



CABINET OFFICE

7 September 2023

[Redacted]
[Redacted]

Ref: OIA-2023/24-0109

Dear [Redacted]

Official Information Act request for advice relating to policy contractors and external consultants

Thank you for your Official Information Act 1982 (the Act) request received on 10 August 2023. You requested:

"I would like to request documents from the last twelve months which relate to the following:

- 1. Advice from DPMC (which may be in combination with other agencies such as the Public Service Commission and/or MBIE) outlining rates that government agencies should pay to policy contractors.*
- 2. Advice which led to the decision to include a requirement in the Cabinet paper template to include information about the use of external consultants in developing policy proposals."*

As advised on 21 August 2023, Part 1 of your request was transferred to the Ministry of Business, Innovation and Employment (MBIE) for response. The below provides my response to Part 2 of your request. You can expect to receive a response from MBIE to Part 1 in due course.

Information being released

I have decided to release the documents listed below, in full. Please find the following documents attached.

Date	Document Description	Decision
8 May 2023	Cabinet Office Memo: Updating Cabinet paper guidance: Use of external resources in the development of policy advice.	Release in full
8 May 2023	Annex one: Guidance to enable state services agencies to consistently measure and report their usage of contractors and consultants.	Release in full
9 June 2023	Cabinet Office Memo: Updating the Cabinet policy paper template and CabGuide.	Release in full

This response will be published on the Department of the Prime Minister and Cabinet's website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Yours sincerely



Rachel Hayward
Secretary of the Cabinet

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Cabinet Office

Memo

8 May 2023

To Prime Minister

From Diana Hawker, Deputy Secretary of the Cabinet

Subject **Updating Cabinet paper guidance: Use of external resources in the development of policy advice**

Overview

- 1 You have asked for existing guidance to be updated to direct agencies to clearly identify and justify the use of paid external resources engaged in the development of policy advice to Cabinet. This memo sets out a number of possible options, and raises some questions for your consideration.
- 2 Your office suggested that the updated guidance could request the following information: a brief explanation on why external resources were engaged; why reprioritisation of existing resources was not possible; and whether Ministerial agreement was obtained.
- 3 In preparing this memo, we have consulted with the Policy Advisory Group (PAG) the Ministry for Business, Innovation and Employment (MBIE) and Te Kawa Mataaho Public Service Commission (PSC). We recommend that any updated guidance be prepared jointly with those agencies and your office to ensure alignment and coherence with related advice. This includes the existing *Guidance To Enable State Services Agencies To Consistently Measure And Report Their Usage Of Contractors And Consultants*, published by the PSC (a copy is attached for reference), and related work being led by MBIE.
- 4 Options for updating Cabinet guidance for agencies include:
 - 4.1 updating the CabGuide (the online resource about Cabinet processes);
 - 4.2 updating the information fields in CabNet, and the Cab100 form, so that the information is captured when a paper is lodged;
 - 4.3 updating the Cabinet policy paper template;
 - 4.4 issuing a Cabinet Office circular.

Considerations

- 5 Consultation with PSC, MBIE and within DPMC has identified some additional questions that will need to be worked through before finalising the updated guidance.
- 6 **Scope and parameters:** As you know, policy development is rarely a short or linear process. During any long policy process, there may be a number of occasions where contractors have contributed (e.g., through policy officer backfill, team support or administration support). These resources may not be formally tracked against individual cabinet papers. If the guidance does not include clear parameters (which could include a dollar threshold above which external resources must be reported), the identification of the use of any external resources may be challenging and/or ineffective.
- 7 **Justification:** Contractors and consultants are often engaged to provide specialist or technical advice that is not available within the agency, or to provide additional support in times of particular urgency (e.g., COVID-19 response). It may be useful for any guidance to differentiate between the engagement of specialist resource, versus external resource engaged for other reasons.
- 8 **Operational decisions:** The guidance can request that operational decisions that are the responsibility of the chief executive are reported. In many circumstances, these operational decisions will not require Ministerial agreement so the guidance will need to reflect this distinction.
- 9 Against those considerations, we set out a number of options below.

Updating the CabGuide

- 10 The CabGuide is an online publicly accessible resource that gives practical guidance about Cabinet processes and related matters. It includes specific advice on consulting with agencies, Ministers, and interest groups.
- 11 A new section could be added setting out an expectation that the use and remuneration of external resources must be clearly identified and justified in the Cabinet paper. The update would be developed with PAG, PSC and MBIE as appropriate.
- 12 Of the options set out in this note, this would be the most straightforward and fastest to implement.

