agencies' comments on how and why they use such labour.
- Chapter Three—*Strategic Planning of Non-APS Workers*—examines the relationship between workforce planning and non-APS workers. This chapter focuses on non-APS workers who are contractors within an agency.
- Chapter Four—*Procurement of Non-APS Workers*—this chapter discusses the procurement process relating to the engagement of non-APS workers, with a focus on contractors.

**1.18** The audit recommendations are framed to have general application, and the audit findings are reported to Parliament in generic terms, without being attributed to particular agencies. Where appropriate, references to sound and better practices have been included in this report.

### Audit Methodology

**1.19** The ANAO audit methodology included scoping discussions with ten agencies to identify common issues and their general use of non-APS workers. Four agencies were selected from the initial ten for further field work, which included file reviews and interviews with relevant staff. These four agencies were selected on the basis of substantively using non-APS workers.

**1.20** The four agencies selected were the Department of Agriculture, Fisheries and Forestry—with a focus on Australian Quarantine and Inspection Service (AQIS), the Department of Health and Ageing (Health), the Department of Foreign Affairs and Trade (DFAT), and Centrelink. AQIS was specifically selected due to some unique uses of non-APS workers within their broader workforce.

**1.21** The audit also included an online survey of all agencies employing 20 or more APS employees as at 10 April 2006. The survey covered 84 agencies and was conducted to collect expenditure and usage data on the engagement of non-APS workers across the Australian Government. All 84 agencies responded to the survey; a complete list of the agencies surveyed is provided in Appendix 1. Orima Research was selected to design and monitor the online survey.

**1.22** The audit was conducted in conformance with ANAO auditing standards and cost approximately \$320 000.



## 2. Status on the use of Non-APS Workers

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*This Chapter presents a point in time analysis of Australian Public Service agencies use of non-APS workers including agencies expenditure, justification, usage, and procurement methods. It also examines the tenure of non-APS workers.*

### Introduction

**2.1** In order to ensure agencies are getting value for money from their procurement of non-APS workers they need reliable and up-to date information on who they are engaging, the prices they are paying, and how much in total they are spending. Access to such information will enable agencies to: monitor trends so as to determine whether their expenditure is justified in the context of their broader operational costs; identify which areas within an agency are the heaviest users of non-APS workers and require specific guidance; and to compare and benchmark prices both internally and with the current market average.

**2.2** There is currently no APS wide data available on the use of non-APS workers. There are various reporting requirements under the CPGs as outlined in Financial Management Guidance No.15 *Guidance in Procurement Publishing Obligations*.<sup>23</sup> These reporting requirements however do not enable easy disaggregation of agencies' use of non-APS workers. To find out more about the usage of non-APS workers within agencies the ANAO carried out a survey of all agencies employing twenty or more APS employees. A complete list of the agencies surveyed is provided in Appendix 1.

### Audit Survey

#### Background

**2.3** Within the survey, each agency was given the opportunity to provide comments or clarification in response to each question. From these comments it is evident that agencies' systems for human resource management or financial reporting were unable to provide the requested data with a high degree of confidence. This is partly due to the fact that the use of non-APS workers was not necessarily distinguished in contracts that provided a mix of

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<sup>23</sup> Available from <<http://www.finance.gov.au>>.

services and labour. Further, while the specific purpose of the contract may be known at business line level, the specific purpose is not necessarily recorded in any central registry. Therefore it was extremely difficult from a whole of agency level to identify the use of non-APS workers.

**2.4** In an attempt to respond to the survey, agencies frequently made assumptions in interpreting their data. As a result the following results should be viewed as providing useful trend analysis only. The ANAO considers that the survey results provide a conservative estimate on the use of non-APS workers in agencies.

## How many non-APS workers are engaged

**2.5** The ANAO survey found that some 19 000 non-APS workers were engaged by agencies as at 30 June 2006. At the same time there were approximately 146 000 APS employees—92% employed as ongoing employees, 8% employed as non-ongoing employees. On this basis the total workforce supporting agencies was some 165 000 persons, with non-APS workers representing more than 11% of this total workforce. Table 2.1 summarises the APS and non-APS workforce categorised according to agency size. The survey results clearly demonstrate that non-APS workers make a significant contribution to the broader Australian public sector, especially in the smaller agencies.

**Table 2.1**

**The workforce of agencies as at 30 June 2006.**

AGENCY SIZE	APS <sup>(1)</sup>	non-APS <sup>(2)</sup>	ESTIMATED TOTAL WORKFORCE
Large (>1000)	129 760 (88.6%)	16 631 (11.4%)	146 391
Medium (251 – 1000)	12 801 (89.8%)	1 452 (10.2%)	14 253
Small (20 – 250)	3 873 (78.1%)	1 089 (21.9%)	4 962
All APS agencies	146 434 (88.4%)	19 172 (11.6%)	165 606

Source: 1. Australian Public Service Statistical Bulletin 2005–06: Table 2 pp. 17–18.

2. ANAO Survey 2006.

## What agencies spend on non-APS workers

**2.6** Agencies estimated their total expenditure on non-APS workers was \$2.197 billion in 2005–06. Agencies were further asked to differentiate the methods of engagement from the four categories represented in Table 2.2 below.

**Table 2.2****Methods of engagement for non-APS workers**

Method of engagement	Number of contracts in 2005–06	Total expenditure during 2005–06	Percentage of total expenditure on non-APS workers
(a) large specific purpose based contracts with non-specific personnel	2 673	\$516 730 327	24%
(b) contracts for established outsourced services	3 799	\$681 909 082	31%
(c) traditional labour hire arrangements for short term contracts	7 412	\$288 618 879	13%
(d) longer term contracts for specified personnel	5 608	\$709 255 371	32%
<b>Total</b>	<b>19 492</b>	<b>\$2 197 523 864</b>	<b>100%</b>

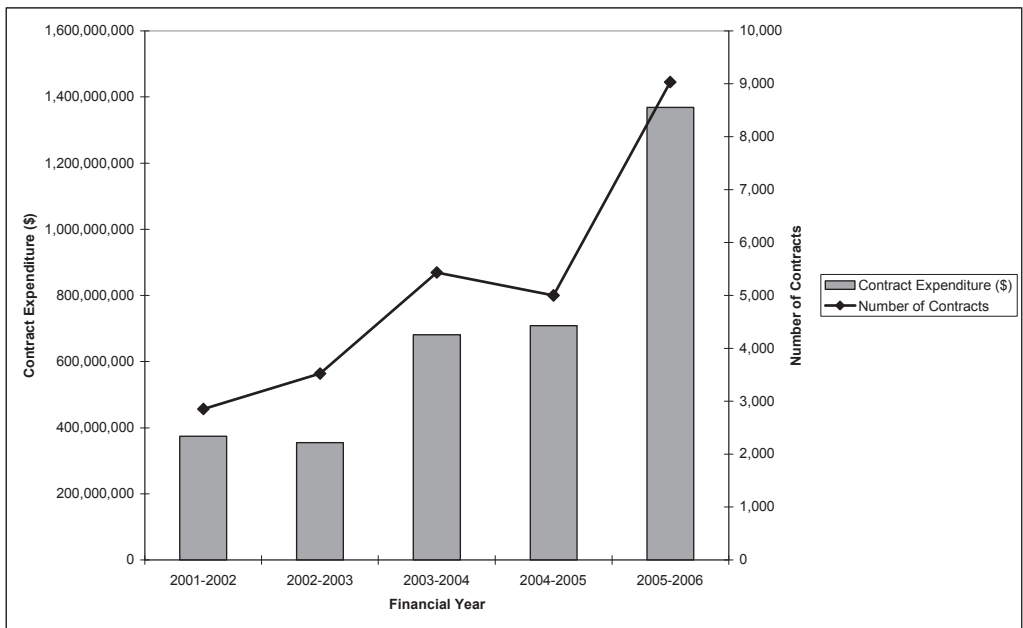
Source: ANAO survey 2006.

