
Sean King

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proximity

BACKGROUND

Sean is a Director of Proximity. He is a highly regarded commercial advisor and lawyer with significant experience acting for Australian Government, private sector and non-profit clients.

Sean has significant experience in probity, contracting, procurement, commercial law and governance.

Sean is based in Canberra and has a current NV2 (top secret) security clearance with AGSVA.

EXPERTISE

- › General contract law
- › Procurement and tendering
- › Governance and probity
- › Intellectual property
- › Media
- › Information and communications technology
- › Information technology
- › Commercial consulting

Sean's strongest specialisations are:

Commonwealth government procurement and tendering: assisting clients to achieve good procurement results through effective and efficient management of the procurement process from procurement planning to tender evaluation to negotiation and contract management

Commonwealth government governance and probity: providing pragmatic front-end probity services (probity plans, probity briefs, probity document reviews, probity register, probity advice) and back-end probity advice (managing complaints, FOI requests, threatened litigation).

Commonwealth government Intellectual Property: advising clients on intellectual property law including registration, ownership and licensing, commercialisation, auditing, protection and government IP law and policy (including crown copyright)

Sean has wide ranging commercial and contracting experience including in respect of outsourcing (including ICT outsourcing), procurement (including major capital acquisitions and services), funding agreements and MOUs. Sean is regularly involved in major technology transactions including systems integration projects, software licensing and hardware acquisition.

Sean regularly assists clients to achieve good procurement results through effective and efficient management of the procurement process from deal structuring to tender evaluation to negotiation support. Sean also regularly advises clients on Australian Government procurement law and policy.

EXPERTISE

Procurement and tendering

Advised Defence on its Next Generation Desktop Project. The project is part of Defence's \$940 million ICT reform and will result in improved application and data delivery (through a virtualised thin-client architecture) and a more user-friendly multi-level security solution. Advised Defence on its Data Centre Migration program to move its ICT infrastructure from its existing data centre to a new facility in Sydney.

Advised the ATO, Mint, Future Fund, Defence and many other agencies on software licences, licence support, hardware and ICT consultancy services (including in relation to both COTS and developed products).

Sean has provided procurement support for many other projects including:

- › Defence – Landing Helicopter Dock sustainment arrangements
- › Customs – Telecommunications Strategy and Market Testing Project
- › Health – \$467 million My Health Record reform program
- › AMSA – panel of search and rescue providers
- › CIOG – McAfee procurement of appliances, software and hardware
- › Defence – Health Services performance based contracting

Governance and probity

Probity advisor for the ATO Contact Centre Outsourcing Project (a significant project with contracts valued in the \$100s millions and representing an outsourced workforce exceeding 1000 FTE). Sean was lead advisor for several years covering: panel establishment, major ATO and DHS contracts using the panel, acquisition of one of the 5 panellists by another panellist through a venture capital firm. The engagement spanned Canberra, Melbourne and Brisbane.

The probity role was significant and included advising on: market sounding; involvement of other agencies in the procurement process; management of incumbent contractors; a proposal from a tenderer in its RFQ to provide the services from a different site to the site proposed in its panel RFT. Sean's work helped ensure that despite the sensitivities and difficult probity issues, the procurement was undertaken successfully with no probity challenges.

Sean has been a front-end probity advisor on numerous other jobs including:

- › Geoscience Australia Probity for Main Building Refresh
- › Department of Infrastructure Urban Rail Plans
- › ATO OmniChannel and ATO Smarter Data Program
- › Icon Water AMMS system procurement.

Sean regularly advises Commonwealth entities on governance and is the lead Partner for Proximity's engagement to review governance of DVA's committees.

Sean is regularly called upon to provide probity advice in relation to Commonwealth procurements.

Sean's front end (proactive / preventative) probity experience includes:

- › probity plans
- › probity briefs
- › probity document reviews
- › probity registers
- › probity advice
- › probity training

Most recently Sean was appointed as the lead probity advisor on a very large procurement for the provision of outsourced contact services that is likely to be valued in the \$100s of millions that is likely to be the Commonwealth's most significant arrangement of this type with potential whole of government application.