Updating information fields in CabNet and Cab100

- 13 Cabinet papers are lodged on CabNet by officials in Ministers' offices. CabNet is a secure system with managed access for authorised government officials. During the lodgement process, officials provide information on the Ministers, agencies, and groups that were consulted during policy development. This same information is required in a "Cab100 form" which is the hard copy version of the lodgement notice and is still used for highly classified papers.
- 14 A new information field could be added in the CabNet paper information page titled "Engagement of external resources [*to be used when external resources or*

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consultants are engaged and remunerated in the preparation of the policy advice included in the Cabinet paper]". The description of the field would be developed with PAG, PSC and MBIE.

- 15 This option would make that information available to all officials and ministers with access to the paper (ministers would need to log on to CabNet; it would not be available on CabDocs). This option would require technical development work to implement (via the existing CabNet service provider). Further scoping work would need to be carried out to identify the complexity of the project and possible costs.
- 16 Building on this option, the information could be pulled out from CabNet and reflected in the Cabinet Office summary "top" (the coversheet that accompanies every Cabinet paper and summarises the key information). Cabinet Office tops are not proactively released with Cabinet papers, but are subject to the OIA.

Updating the Cabinet policy paper template

- 17 The Cabinet policy paper template is the most commonly used Cabinet paper template. There are also templates for: legislation-specific matters (seeking approval to introduce a Bill or submit an Order in Council to the Executive Council); noting appointments to significant government boards; and seeking agreement to or reporting on Ministerial overseas travel.
- 18 External resources such as contractors or consultants are most likely to be engaged in the development of advice that informs a policy paper. The other templates are largely administrative in comparison, but we will undertake further analysis to consider whether they should be similarly updated, should you wish to pursue this option.
- 19 The Cabinet policy paper template could be updated to include a requirement to identify and justify the use of external resources. The description of this section would be developed with PAG, PSC and MBIE as appropriate.
- 20 The Cabinet policy paper template is a publicly available document, and Cabinet papers are proactively released (unless there is good reason not to publish all or part of the material). Any updates to the template would therefore result in this information being publicly available.

Issuing a circular

- 21 Circulars are a recognisable and authoritative means of disseminating administrative guidance that has general application across central government.
- 22 The existing requirement for state sector agencies to measure and report on their use of contractors/consultants is already in place, as per the attached PSC guidance (annex one).
- 23 While a circular would add further weight to the guidance, the drafting of a circular may take time as it will need to align with related work from relevant agencies (some of which is still under development).

Comment from Te Kawa Mataaho Public Service Commission

- 24 The Chief Executive of MBIE has acted as the Procurement Functional Leader (PFL) since 2012. The original role of the functional lead was to lift procurement performance and improve consistency of practice across the state services. In April 2022 Cabinet agreed in principle to strengthen leadership of the procurement system through greater centralisation, co-ordination, and assurance of government procurement functions, and a Cabinet report back on the mandate of the lead is due to be considered in June.
- 25 The Procurement System Lead can set expectations in relation to procurement practice and to issue guidance which agencies must consider. The Public Service Commissioner has asked the Procurement System Lead to use this role to issue guidance on the appropriate use of contractors and consultants by the Public Service. This would include the kinds of tasks that are appropriate to outsource to contractors, and those activities that are considered core public service responsibilities that should not usually be outsourced except in exceptional circumstances. This guidance would be issued alongside expectations from the Commissioner as the head of the Public Service. Guidance is currently being drafted and will be issued by the start of the next financial year. If necessary, the Commissioner is happy to look at bringing forward aspects of the guidance relating to policy work.

Next steps

- 26 We will update the relevant guidance in line with your decisions, in consultation with PAG, PSC, MBIE and your office as appropriate.
- 27 Cabinet Office, with the relevant agencies, will engage with chief executives and policy leaders to advise them of any updated guidance.

Recommendations

28 I recommend that you:

EITHER

28.1 agree that the CabGuide be updated to request information on the use of paid external resources engaged in the development of policy advice to Cabinet;

AGREE / DISAGREE / DISCUSS

AND/OR

28.2 agree to our further exploring the addition of an information field on the CabNet paper information page and the Cab100 form to request information on the use of paid external resources engaged in the development of policy advice to Cabinet;

AGREE / DISAGREE / DISCUSS

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AND/OR

- 28.3 **agree** that the Cabinet policy paper template be updated to include a section requesting information on the use of paid external resources engaged in the development of policy advice to Cabinet;

AGREE / DISAGREE / DISCUSS

AND/OR

- 28.4 **agree** that officials undertake further work to prepare a Cabinet Office circular with guidance on identifying and justifying the use of paid external resources in the preparation of the policy advice to Cabinet;