**2.7** A focus of this audit was on circumstances where agencies had a significant reliance on a non-APS workforce to assist them in achieving their core functions. A particular focus during fieldwork of the selected agencies was the use of longer term contracts with specified personnel—category (d) in Table 2.2. This particular category of non-APS workers are otherwise known as dependant contractors, or more simply contractors; workers who are engaged on a commercial contract but with significant elements of their work arrangements consistent with agencies' engagement of employees.

**2.8** In the survey agencies were asked to provide historical data on their use of non-APS workers in terms of expenditure and number of contracts. Figure 2.1 represents the survey results for the 30 agencies that were able to answer this question. The ANAO notes that the cross section of agencies (small, medium and large) that were able to respond to this survey question was proportional to the cross section of all agencies asked to participate. This sample suggests a clear trend in the increased use of non-APS workers within the last five years, both in terms of expenditure and number of contracts.

Figure 2.1

Expenditure and number of contracts for non-APS workers 2001–02 to 2005–06

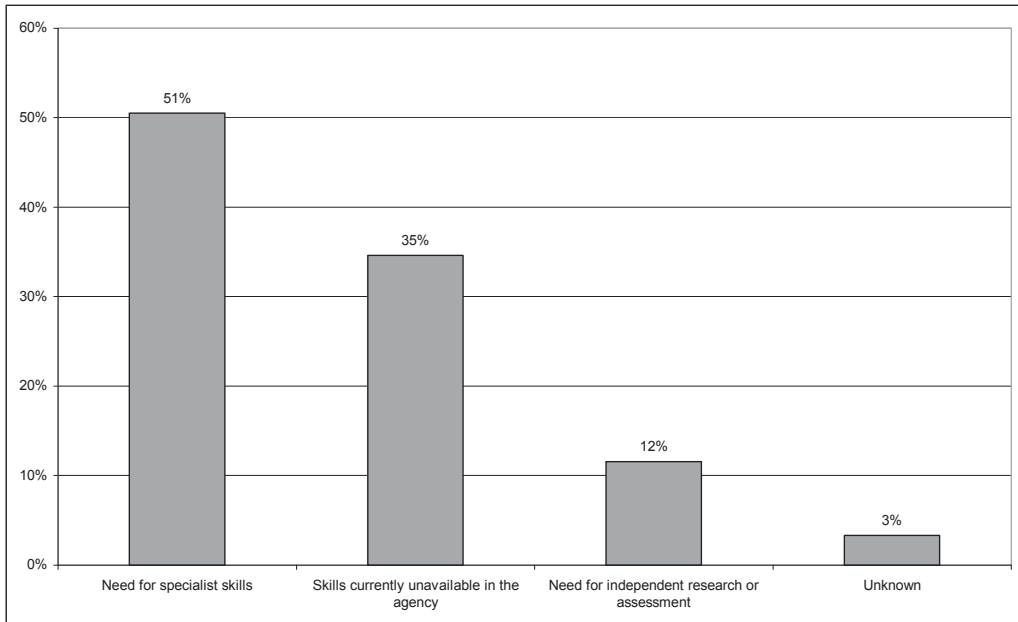


Source: ANAO survey 2006.

Why agencies use non-APS workers

2.9 Agencies were also asked to indicate their predominate reason for engaging non-APS workers for contracts that commenced in 2005–06. The distinction between consultants and non-consultancy contracts is an acknowledged grey area in the *Guidance on Identifying Consultants for Annual Reporting processes Financial Management Guidance*.<sup>24</sup> As a consequence the reasons for engaging non-APS workers are often closely aligned to the reasons for engaging consultants. The most frequent reason given for engaging non-APS workers was the need for specialist skills (51% of all contracts). Figure 2.2 represents agencies’ responses when asked what was the predominate reason for engaging non-APS workers.

<sup>24</sup> As defined in the Department of Finance and Administration *Guidance on Identifying Consultants for Annual Reporting processes Financial Management Guidance No.12*, Canberra, 2004.

**Figure 2.2****Predominate reason given for engaging non-APS workers**

Source: ANAO survey 2006.

**2.10** Agencies indicated in their survey responses and throughout fieldwork some additional reasons for the engagement of non-APS workers including:

- to provide a flexible alternative to the model of full time or part time work with intermittent and irregular shifts over a period of time;
- to supplement the APS workforce in peak times over a business cycle;
- in circumstances where there was a legacy system in place;
- when a quick response was required to a newly announced government initiative; and
- when a program or project had a finite lifespan.

**2.11** Agencies also provided specific justifications for contract renewals and extensions, including: the need for business continuity through the retention of knowledge; and the associated cost of retraining new individuals.

**2.12** The survey results combined with agency comments are reflective of the changing nature in how agencies do business. Over the last five years agencies are increasing their reliance on non-APS workers by both spending more and engaging more workers than ever before. The Australian Public

Service Commission *State of the Service Report 2005–06* further highlights the nature of the work performed by agencies has changed, ‘...there has been a general consolidation of trends towards a more skilled workforce’. <sup>25</sup> These changes to the APS workforce brings different risks that agencies need to manage.

**2.13** To address these issues the ANAO considers that at a minimum, agencies should be maintaining trend data on the use of the non-APS workforce and the main functions for which they are being used to better understand their reliance and fluctuations in their use. Agencies should seek to understand the demographics of the non-APS workforce which is drawn from the same ageing population as the permanent workforce and may not be necessarily relied on if staff shortages occur in the longer term. In some cases, workforce planning strategies should consider ways to develop innovative long-term responses to identified operational needs to reduce or eliminate the reliance on the non-APS workforce.

**2.14** The ANAO considers the survey questions may provide a useful starting point for data collection for agencies to analyse their non-APS workforce. Additional data surrounding the incidence of former APS employees returning as non-APS workers may also be of interest. While the specific business of an agency will determine the usefulness of individual questions and additional data collection, over the short to medium term the survey data may assist agencies in providing basic contractor information for workforce planning processes.