Sean's back end (reactive) probity experience includes:

- › probity reviews
- › probity audits
- › probity reports
- › complaints resolution
- › probity advice

Most recently Sean provided back end probity advice in relation to an FOI request and threatened litigation by an unsuccessful tenderer against an agency in which the tenderer claimed that its tenderer was not evaluated fairly.

Sean has experience working with high profile probity auditors such as Sir Lawrence Street.

Sean is up-to-date in relation to all of the most recent probity issues and Proximity has useful templates for probity plans, conflict of interest declarations, probity briefing packs, and probity registers.

Sean has provided probity services on a range of procurements including:

- › Data Analytics Multi Use List establishment
- › ATO Omni-Channel information technology procurement
- › Call Centre Outsourcing for a large government portfolio
- › Immigration Detention Centers

Intellectual property

Undertaken IP management reviews and drafting IP management policies for DSTO, Defence CIOG and the National Library.

Trade mark matters for Defence and Education (formerly DEEWR), including managing international trade mark applications.

Advised Defence on its IP and technical data rights under major procurement contracts (a number exceeding \$1 Billion) including Multi-Role Helicopters, Seasprite Helicopters and Follow-on Stand-off Weapons.

Advised the ATO on the extent of its IP rights in relation to its national telephone call management system, and on domain name protection strategies.

Advised the APEC Taskforce on copyright issues with respect to artworks. The advice enabled APEC to ensure it did not inadvertently infringe artists' copyright. Advising the Future Fund and Home Affairs on proposed licence agreements with Copyright Agency Limited (the declared collecting society for government copies of works), including advising on crown copyright law.

Drafted a detailed issues paper on the commercialisation of IP for Forest and Wood Products Australia to enable it to devise a strategy for commercialising its substantial IP assets.

Advised the Rural Industries Research and Development Corporation on exclusive licences in respect of plant breeder's rights in varieties of rice.

Government contracting

Assisted Defence with contracting and procurement support for the Landing Helicopter Dock (Canberra Class Amphibious Assault Ship) sustainment arrangements. The Landing Helicopter Dock Systems Project Office has been established to put in place sustainment arrangements for the Royal Australian Navy's largest ever ships, the \$3b HMAS Canberra and HMAS Adelaide, and 12 landing craft. The sustainment arrangements include multiple high value contracts for the provision of sustainment services including maintenance, asset management, supply management and design services. Sean assisted with procurement strategy, preparing requests for tender, providing advice on intellectual property management and licensing, developing evaluation reports and planning for contract negotiations.

Assisted the Australian Customs and Border Protection Agency with its Telecommunications Strategy and Market Testing Project. Sean assisted the client to establish outsourcing arrangements for telecommunications services including fixed voice, mobile, satellite, radio, wide area network and closed circuit television. The procurement involves a combination of open approaches to market (which will result in the placement of work orders under AGTA) and purchasing from the whole-of-government telecommunications panels (which will result in the placement of official orders under multiple WoG panels).

Assisted an Australian Government client with its procurement of an electronic document records management system. The system will be rolled out in separate phases, with the first phase being electronic management of physical records and a pilot and a second phase (contingent on events) for agency-wide management of electronic records.

Provided support to Department of Defence for the \$1.3 Billion AIR 87 Armed Reconnaissance Helicopter Acquisition Project, including participating in major contract renegotiations and advising on on-going contract management.

Drafted the Army Aviation Training and Training Services (AATTS) RFT for, and negotiating the AATTS contract on behalf of, the Department of Defence. The project

was praised for the quick, effective and cooperative manner in which the contracts were negotiated.

Department of Health Ageing - Assisting DoHA with its \$467 million eHealth reform program. The project will develop a national electronic health records system to supplement health providers' paper based systems. For the first time, Australians who choose to participate will be able to see their important health information when and where they need it. Sean has been involved in drafting and negotiating the contract to appoint a managing agent; drafting the approach to market documents (including conditions of tender and draft contracts) for the IT provider, marketing and public relations provider, strategic advisor and quality assurance organisation; and drafting the eHealth site funding agreements.