AGREE / DISAGREE / DISCUSS

- 29 **note** that Cabinet Office will work with PSC, MBIE, PAG and your office, as appropriate, to finalise the wording in any updated guidance as a result of decisions in this memo;


NOTED / DISCUSS

- 30 **note** that, if you wish to update the Cabinet policy paper template, Cabinet Office will undertake further analysis of whether other Cabinet paper templates need to be updated, and will make these changes as necessary and in consultation with your office;

NOTED / DISCUSS

- 31 **note** that Cabinet Office will work with PSC, MBIE, PAG and your office, as appropriate, to communicate any updated guidance to chief executives and senior officials.

NOTED / DISCUSS


Diana Hawker
Deputy Secretary of the Cabinet


Rt Hon Chris Hipkins
Prime Minister

Date: 9 / 05 / 2023

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Annex one

GUIDANCE TO ENABLE STATE SERVICES AGENCIES TO CONSISTENTLY MEASURE AND REPORT THEIR USAGE OF CONTRACTORS AND CONSULTANTS

STATE SERVICES COMMISSION
TE KAWA MATUAHO



PURPOSE

On 12 June 2018, the Cabinet Government Administration Expenditure Review Committee approved SSC's proposal to reduce State Services agencies reliance on purchasing external capability (GOV-18-MIN-0030). The Government's expectation is that State Services agencies invest more in building government core administrative capability in line with the Government's vision of a stronger public service, and reduce their reliance on purchasing external capability where this is appropriate to deliver value.

For public trust and confidence, government agencies need to provide clear and consistent reporting on their expenditure. This is scrutinised by the Parliamentary Select Committee process. There is currently inconsistency in how agencies are reporting their contractor and consultant expenditure. This guidance will provide a consistent way for agencies to report this information.

Further, SSC will specifically use agency estimates of *total cost of contractors and consultants* reported to select committees through Annual Review processes to collate a whole of Public Service report on usage of external capability.

APPLICATION OF THESE GUIDELINES

These guidelines apply for both the Select Committee Annual Review and Estimates processes, where the questions ask for information relating to contractors or consultants. Agencies are to supply this information to SSC (hrcsurvey@ssc.govt.nz) at the same time they supply it to Select Committee. Operating and capital expenditure should be reported separately.

These guidelines apply for all reporting, effective immediately. There is no expectation to apply the new guidelines retrospectively to recalculate expenditure for preceding years. Instead, agencies should provide a narrative for the 2017/18 Annual Review, noting how their reporting has changed from the previous year as a result of implementing these guidelines. This may include noting new categories that have been included (e.g. ICT projects and/or capital expenditure) and/or estimating the equivalent expenditure for the preceding year.

All Public Service departments should use these guidelines. Their use by Crown Entities and non-Public Service departments is also recommended.

Both the Chief Government Accountant and the Office of the Clerk have endorsed these

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guidelines.

CONTRACTOR AND CONSULTANT DEFINITIONS¹

A person is considered a contractor if all of the following apply:

- is engaged on a contract for service, either directly (self-employed) or via a third party (recruitment agency), and is not an employee; and
- is paid upon provision of a GST invoice through their own managed entity or third party recruitment agency; and
- is providing backfill or extra capacity in a role that exists within the agency or acts as an additional resource for a time-limited piece of work (project work); and is under the direct supervision of the agency and the agency is responsible for ensuring that the required deliverables and performance standards are met.

In addition, contractors generally:

- require access to the agency's IT systems to perform their duties and usually work onsite.
- charge on a time unit basis (e.g. by the hour or day).
- Are engaged via a Recruitment Service Order or a

Government Model Contract. A consultant:

- does not meet the definition of a contractor;
- is a company or individual engaged in a contract for professional advice or information either directly (self-employed) or through an organisation;
- provides expertise in a particular field and can demonstrate relevant skills and expertise not readily available from within the agency;
- is engaged to perform a specific piece of work or outcome with a clearly defined scope and often invoice by project or for delivering certain milestones;
- operates independently from the agency and is responsible for all the resources and managing the risks associated with delivering the piece of work;
- generally works offsite, but may be required to work onsite from time to time.
- generally carry the risk of payment being withheld for if the piece of work they are engaged to complete is not delivered or is not fit-for-purpose.
- are often engaged under a Consultancy Services Order.
- Note: Having the title of consultant doesn't automatically mean an individual should be considered a consultant. Nor does being engaged through the AOG consulting panel automatically qualify an individual as a consultant. It depends on the nature of the engagement with the agency.