## **How agencies engage non-APS workers**

**2.15** Agencies procure non-APS workers in different ways. As defined by the CPGs, an agencies’ procurement is required in certain circumstances to be conducted using one of the following methods:

- Open Tender—A procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders;
  - Select Tender—A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders;
- or

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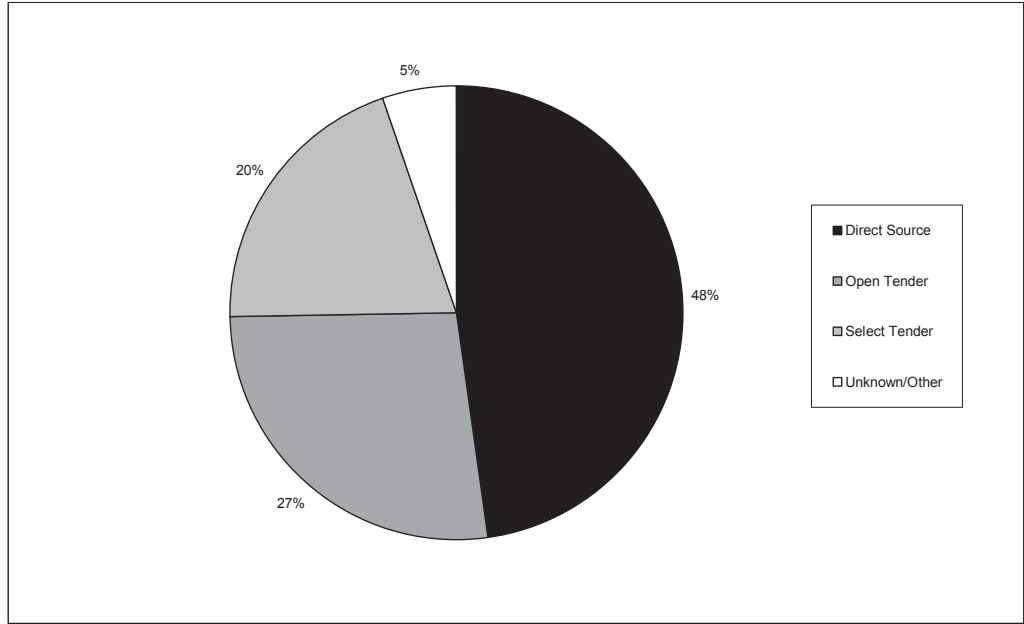
<sup>25</sup> Australian Public Service Commission, *State of the Service Report 2005–06*, 2006, Canberra, p. 2.

- **Direct Source**—Direct sourcing refers to a procurement process in which an agency may invite a potential supplier or suppliers of its choice to make submissions.

**2.16** The ANAO asked agencies to indicate the method of procurement used for non-APS workers for new contracts in 2005–06. As some agencies are not subject to the CPGs, the survey question included a further category to allow for systems that did not necessarily capture this information. Figure 2.3 represents the procurement method adopted as a percentage of all contracts entered into in 2005–06 for non-APS workers.

**Figure 2.3**

**Methods used to engage non-APS workers 2005–06**



Source: ANAO survey 2006.

**2.17** The CPGs state that value for money is enhanced in Government procurement through encouraging competition, by ensuring non-discrimination in procurement and using competitive procurement processes. In selecting the most appropriate form of competition agencies need to consider the costs of tendering; the number of potential suppliers; and the nature of the work. Unless the contract expenditure is very small, the more competitive the tender process, the more likely it is that an agency will ensure that they achieve value for money and be able to compare the alternative services offered by different suppliers.

**2.18** Agencies advised that some 48% of contracts for non-APS workers were awarded through a direct sourcing arrangement. The convenience of direct sourcing arrangements was often a significant factor in the re-engagement of non-APS workers, especially given the highly specialised work often performed by non-APS workers.

**2.19** The CPGs have particular guidelines that restrict the use of a direct sourcing approach for certain arrangements to enhance the competitive process. There is also an underlying presumption that there will be an open approach to the market for procurements above a prescribed threshold. While not all engagements of non-APS workers are above the prescribed threshold, the ANAO considers that agencies should review their procurement practices surrounding the engagement of non-APS workers to ensure they are using a competitive procurement process that will assist in obtaining value for money.

**2.20** A number of agencies have taken steps to improve their efficiency in engaging contractors while ensuring a competitive process. One solution is the establishment of a panel. A panel is established by an agency entering into contracts or deeds of standing offer for the provision of identified services. For example, acknowledging their significant usage of IT contractors, DFAT has, since October 2003, established a specific IT contractor panel of 13 contracting agencies. The panel facilitates the timely appointment of contractors and enhances the value for money considerations relating to the engagement of contractors.

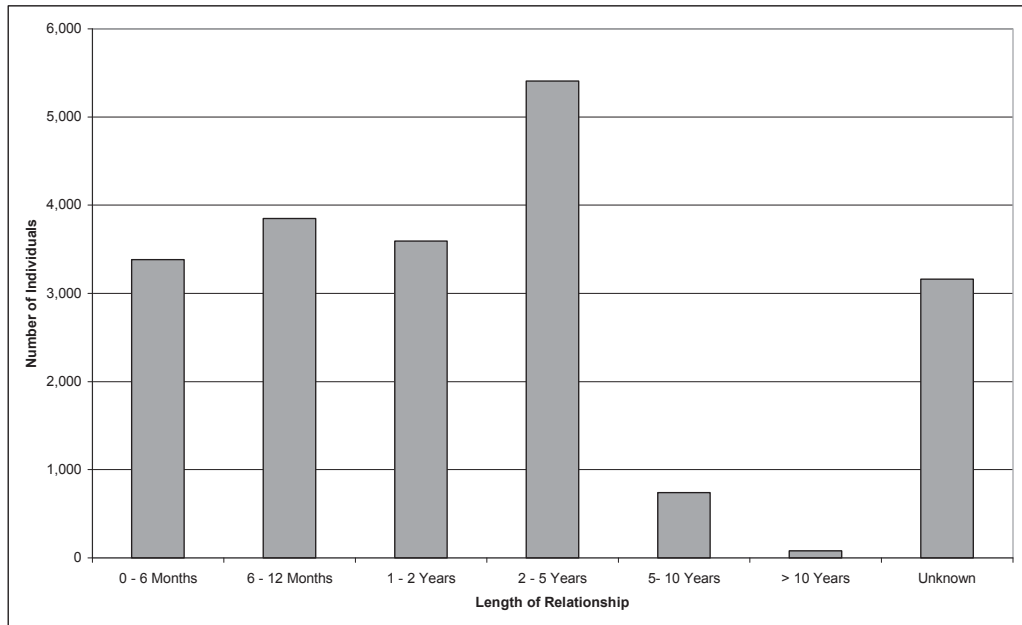
## **Tenure of non-APS workers**

**2.21** The ANAO survey sought information from each agency regarding the length of relationship a non-APS worker had had with the agency. This was for all workers engaged as at 30 June 2006. For the purposes of the survey, 'continuous relationship' included circumstances where an individual did not necessarily work for the agency for the entire year, but did work at least part of the year. A summary of agencies responses is provided in Figure 2.4.