Assisted the Australian Maritime Safety Authority to establish a panel of search and rescue providers. The project included drafting template SAR services agreements and advising on transitional arrangements.

Assisted the Australian Antarctic Division with its approach to market for the provision of Airlink services between Tasmania and Antarctica and with a contract for a ski fitted aircraft to provide contingency fixed-wing services within Antarctica.

Information Technology

Advised a major Agency on its Internet Gateway Reduction Project, including assisting with its procurement strategy for both the gateway and IBNCs services. The project is particularly important for the Agency because it is procuring the services for the Agency and a large group of more than ten client agencies. The aims of the project are increased IT security and reduced costs. Sean has provided advice on procurement strategy, system integration risk, governance arrangements, and establishing MOUs between the lead agency and its client agencies.

Assisted the ATO with its Standard Business Reporting Authentication Project. The project will benefit more than 1 million businesses - simplifying the way they interact with the Australian Government online by establishing a common method of authentication. The project included drafting and negotiating the Deed of Standing Offer and both the Phase 1 (design) and Phase 2 (implementation) work orders.

Assisted Finance (through the Australian Government Information Management Office) with a coordinated procurement to establish a whole-of-government panel for data centre facilities (space in data centres) and data centre migration services (services to move equipment between data centres). The project includes advising on the procurement plan and strategy, drafting the RFT and head agreement, tender evaluation and negotiation. The project implements a key recommendation of the Gershon review and aims to save the Government \$1 Billion over the next 10 to 15 years.

Advised the Department of Defence on its Next Generation Desktop Project. The project is part of Defence's \$940 million ICT reform and will result in improved application and data delivery (through a virtualised thin-client architecture) and a more user-friendly multi-level security solution. Advising the Department of Defence on its Data Centre Migration program to move its ICT infrastructure from its existing data centre in Canberra to a new facility in Sydney. The project involves the physical moving of equipment, but also covers design of the moving process, assessment of Defence's data recovery systems and the purchase of new infrastructure.

Advised the ATO, Mint, Future Fund and others on contracts for software licences, licence support and ICT consultancy services (including in relation to both COTS and developed products).

Advised Centrelink in relation to the procurement of telecommunications arrangements on behalf of DHS.

Assisted with the production of a web-based procurement tool for DIAC.

Non-government contracting

Assisting Linfox with a variety of aviation matters including drafting agreements for aircraft purchase, aircraft trade-in, exclusive agency, and aircraft management. Negotiating an aircraft hire agreement under which Helifox (subsidiary of Linfox) provides aircraft and services to Raytheon Australia.

Assisting HIA to renegotiate a major IT redevelopment project including drafting a revised head agreement and work orders. The renegotiation will result in a contracting regime that is significantly more favourable for HIA.

Advising Canberra Data Centres on securities documents (fixed and floating charges). The advice enabled CDC to negotiate more favourable securities arrangements.

Government advice

Advising Defence on the \$1.3 Billion Seasprite helicopter acquisition project, including in respect of termination issues.

Advising AMSA on a pricing dispute with a major provider of search and rescue services, including advising on fee indexation, duty of good faith, dispute resolution and termination rights.

Giving advice to, and assessing claims on behalf of, Customs and Comcover in relation to Customs' implementation of an integrated cargo management system.

Advising Infrastructure on its rights to a repayment of funds paid under a funding agreement and options for termination. Advising Infrastructure on the application of procurement policy to a proposed software purchase.

QUALIFICATIONS

- › Bachelor of Laws (University of Canberra)
- › Bachelor of Engineering (Computer Engineering) with Honours (University of Canberra)
- › Graduate Diploma in Legal Practice (Australian National University)
- › Gateway Review Team Member Course
- › Admitted as a lawyer of the ACT
- › Admitted as a lawyer of the High Court of Australia
- › Unrestricted practising certificate