INCLUSIONS

- All contractor and consultant operating expenditure², including those working on ICT projects
- All contractor and consultancy capital expenditure, including those working on ICT projects.

EXCLUSIONS

- Non-professional services outside of core business. For example, cleaning services, registered trades, building security.
- Audit fees, actuarial fees and legal fees paid to a firm of solicitors.
- Outsourced services - service providers that have been contracted to provide all or part of a business activity of function.
- Services received from other government agencies.
- Staff on secondment from other government agencies.

NOTES

- External capability does not include capability paid through payroll, including fixed-term and casual employees. Expenditure on voluntary employees is also excluded. Guidance on the distinction between employees and contractors is available [here](#).
- In providing detailed lists of contractors or consultants, agencies can exclude those where the cost was below a threshold (e.g. \$10,000 cumulative total across the financial year), but these amounts are to still be included in the overall total.
- Expenditure for Annual Review purposes must be for the full financial year.
- Operating and capital expenditure should be reported separately. Additional breakdowns can be used to explain expenditure.
- Include all contractors regardless of their hourly/daily rate.

EXAMPLES

- Person A is engaged through an AOG recruitment provider to backfill for a permanent employee while they are on parental leave. Person A is a contractor and therefore expenditure is included.
- Person B is contracted by an agency to develop some software, which will be capitalised once implemented. Person B is a contractor and therefore this expenditure is included.
- Person C is engaged through an AOG recruitment provider as an additional resource to help the HR team through a period of peak activity due to an organisation restructure. Person C is a contractor and therefore expenditure is included.
- Agency A has contacted XYZ Security to provide extra building security while the APEC conference is taking place in Wellington. XYZ Security is providing a non-professional service outside of core business and therefore expenditure is excluded.
- Agency A pays for specific science expertise, which is unable to be undertaken in-house. This is consultancy expenditure and should be included.
- Agency B owns a fleet of helicopters as helicopter transport is part of its core business. It engages private sector pilots to provide extra capacity. These pilots are contractors and the expenditure is included.
- Agency B subsequently decides to outsource helicopter transport to 123 Helicopters. It ends helicopter transport internally and sells its helicopters.

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Payments to 123 Helicopters are for an outsourced service and are excluded.

- Agency A moves to a shared services operating model and contract its corporate services from Agency B. This is excluded as this is outsourcing a business function. It is also excluded as this is a service received from another government agency.

Released Under the Official Information Act 1982



Cabinet Office

Memo

9 June 2023

To Prime Minister

From Diana Hawker, Deputy Secretary of the Cabinet

Subject **Updating the Cabinet policy paper template and CabGuide**

Overview

- 1 At your request, existing Cabinet policy paper guidance will be updated to include sections relating to:
 - 1.1 the use of paid external resources engaged in the development of policy advice to Cabinet; and
 - 1.2 cost-of-living impacts.
- 2 This memo sets out options for changes to the Cabinet policy paper template and the CabGuide.
- 3 A circular will be drafted in consultation with relevant agencies/units (the Policy Advisory Group (PAG), the Ministry for Business, Innovation and Employment (MBIE), Te Kawa Mataaho Public Service Commission (PSC) and the Treasury).

Updating guidance on use of external resources

Proposed wording for new section in Cabinet policy paper template: 'Use of external resources'

- 4 This section should be used when external resources such as contractors or consultants are engaged and remunerated, and provide a material contribution to the preparation of the policy advice in the paper. This includes the full policy development process, not only the drafting of this paper.
- 5 The advice in this section should include an overview of the external resources used (including the number of people engaged and for how long, and the services/input provided), and clear justification for their use.
- 6 If the Cabinet paper is setting up further work, any requirement for external resources to further develop, implement or deliver this work should also be made clear.

7 Further advice on the information that should be included in this section is outlined in the CabGuide. Te Kawa Mataaho Public Service Commission guidance, including Public Service Contractor and Consultant Expenditure, and Guidance to Enable State Services Agencies to Consistently Measure and Report their Usage of Contractors and Consultants, outlines the expectations for agencies to measure and report on the use of external resources, and provides some useful definitions that may help to inform the advice in this section. The Ministry for Business, Innovation and Employment also provides guidance on the appropriate use of contractors and consultants in procurement processes.¹

Proposed wording for new section in the CabGuide: “Use of external resources”

8 The Cabinet Manual states that public service officials are responsible for “serving the aims and objectives of Ministers by developing and implementing policy and strategy” (para 3.11) and that “Ministers have a duty to give fair consideration and due weight to free and frank advice provided by the public service” (para 3.10). The purpose of this section is to provide transparency for Cabinet decision-makers on when and why advisors from outside the public service have had, or will have, a substantive role in producing the advice that Ministers’ decisions are based upon.