**Figure 2.4**

**Length of relationship of non-APS workers**



Source: ANAO survey.

**2.22** The ANAO notes that agencies responses indicated that the large ‘unknown’ response was partly due to the information not being centrally recorded or that this type of information was not necessarily recorded in any of their systems.

**2.23** Agencies advised that 49% (9 821) of all non-APS workers engaged as at 30 June 2006 had been with the agency for a period longer than one year. However 83% of all new contracts for non-APS workers were for a period of less than one year. The survey results indicate the initial intent relating to the engagement of a non-APS worker does not necessarily reflect the ongoing nature of the relationship between the agency and the worker given the high proportion of subsequent re-engagement. The ANAO considers that if agencies maintained and recorded accurate data on their non-APS workforce, they will be better able to scope their requirements for non-APS workers. Appropriately, scoping contracts for non-APS workers should similarly be an important consideration when contracts are ‘rolled-over’ on completion of the initial contract period. The ANAO considers that agencies need to formally and realistically ensure time frames for expected engagements are appropriate. The strategic use of non-APS workers is further discussed in Chapter 3—*Strategic Planning for Non-APS Workers*.

## 3. Strategic Planning for Non-APS Workers

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*This chapter discusses the operational and strategic planning by agencies for the engagement of non-APS workers—in particular the contractor workforce.*

### Introduction

**3.1** An important aspect to the engagement of non-APS workers is how agencies plan for and rely on their use. A key consideration for agencies that have a significant reliance on a non-APS workforce is that their requirements for non-APS workers should be established at both the strategic and operational levels. This is particularly relevant when non-APS workers perform core functions in an agency, and where these core functions are performed by contractors, a subset of non-APS workers. A reliance on contractors as part of an agency's workforce requires conscious planning in terms of expected tenure, knowledge and skills transfer, and performance assessment. The strategic planning for such contractors should be a part of an agency's workforce planning framework.

**3.2** The use of the term 'contractors' within this Chapter refers primarily to dependant contractors; workers who are engaged on a commercial contract but with work arrangements consistent with them being an employee.<sup>26</sup> As outlined in Chapter 2, in excess of \$709 million was spent in 2005–06 on this segment of the non-APS workforce. A reliance on contractors as part of an agency's workforce requires conscious planning in terms of expected tenure, knowledge and skills transfer, and performance assessment. The strategic planning for such contractors should be a part of each agency's workforce planning framework.

### Workforce Planning

**3.3** Workforce planning is a process that aims to ensure that the workforce within the organisation is capable of delivering the organisation's objectives, especially over the medium to longer term. Having an effective workforce plan, which is flexible enough to adapt to the ever-changing environment contributes towards strengthening the agency's organisational capability, as it

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<sup>26</sup> As per the definition used in the Productivity Commission *The Role of Non-Traditional Work in the Australian Labour Market*, May 2006, Definitions Page.

assists in anticipating the staffing and skill requirements of the changing environment.

**3.4** A fundamental element of workforce planning, in the context of meeting the agency's outcomes into the future, is consideration of the demand the agency has for labour and consideration of the supply of people with appropriate competencies to fulfil that need. That is, what are the human capital requirements of an agency necessary to achieve its objectives. The agency's context will affect its approach to assessing the requirements for non-APS workers. As outlined in the ANAO Audit Report No.55 2004–05 *Workforce Planning*:

For many agencies, a key business risk, which could impact on economic growth, is skill shortages. Many industries are experiencing pressures from shortages in unskilled physical jobs, through to tradesmen, teachers, health care workers and specialist white-collar professionals.

A key element in workforce planning is considering the implications for the workforce of the strategic direction of the agency. It is therefore essential for an agency to first clearly articulate its strategic direction and identify the organisational capabilities needed to deliver on commitments into the future, before workforce planning can be undertaken.<sup>27</sup>

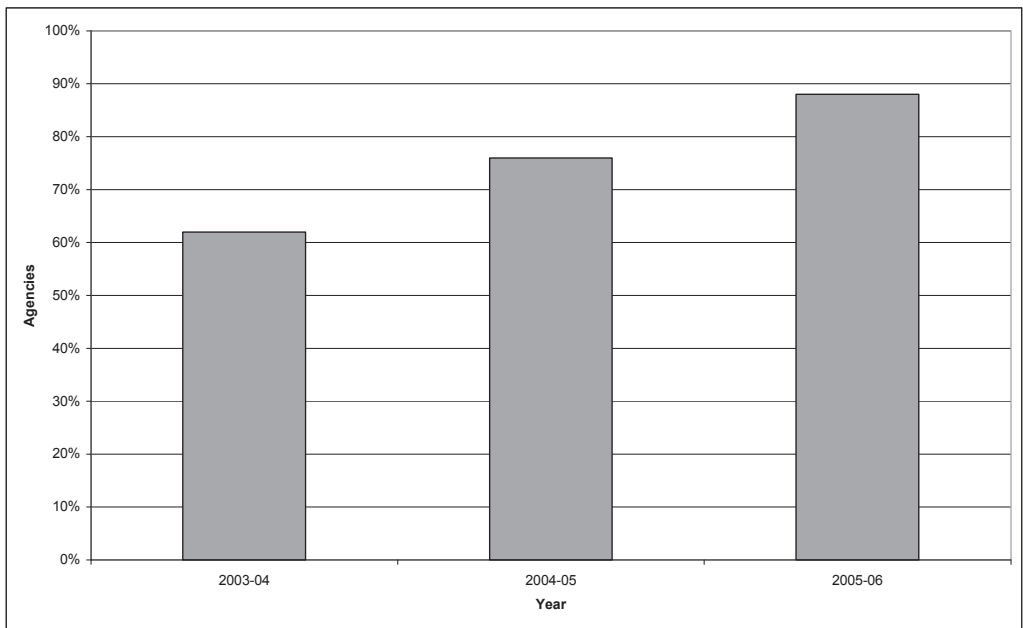
**3.5** As reported in the *APSC State of the Service* report and shown in Figure 3.1, agencies are finding it increasingly difficult to recruit people (other than through the graduate program) with required skills.

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<sup>27</sup> ANAO Audit Report No.55 2004–05, *Workforce Planning*, p. 15.

**Figure 3.1**

**Percentage of agencies reporting difficulty in recruiting people (other than through a graduate program) with required skills**



Source: ANAO analysis of APSC data.

**3.6** The difficulty in recruiting people was a significant issue for a reported 62% of agencies in 2003–04 which increased to 88% of agencies in 2005–06. This is the most commonly reported workforce challenge for agencies. The trend in the number of agencies reporting difficulties in recruiting people with the required skills appears likely to continue and agencies should be addressing this challenge through workforce planning.

