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## SENATE

STANDING COMMITTEE ON FINANCE AND PUBLIC  
ADMINISTRATION

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**SENATE STANDING COMMITTEE ON  
FINANCE AND PUBLIC ADMINISTRATION**

**Monday, 27 November 2006**

**Members:** Senator Fifield (*Chair*), Senator Forshaw (*Deputy Chair*), Senators Carol Brown, Fierravanti-Wells, Mason, Moore, Murray and Watson

**Substitute members:** Senator Bernardi for Senator Mason

**Participating members:** Senators Barnett, Bartlett, Bernardi, Boswell, Brandis, Bob Brown, Carr, Chapman, Conroy, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Heffernan, Hogg, Joyce, Ludwig, Lundy, Ian Macdonald, Marshall, McGauran, McLucas, Milne, Nettle, O'Brien, Parry, Payne, Robert Ray, Ronaldson, Sherry, Siewert, Stephens, Trood and Webber

**Senators in attendance:** Senators Bernardi, Carol Brown, Fierravanti-Wells, Fifield, Forshaw, Murray and Watson

**Terms of reference for the inquiry:**

To inquire into and report on:

The operation of the Senate order for the production of lists of departmental and agency contracts.

**WITNESSES**

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**Committee met at 9.23 am**

**CHAIR (Senator Fifield)**—I declare open this meeting of the Senate Standing Committee on Finance and Public Administration. Today's hearing combines the committee's oversight of the operation of the order for contracts and the inquiry into the transparency and accountability to parliament of Commonwealth public funding and expenditure. It continues the hearing of 11 October on the order with the Australian National Audit Office and the Clerk of the Senate appearing before the committee. The committee will also be hearing from the Department of Finance and Administration and the ANAO in relation to the funding inquiry.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, be made at any other time. Any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.

The Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how appropriate policies were adopted.

[9.25 am]

**BIRD, Ms Sheila Margaret, Group Executive Director, Australian National Audit Office**

**BONNEY, Mr Bill, Audit Manager, Australian National Audit Office**

**BOYD, Mr Brian Thomas, Executive Director, Australian National Audit Office**

**COLEMAN, Mr Russell Charles, Executive Director, Australian National Audit Office**

**CHAIR**—Welcome. Do you wish to make an opening statement?

**Ms Bird**—In September this year the ANAO completed the eighth audit of compliance with the Senate order that requires departmental and agency contract details to be listed on the internet. This audit examined seven agencies, and the results of the audit are consistent with those of the past four years and show a progressive reduction in the number of contracts reported as including specific confidentiality provisions. The number reported, however, is overstated. The audit also found that some agencies had given insufficient attention to ensuring the completeness and accuracy of the contract listing on their website. Controls and quality assurance could be strengthened to improve the accuracy of reporting, and the report makes two recommendations aimed at those issues. Mr Coleman and Mr Bonney were involved in the detail of the audit and will be able to answer any detailed questions that the committee has.

**CHAIR**—Thank you very much. Senator Murray.

**Senator MURRAY**—I think the issue before the committee is probably one of timing rather than of intent. The point we wish to get to is that, if there are going to be separate reporting regimes, they are coincident and there is no clash in criteria. Secondly, if there is to be further rationalisation, that should occur at a time when we are satisfied that the disciplines that lie behind the Senate order are well established. That is my question. Whenever I read your reports, I come away with a strong feeling that the disciplines we are searching for are not yet embedded in public sector practice. They are there in DOFA guidelines and in executive support, but they are not there in practice. Contracts continue to be let and to be designated with confidentiality provisions which should not be in there and are inappropriate for the matter under question. Is that a reasonable summation of the situation?

**Mr Coleman**—Yes. As our reports continue to say, as Ms Bird mentioned in the opening statement, there continue to be issues with compliance as we do these audits. There has been a reduction in the overall number of contracts that are listed as being confidential, and that is a very good outcome. But, within that population, agencies can, I guess, continue to have some difficulties with the completeness and accuracy of their listings.

In the last couple of audits we have also found an increasing number of agencies not making errors of judgement in terms of what goes in the contract but just listing them as containing confidential provisions when in fact they do not. That, to our mind, demonstrates some continuing lack of understanding of the requirements of the order and also the need for what can

in most cases be quite a simple quality assurance process to be embedded in agency business processes. That is essentially what the recommendations point to.

**Senator MURRAY**—My difficulty with the approach that is foreshadowed by the DOFA recommendations is that there is still no enforcement mechanism, so, if the Senate were to back off from its order and the ANAO were to cease annual audits, which you would do—I cannot see you continuing it of your own volition, and perhaps you could correct me if you think I am wrong, but I cannot see doing it every year if the Senate order were withdrawn—then we would be relying on the willingness of agencies to comply with Finance directions and guidelines without any enforcement mechanism. As we know, those guidelines already exist and agencies are still not complying, which to me means the only way in which this can be regularly reviewed is through the ANAO mechanism, because that is the only way in which the parliament will get a rigorous understanding in this area. Is that an accurate view of the matter?

**Ms Bird**—Officers from the department of finance raised with the ANAO the possibility of us conducting a post-implementation audit once the changes that they were proposing were established, and the Auditor-General agreed that that was a good idea and that he would undertake such an audit. The Auditor-General also indicated that he would be prepared to undertake audits for the first couple of years following such a change and would then anticipate discussing the outcomes of those audits with the committees to see whether that should continue into the future.