9 This section should be used when external resources such as contractors or consultants are engaged and remunerated, and provide a material contribution to the preparation of the policy advice in the paper. This may include external resources being engaged to:

- 9.1 provide thought or project leadership within the policy development process;
- 9.2 undertake, manage, or assess consultation processes or outcomes;
- 9.3 prepare, or support the preparation of, policy advice;
- 9.4 undertake specialist or technical functions;
- 9.5 provide any other input resulting in a material contribution to the development of the policy advice.

10 This section should include, as appropriate:

- 10.1 an overview of the number of external resources engaged in the policy development process, and the length of time they were engaged;
- 10.2 any requirement for external resources to further develop, implement or deliver the policy advice being presented;
- 10.3 a brief description of the input (e.g.: policy analysis; specialist technical support; research support or information collation; administrative support; communications);

¹ MBIE’s guidance is currently in the final stages of development. We will ensure it has been finalised before publishing this reference in the updated Cabinet paper template.

- 10.4 clear justification for why the external resource was engaged (e.g. provision of specialist or technical advice not available within the agency, or additional surge support in times of particular urgency).
- 11 Further advice on the information that should be included in this section is outlined in the CabGuide. Te Kawa Mataaho Public Service Commission guidance, including Public Service Contractor and Consultant Expenditure, and Guidance to Enable State Services Agencies to Consistently Measure and Report their Usage of Contractors and Consultants, outlines the expectations for agencies to measure and report on the use of external resource, and provides some useful definitions that may help to inform the advice in this section. The Ministry for Business, Innovation and Employment also provides guidance on the appropriate use of contractors and consultants in procurement processes.²

Updating guidance on cost-of-living implications

- 12 You have requested the addition of a section on cost-of-living implications. We suggest incorporating this as a new heading in the Cabinet policy paper template and in the CabGuide. The guidance could be reviewed within 12 months to ensure it remains relevant.
- 13 A cost-of-living section would request additional analysis on the impact that the proposed policy will have on New Zealanders' pockets.

Proposed wording for new heading in Cabinet policy paper template and in the CabGuide: 'Cost-of-Living implications'

- 14 This section should be used to summarise the likely impacts this proposal will have on the cost of living. This section is primarily descriptive and seeks to demonstrate that consideration has been given to how this proposal will impact on New Zealanders' ability to maintain their standard of living. This includes direct or indirect impacts on the cost of everyday expenses, such as housing, food, clothing or transport. It also includes any implications for businesses that are likely to be passed on to the consumer.
- 15 Any detailed financial implications analysis should be included in the financial implications section.

Including additional guidance in the 'Relation to government priorities' section

- 16 An alternative option to creating new sections in the template is to include the additional guidance in the "Relation to government priorities" section. This would tie these requests directly to the government's priorities and therefore elevate the importance of the issues. It would also have the practical effect of presenting the information at the front of the paper, thereby making it immediately visible to ministers.

² MBIE's guidance is currently in the final stages of development. We will ensure it has been finalised before publishing this reference in the updated Cabinet paper template.

- 17 However, we do not recommend this option as it may distort the intention of the existing section, which is to link the policy advice to the highest-level government priorities. For example, it would elevate these two issues into the same category as manifesto commitments and the Speech from the Throne. Including these issues in this section may also raise questions about why these two issues are being highlighted and others are not.

Next steps

- 18 We will update the relevant guidance in line with your decisions and circulate the information to agencies. Along with the Policy Advisory Group, we will engage with senior officials and policy leaders as appropriate to disseminate the guidance.
- 19 Following your decisions on this memo, we will work with relevant agencies to prepare the Cabinet Office Circular on the use of contractors and consultants for your approval.

Recommendations

- 20 I recommend that you **agree**, subject to any changes you may wish to make, to update:

20.1 the Cabinet policy paper template with the guidance on use of external resources in paragraphs 4 – 7 above;


AGREE / DISAGREE / DISCUSS

20.2 the CabGuide with the guidance on use of external resources in paragraphs 8 – 11 above;

AGREE / DISAGREE / DISCUSS

20.3 the Cabinet policy paper template and CabGuide with the guidance on cost-of-living implications in paragraphs 14-15 above;

AGREE / DISAGREE / DISCUSS


Diana Hawker
Deputy Secretary of the Cabinet


Rt Hon Chris Hipkins
Prime Minister

Date: 10 / 06 / 2023

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