**3.7** Another important element of workforce planning is organisational capability. Organisational capability refers to the capacity of the organisation to achieve its objectives. Organisational capability has had particular attention in light of recommendations made in the MAC report *Organisational Renewal* 2001 and the Senate Finance and Public Administration Reference Committee report *Recruitment and Training in the Australian Public Service* 2003. This aspect of workforce planning was also raised as an important element of the Audit Report No.55 2004–05 *Workforce Planning*.

**3.8** While workforce planning practices will be influenced by the size of the agency, its complexity and the context in which it is operating, all agencies rely on specialist skills in certain areas and organisational capability may be

adversely impacted by not having appropriately skilled staff available when they are required. With the ageing population and the subsequent demographic changes to the Australian workforce, agencies will need to be increasingly aware of not only the impact this has on the APS workforce, but also the different risks, advantages and disadvantages this has on the non-APS workforce.

## **Observations in agencies**

**3.9** Agencies noted the tightening labour market is having significant impact on the use of contractors. Firstly, agencies noted that contractors have traditionally been engaged to fill vacancies unable to be met by the APS workforce; hence the growing reliance on contractors. Secondly, the difficulty in recruiting appropriately skilled persons was also currently extending to the contractor workforce; that is, agencies are finding it increasingly difficult to engage the right contractor when needed, directly exposing agencies to market fluctuations and variations. In particular this is currently a major issue with the use of contractors in specialised areas, notably in accounting and information technology (IT) disciplines.

**3.10** Within the audited agencies the planning processes surrounding these contractors were generally at the operational level. The specific contracts were generally for short term engagements and were task orientated. The ANAO noted that the typical engagement of a contractor within an agency begins with a request in the form of an individual business case developed from a line area. This request is processed through a centrally co-ordinated contractor team, which managed the approach to market and the procurement process.

**3.11** Within the specific business cases, responsibilities of the contractor's role were generally detailed. This largely focused on key tasks and also often included a skills transfer component. These contractors were often justified on the basis of the uniqueness or idiosyncratic nature of the work they performed and the high impact the position had to the agency's business.

**3.12** The ANAO notes that while this approach of operationally based planning may be appropriate for genuine short term contractors, the survey results and fieldwork revealed that the actual tenure of a contractor commonly extended beyond the original planned period. As a consequence, in these cases, the original planning only loosely resembled the true nature of the relationship. The following case study is illustrative of a contractor's relationship with one of the audited agencies.

## Case Study No.2—The engagement of an IT contractor

A business case was developed for an IT contractor for a position for 100 days. A contractor was selected and the contract period began in August 1998 (Contract 1).

Again, following the development of a business case, in February 2001, the same contractor was selected for a twelve month contract (Contract 2). Prior to the completion of this contract, a request was sought and approved to re-new this contract for another twelve months (Contract 3)

As a part of an internal review process to align all IT contractors to the financial year, Contract 3 was extended until 30 June 2003 (Contract 4). To provide continuity during a request for tender process this contract was extended again for another four months (Contract 5). The contract was again extended for another six months (Contract 6).

Following Contract 6, a new business case was developed for a three month contract with an option for a further twelve months. The same contractor was awarded a three month contract (Contract 7). This contract was extended for a further three months (Contract 8).

Following Contract 8, the contractor was successful following a select tender process for a nine month contract (Contract 9). Following consecutive select tender processes, two separate twelve month contracts were awarded (Contract 10 and Contract 11).

In summary, notwithstanding the business case specification for an initial 100 day contract, the agency has continuously engaged the same individual, since 2001 at a cost in excess of \$1.3 million. The individual was still engaged with the agency during the audit fieldwork.

**3.13** With slight variations, examples of the broad practices represented within this case study were common to all of the audited agencies. Of added significance is that within particular business lines of agencies, these long term contractors constituted in the range of 10% up to 40% of the total workers. That is, the quantum of contractors alone resulted in significant reliance on them by an agency as well as the consequential risks of such a strategy.

**3.14** Agencies noted this reliance on contractors can have significant flow on effects and risks including:

- becoming highly dependent on the retained knowledge of contractors with limited means of managing exposure to loss of this knowledge under commercial tri-party labour hire arrangements;
- being directly exposed to pressure on hourly rates, particularly in a tight labour market. Dependency on retained knowledge compounds this exposure to increased costs of services;
- equity of remuneration and allocation of work that can lead to problems of retention of valuable ongoing employees; and
- impact on morale amongst APS workers who may perceive contractors to be highly paid but with less responsibility.

**3.15** Further, as outlined in the 2005–06 Budget, 'With the unemployment rate at its lowest level in a generation, there is a risk that the tight labour

market could lead to wage increases across the economy...'.<sup>28</sup> Thus the pressures of the tight labour market have the very real potential to further expose agencies to increasing costs for contractor services.

**3.16** Overall, the ANAO observed a general lack of strategic planning for the contractor workforce, despite an acknowledgment within agencies of their reliance on that workforce. Where workforce planning was in existence, there was little to no data about the workforce outside APS employees. While contractors are used as a flexible alternative to APS employment, under the current tight labour market conditions, agencies are exposed to a significant reliance on a contractor workforce to achieve their outcomes. Against this background, there is scope for agencies to more formally monitor the use of contractors and use this information to inform their workforce planning processes and resultant strategies.

**3.17** The ANAO observed examples of where the use of a contractor workforce had been successfully integrated into the strategic planning process in circumstances where the contractors provided ad-hoc and temporary relief to the permanent workforce. In such circumstances it was more the specialist requirements of the agency that resulted in their significant reliance on a contractor workforce. Case Study No.3 reflects a particular approach taken by AQIS to balance the needs of business efficiency and organisational capability.

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<sup>28</sup> Australian Parliament, *Budget Paper No.1, 2005-06*, pp. 3–5.

### Case Study No.3—The use of non-APS workers in AQIS

AQIS provides quarantine inspection for international passengers, cargo, mail, animals, plants and animal or plant products arriving in Australia, and inspection and certification for a range of agricultural products exported from Australia. To support the APS employee workforce, AQIS engages non-APS workers in a variety of business areas.

#### **Grain inspection**

The Grain Export Program provides independent export inspection and certification services to the grain and plant industries. Volumes of export grain can vary considerably depending on seasonal conditions, international markets (supply and demand) and international politics. In addition the high cost of port fees necessitates that shipments be inspected at various times through out the day and night, seven days a week. For these reasons the program engages a large proportion of flexible labour that can be stood down in the event of a trade downturn or can be used on an 'on call' basis. A core of skilled and trained AQIS inspectors is retained to provide a sound skills base in order to maintain an appropriate quality of inspection service—a core outcome for AQIS.

For example, in South Australia, AQIS has engaged a labour hire firm to provide the requisite additional labour—workers to perform basic grain and plant inspection at port and other locations across South Australia. Acknowledging that there are certain risks with this approach including high penalty rates and lack of direct control over the workers, following an analysis of both the cost and benefits, AQIS ascertained the administrative and cost efficiency of a single contract with a labour hire firm outweighed the alternative approaches of either casual APS employees or individual contractors.

#### **Veterinary Officers**

The Meat Program provides audit, inspection and certification services underpinning market access for Australia's export meat industry. Similar to the grain industry volumes of meat export can vary considerably depending on seasonal conditions, international markets and international politics. Positions are made available to contractors as Veterinary Officers to provide short and long term relief and to work in seasonal establishments or those not seen as viable in the long term. It is a prerequisite for all contractors to have qualifications which enable them to be registrable with the State Veterinary Board.

It is of note that AQIS engage directly with the contractor in these instance, and not through a labour hire firm. This is largely because of the highly specialised nature of the work and the inability of a labour hire firm to provide such resources. While this approach may be administratively more intensive than through a labour hire firm, it still provides a flexible approach to engaging workers on an ad-hoc basis and ensuring efficiently delivered business outcomes.

**3.18** The above case study highlights the different approaches to specific business needs. While acknowledging the inherent risks within each approach, AQIS has made a conscious business decision, following appropriate analysis, to engage non-APS workers adopting a tailored approach to their business needs. The ANAO notes that the specific business of an agency will determine the particular use of such workers and that it is important to recognise their role within a workforce. That is, agencies should be actively aware of their reliance on and planning for non-APS workers who provide either specialised or business specific services for the agency.



## Integration of contractors into workforce planning

**3.19** One of the difficulties identified by agencies regarding the integration of contractors into the workforce planning process was due to the data available on contractors. As agencies have a legal relationship with the labour hire companies that provide the services of contractors, the extent of the data available on individual contractors was at times very limited, even where the individual contractor may have had a long term relationship with a particular agency. A further consequence of this relationship is that the finance or procurement areas of an agency usually hold all the contract data. As a consequence, only basic contractor information, useful for workforce planning considerations, was collected by the audited agencies.

**3.20** Non-APS workers provide a range of critical services to agencies. The ageing population and consequent demographic changes to the Australian workforce will place additional human resourcing pressures on agencies' ability to meet their organisational objectives. While some agencies were aware of their reliance on the non-APS workforce, there was limited inclusion of this segment of the workforce into workforce planning considerations, or any other strategic planning process. Where active workforce planning was in existence within the audited agencies, there was little or no data about the workforce other than APS employees. The ANAO considers that a useful element of an agencies workforce planning processes should include accurate and relevant information on the entire workforce of an agency, including non-APS workers.

## Recommendation No.1

**3.21** The ANAO *recommends* that APS agencies that have a significant reliance on non-APS workers ensure the planning and management of non-APS workers is identified, acknowledged and built into implementation strategies as part of APS agencies' broader workforce planning processes.

### *Agencies responses*

**3.22** Each of the audited agencies agreed with the recommendation.

## 4. The Engagement of Non-APS Workers

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*This chapter discusses the procurement process relating to the engagement of non-APS workers, with a focus on contractors.*

### Introduction

**4.1** There is a range of legislation and government policy relevant to the engagement of non-APS workers. The main legislation directly affecting procurement for agencies is either the *Financial Management and Accountability Act 1997* (FMA Act) or the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The most significant policy requirements for agencies are articulated in the CPGs issued by the Finance Minister. The CPGs establish the procurement policy framework within which agencies determine their specific procurement practices.

**4.2** The specific procurement practices of an agency will further be influenced by the agency's own policies and instructions. Central to all procurement decisions is the principle of value for money, through encouraging competition, accountability and transparency and the efficient, effective and ethical use of resources.

**4.3** In reviewing the practices surrounding the engagement of non-APS workers, the ANAO reviewed a selection of contracts within each audited agency based on criteria of length, total cost, and value per day. For the contracts reviewed the ANAO assessed whether the procurement surrounding each contract was conducted within the agencies' own policies, the overarching policy requirements of the CPGs and the agencies' legislative requirements.

**4.4** The CPGs establish a set of Mandatory Procurement Procedures for covered procurements, including the presumption of open tender. Covered procurements are procurements, other than those which the Government has exempted, which exceed a prescribed threshold. The overwhelming majority of contracts reviewed were covered procurements.

## Conducting Procurement

**4.5** The majority of contracts reviewed by the ANAO were for IT contractors. Common to all audited agencies was a centralised procurement area that specialised in the engagement of IT contractors. The IT contracting units were established in each agency to streamline the engagement process due to the high number of contracts processed each year and the specialised skills and knowledge required. The IT contracting units were established within the IT branches, separate from the procurement policy area.

**4.6** All audited agencies also had specialised contractor policies and forms to assist in the agency's adherence to their legislative and policy requirements. The policies were targeted at line areas, outlining in a simplified form the processes and the varying responsibilities of engaging a contractor.

**4.7** While agencies' procurement policies were sound, there were numerous deviations between the implementation of these policies and the CPGs. There was a particular weakness across all audited agencies where contracts for non-APS workers, especially for IT contractors, were extended or renewed. Deviations from the CPGs' related to the adequacy of:

- documentation of the selection and approval processes;
- appropriate value for money considerations (especially for long term contractors); and
- the evaluation of the performance of the services rendered under the contract.

**4.8** The ANAO notes that the separation of the IT contracting units from the central procurement areas produced certain efficiencies in terms of turn around time and standardisation of approach. There was, however, scope within some agencies to ensure closer links between the policy arm and the contracting units to ensure that the correct procedures were being followed and were appropriate in the circumstances.

## Value for Money

**4.9** Value for money is the core principle underpinning Australian Government procurement. While there are numerous considerations in achieving and demonstrating value for money, the engagement and re-engagement of contractors highlighted a particular weakness across all

audited agencies. The ANAO noted within the audited agencies the following practices that compromised the procurement process:

- the commencement of the contract prior to the signing of the contract;
- significant variance in actual terms of the contract compared to the approved terms of the contract, for example an approval for a six month contract, yet a twelve month contract signed;
- contract variations involved a significant change in scope but were not supported by an assessment that the variation demonstrated value for money; and
- no contract evaluation or formal assessment of contractor performance under the contract.

**4.10** The ANAO also observed the extension of contracts in circumstances where the original contract was silent on the possibility of an extension. As a consequence this was a direct sourcing of a contract, despite the underlying presumption of an open approach to the whole market for covered procurements. Where direct sourcing is used the CPGs state:

...for each contract awarded through direct sourcing, agencies must prepare and appropriately file within the agency's central filing system, a written report that includes:

- a. the value and kind of property or services procured; and
- b. a statement indicating the circumstances and conditions that justify the use of a procedure other than an open or select tender process.<sup>29</sup>

**4.11** The ANAO noted a particular absence of justification for direct sourcing of covered procurements within the contracts reviewed. Agencies noted that in the current labour market, it was particularly difficult to find appropriate workers. As a consequence, appropriately skilled contractors with corporate knowledge were a valuable resource within the agency. This however does not remove the requirements of the CPGs, especially considering that the majority of contracts reviewed were covered procurements. The ANAO considers agencies that engage contractors, especially those who do so on a regular basis, should review their current practices and processes to ensure their compliance with the CPGs.

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<sup>29</sup> Department of Finance and Administration, *Financial Management Guidance No.1*, January 2005, p. 36.

**4.12** In situations where there is a likely future requirement, the ANAO considers it appropriate to structure the initial approach to market to foreshadow this possibility and to include appropriate provision to extend the initial contract. Case Study No.4 provides a better practice example from the Department of Health and Ageing (Health) regarding their approach to the market.

#### **Case Study No.4—IT contractors in the Department of Health and Ageing**

A better practice example is drawn from the Technology Group (TG) of Health. Acknowledging that the majority of their requirements for IT contractors fell within the 'covered procurement', for the 2005–06 financial year the TG Group developed a specific procurement plan to address their obligations. In summary, they aggregated a large number of procurements into a single bulk round of market testing for all their contractors whose contracts were due to expire at the end of the financial year. As a consequence, there were no extensions for the contractors that fell under this arrangement.

Importantly the bulk market testing process was accompanied with appropriate justification and documentation. While ensuring compliance with the CPGs, Health also derived certain administrative efficiency gains through the forward planning of their contractor requirements and a single approach to market.

### **Adequacy of documentation**

**4.13** The CPGs state:

Documentation is critical to accountability and transparency. It provides a record of procurement activities and how they have been conducted, and facilitates scrutiny of these activities.

Agencies must maintain appropriate documentation for each procurement. The appropriate mix and level of documentation depends on the nature of the risk profile of the procurement being undertaken. In all cases, officials need to ensure there is sufficient documentation to provide an understanding of the reasons for the procurement, the process that was followed and all relevant decisions, including approvals and authorisations, and the basis of those decisions.<sup>30</sup>

**4.14** The ANAO found that in significant number of contracts reviewed there was inadequate record keeping practices including: no documentation of key decisions and approvals; and, records held by individuals in email systems and not being recorded in the agency's official record keeping system. Using email systems that are not within an agency's official record keeping system, to manage records, was also identified as an inappropriate practice in ANAO Audit Report No.6 2006–07, *Recordkeeping including the Management of Electronic*

<sup>30</sup> Department of Finance and Administration, *Financial Management Guidance No.1*, January 2005, p. 18.

**4.15** An example of inadequate documentation in one agency related to the reasons for the use of a particular procurement method. On the standard form for engaging contractors the documented reason for numerous contracts was that it was the ‘standard process for procuring IT contractor services’. This justification was at times supported by additional material, however more commonly it was all that was recorded in the agencies’ official file. The ANAO does not consider this to be sufficient documentation.

**4.16** The ANAO considers that improved documentation will assist agencies in providing transparency over the process and thus providing assurance that procurement processes are appropriate and that policy and legislative obligations are met. Transparency involves agencies taking steps to support scrutiny of their procurement activity.

## **Contract Performance and Monitoring**

**4.17** Contractors should be actively managed throughout the tenure of their engagement to ensure performance is satisfactory and that all contract requirements are appropriately met. Managing contractor performance should also assist agencies in ensuring they are obtaining value for money. Effective contractor management provides a mechanism to systematically improve organisational capability by linking and aligning individual, team, and organisational objectives and results. The basis of performance assessment should be set out in the contract.

**4.18** The ANAO observed that for the most part there was a relatively high degree of specificity of tasks and responsibilities within most contracts as a means of measuring performance. For example, the ANAO noted that in most contracts where appropriate there were very specific tasks; a mandatory requirement for the adoption of the APS Values and Code of Conduct;<sup>31</sup> and a requirement for the transference of skills back to agency.<sup>32</sup> As noted above, however, there was little evidence of agencies performing contract evaluation or formal assessment of contractor performance under the contract.

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<sup>31</sup> The APS Values and Code of Conduct are set out in sub-section 10(1) and section 13 of the PS Act respectively. The APS Values and Code of Conduct provide an ethical framework that underpins relationships with the Government, relationships with the public, relationships at work and personal behaviour.

<sup>32</sup> The transfer of skills also refers to the transfer of knowledge and information.

**4.19** For the majority of contractor engagements, the contractual terms were not supported with any framework for measurement or assessment. While many of the contractors were treated in a similar manner to employees, there was generally very little formal assessment of how the contractor met the contractual terms. While the management of contractors should always clearly acknowledge the commercial nature of their relationship and not an employment relationship, there is significant scope for agencies to ensure all contractual terms are being met, including where the APS Values and Code of Conduct are included as contractual terms.

**4.20** The ANAO also noted that the contractual requirement for the transfer of skills was poorly monitored and implemented. Skills transfer should be encouraged, where appropriate, to increase organisational capability. On a case-by-case basis agencies should actively balance the importance and long term need for skills transfer with the availability of APS staff to receive the benefit. For genuine short term contracts the transfer of skills may not always be appropriate.

## Recommendation No.2

**4.21** The ANAO *recommends* that agencies review, and amend where appropriate, the necessary arrangements to align their engagement of non-APS workers with the legislative and policy procurement framework.

### *Agencies responses*

**4.22** Each of the audited agencies agreed with the recommendation.

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Ian McPhee  
Auditor-General

Canberra ACT  
25 June 2007





# Appendices



## Appendix 1: Australian Public Service agencies (or semi-autonomous parts of agencies) as at 10 April 2006 employing more than 20 APS employees

Agency	Responded to the survey
Aboriginal Hostels Limited	✓
Administrative Appeals Tribunal	✓
Attorney-General's Department	✓
Australian Agency for International Development	✓
Australian Bureau of Statistics	✓
Australian Centre for International Agricultural Research	✓
Australian Communications and Media Authority	✓
Australian Competition and Consumer Commission	✓
Australian Crime Commission	✓
Australian Customs Service	✓
Australian Electoral Commission	✓
Australian Film Commission	✓
Australian Industrial Register	✓
Australian Institute of Aboriginal and Torres Strait Islander Studies	✓
Australian Institute of Family Studies	✓
Australian Institute of Health and Welfare	✓
Australian National Audit Office	✓
Australian National Maritime Museum	✓
Australian Office of Financial Management	✓
Australian Public Service Commission	✓
Australian Radiation Protection and Nuclear Safety Agency	✓
Australian Research Council	✓
Australian Securities and Investments Commission	✓
Australian Taxation Office	✓
Australian Transaction Reports and Analysis Centre	✓
Australian War Memorial	✓
Bureau of Meteorology	✓

Agency	Responded to the survey
Centrelink	✓
Child Support Agency	✓
Comcare	✓
Commonwealth Grants Commission	✓
Commonwealth Ombudsman	✓
ComSuper	✓
CrimTrac	✓
CRS Australia	✓
Defence Housing Authority	✓
Department of Agriculture, Fisheries and Forestry	✓
Department of Communications, Information Technology and the Arts	✓
Department of Defence	✓
Department of Education Science and Training	✓
Department of Employment and Workplace Relations	✓
Department of Families, Community Services and Indigenous Affairs	✓
Department of Finance and Administration	✓
Department of Health and Ageing	✓
Department of Human Services	✓
Department of Immigration and Multicultural Affairs	✓
Department of Industry, Tourism and Resources	✓
Department of the Environment and Heritage	✓
Department of the Prime Minister and Cabinet	✓
Department of the Treasury	✓
Department of Transport and Regional Services	✓
Department of Veterans' Affairs	✓
Department of Foreign Affairs and Trade	✓
Family Court of Australia	✓
Federal Court of Australia	✓
Federal Magistrates Court of Australia	✓
Food Standards Australia New Zealand	✓
Geoscience Australia	✓
Great Barrier Reef Marine Park Authority	✓

Agency	Responded to the survey
Human Rights and Equal Opportunity Commission	✓
Insolvency and Trustee Service Australia	✓
IP Australia	✓
Medicare Australia	✓
National Archives of Australia	✓
National Blood Authority	✓
National Capital Authority	✓
National Library of Australia	✓
National Museum of Australia	✓
National Native Title Tribunal	✓
National Offshore Petroleum Safety Authority	✓
National Science and Technology Centre (Questacon)	✓
National Water Commission	✓
Office of Film and Literature Classification	✓
Office of National Assessments	✓
Office of Parliamentary Counsel	✓
Office of the Privacy Commissioner	✓
Office of the Australian Building and Construction Commissioner	✓
Office of the Director of Public Prosecutions	✓
Office of the Employment Advocate	✓
Productivity Commission	✓
Refugee Review Tribunal	✓
Royal Australian Mint	✓
Social Security Appeal Tribunal	✓
Torres Strait Regional Authority	✓

Source: ANAO survey.

## Appendix 2: Agencies' responses to the proposed audit report

*This Appendix contains comments received on the audit report.*

Each of the agencies selected for audit were provided with the opportunity to comment on the proposed audit report in accordance with the provisions of section 19 of the *Auditor General Act 1997*. The Australian Public Service Commission and the Department of Finance and Administration were also provided the opportunity to comment from a framework and contextual viewpoint.

Agencies' responses are produced below.

### **Australian Quarantine and Inspection Service**

The Australian Quarantine and Inspection Service advised as follows:

#### **1. Workforce Planning**

AQIS has made a conscious business decision to engage non-APS staff, both Labour Hire and Common Law Contracts, adopting a tailored approach to its business needs. Data on the use of non-APS workers in AQIS is integrated into workforce planning HR metrics on a bi-monthly basis. Both Labour Hire and Common Law Contracts are based on a business decision/analysis regarding cost effectiveness and flexibility within an industry cost recovery framework. For example the AQIS Export Meat Program integrates its use of non-APS workers into the workforce planning process to ensure that seasonal inspection requirements are met in a timely manner. The Program has recently carried out a significant analysis of the age profile of existing APS and non-APS field staff. This analysis was used to inform the 07/08 Business Plan with the view to developing strategies to deal with the ageing workforce issues. The drought and the possibility of the drought breaking continue to drive the Program's reliance on non-APS staff as these numbers will reduce once the drought breaks and processors reduce the number of shifts required to meet the demand.

## 2. Procurement

AQIS uses a number of approaches, based on a business need assessment, for the procurement of non-APS workers from direct sourcing through to open tender.

The audit report states that there are a number of practices across all agencies (particularly IT Contracts) that compromised the procurement process. However it should be noted that following the ANAO audit of the Murray Motion Senate Order in March 2006 the auditor assessed two of the personnel provision contracts in AQIS IT and subsequently advised the department that the ANAO were satisfied with AQIS IT processes and it would be excluded from the Contracts for Labour Hire Survey.

In relation to evaluation and assessment AQIS has regular meetings with the main supplier of labour hire to discuss performance (the contract is a performance based contract) and Common Law Contracts contain a performance clause.

### AQIS Response to Recommendations

AQIS agrees with both recommendations however it should be acknowledged that AQIS has already integrated non-APS workers into Workforce Planning HR Metrics and that AQIS IT was excluded from the performance audit.

## Centrelink

Centrelink advised as follows:

Centrelink agrees with the recommendations outlined in the report. Centrelink welcomes this audit which has highlighted areas where Centrelink can review the effectiveness of procedures and processes surrounding the management and use of non-APS workers.

## Department of Health and Ageing

The Department of Health and Ageing advised as follows:

The Department is supportive of the proposed audit report and agrees with the two recommendations. The Department continues to develop its human resources and financial management infrastructure to support workforce planning and ongoing compliance with the legislative and policy procurement framework.

## **Department of Foreign Affairs and Trade**

The Department of Foreign Affairs and Trade advised as follows:

DFAT agrees with the proposed recommendations outlined in the report. I can confirm that the content of the report is consistent with the department's views on the matters concerned.

## **Australian Public Service Commission**

The Australian Public Service Commission advised as follows:

The Australian Public Service Commission agrees with the recommendations outlined in the report.

### **General Comments**

The Commission supports the inclusion of non-APS workers in the broader context of workforce planning. However, it is worth noting that workforce planning is a complex issue for APS agencies. In order for workforce planning to be effective, agencies need to work with an understanding of their own operating context and develop a framework that best delivers on organisational outcomes.

In some cases, this may mean approaching workforce planning based on capability needs, rather than staffing profiles, in order to develop flexible responses to business priorities.

The risks identified with respect to the use of non-APS workers in terms of knowledge management and the need to identify and manage them as part of an agency's workforce planning are sensible.

## **Department of Finance and Administration**

The Department of Finance and Administration advised as follows:

The Department of Finance and Administration (Finance) has reviewed the report in line with our responsibilities for the administration of the Australian Government's procurement policy framework. Finance notes the recommendations in the report and confirms the ANAO's understanding of the content relating to the procurement policy framework.



### Recommendation 1

The Department of Finance and Administration has no response to Recommendation 1 as this recommendation deals with matters which are outside Finance's portfolio responsibilities.

### Recommendation 2

The Department of Finance and Administration supports the recommendation. Whether an agency engages a person under the employment framework or procurement framework is dependent on whether the services being sought are to be provided by an employee or contractor. Employment and workforce planning matters are outside of the procurement policy framework.

Finance notes, however, that a number of agencies which are subject to the *Public Service Act 1999* are not subject to the procurement policy framework.

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Attorney-General's Department

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*Export Certification*  
Australian Quarantine and Inspection Service

Audit Report No.3 Performance Audit  
*Management of Army Minor Capital Equipment Procurement Projects*  
Department of Defence  
Defence Materiel Organisation

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