**Senator MURRAY**—If that were to occur and the view was that should occur then there would be the question of timing. At the moment, one of the possibilities is that the new system should run in tandem for a while and that it would probably be a year or two until such time as the ANAO was satisfied that you could swap completely to the new system. That is an alternative to the immediate proposition you put.

**Ms Bird**—Yes, it would. The ANAO believes that parliament must be satisfied that it is getting the information that it needs to ensure accountability and transparency. So that would be an option to consider.

**Senator MURRAY**—Do you accept that, without the ANAO reporting and auditing mechanism, the parliament would not have a similar in-depth appraisal of this area available to it and therefore its oversight would diminish?

**Ms Bird**—I think that is probably a judgement for the parliament to make. In terms of—

**Senator MURRAY**—Just to interrupt, so you understand my question, there is no other reporting mechanism available, is there, through annual reports or anything else?

**Mr Coleman**—There are no other independent scrutiny processes; that is correct. But, on the other hand, with the amalgamation and rationalisation of the system as Finance is proposing and as we understand the arrangements, it would give the parliament and the committees a greater opportunity. There would be greater functionality available in those systems to scrutinise the information. That is the only other comment I would make.

**Senator MURRAY**—I do not have a problem with DOFA improving its own guidelines and systems and the proposals for improving the IT side of things. It is just the question of how the Senate order continues to interact. One of the main motivations for removing or reducing the Senate order's impact is that there are these inconsistencies between the reporting regimes. Inconsistencies are easily resolved, I think, in this area. I do not think it is that difficult. If inconsistencies were resolved and harmonised reporting requirements did occur, would you have the view that the Senate order would then be redundant or, in fact, should be maintained because it fits neatly into an accountability framework?

**Ms Bird**—Perhaps I can give you some additional background. In an audit that the ANAO undertook earlier this year—and it reported in January—on the expenditure of consultants, the ANAO recommended that Finance, in consultation with other departments, examine options for improving the accuracy and completeness of reporting of government procurement, including the merits of rationalising the number of reporting regimes. In making that recommendation, the ANAO considered other options, such as improving or revising the procedures for the three different regimes, but concluded that it was the very existence of those three separate mechanisms that was making it difficult for agencies to provide the complete and accurate reporting. From the work that we undertook earlier this year, our conclusion was that the three regimes were making it difficult, hence the recommendation to look at rationalising those regimes.

**Senator MURRAY**—The new regime is less comprehensive still than the Senate order. There is the issue of non-procurement of contracts which is not picked up in DOFA's recommendations. Surely until such time as DOFA has a completely comprehensive regime we should hold back from dropping a more comprehensive coverage.

**Ms Bird**—Again, I think that is for the committee to decide. In our discussions with DOFA they have indicated that the proposal is not totally comprehensive. As you say, it only includes procurement contracts.

**Senator MURRAY**—Let me backtrack. You have brought to the attention of the committee your recommendation, but your recommendation is predicated on the reporting regimes being similar in outcome and intent, and therefore just being a multiplicity. But if some of those reporting regimes are less comprehensive than others, surely that affects the judgement we should make on the matter. When all three reporting regimes are as comprehensive as each other, you will obviously then say, 'Well, why do you need three?' That is the point. I do not think it is up to the committee. If the ANAO has made that recommendation, surely the comprehensiveness of DOFA's model has to be part of your consideration as to when, not whether, reporting regimes will be rationalised.

**Ms Bird**—The ANAO would certainly be concerned if the proposal did lead to an overall reduction in the amount of publicly available information and the verification of it.

**Senator MURRAY**—You have said that the ANAO has agreed that they would continue an annual auditing process for a few years, and that is one mechanism, but what reassurances has DOFA given you that the training and implementation of the new system will be such as to satisfy you?

**Ms Bird**—We have not yet received any assurances along those lines. The ANAO considers that the proposals must be supported by the appropriate communication and training to deliver the expected benefits in addition to the system changes.

**Senator MURRAY**—Will you outline to the committee whether you have concerns with data integrity? Data integrity does still seem to be an issue with the new AusTender system. How confident can the Senate be about the reliability of AusTender's reporting mechanism?

**Mr Boyd**—Perhaps the starting point for us in terms of data integrity is looking at the existing systems. In the report that Ms Bird referred to earlier in relation to Senate orders 55 per cent of the 31 agencies confirmed to us that they had omitted consultancies from their Senate orders and nearly two-thirds of consultancies were actually either reported in error or were not reported at all in a Senate order. So the starting point for us was, in essence, that the current Senate order does not have sufficient data integrity within it. The Senate order audits which we conduct on an annual basis are focused on the processes agencies used to prepare the Senate order, but those audits do not actually look at the substantive issue of whether all contracts that should be reported are reported in a Senate order and whether those contracts that are reported are reported accurately. They are focused, if you like, on the controls rather than the outcomes.

Our starting point was that the data integrity is not currently there in the Senate order to be confident that the Senate, and indeed the Australian public, is being advised of all contracts and all contracts accurately such that you can be confident that confidentiality provisions are being accurately reported to the parliament where they do exist. I think Mr Coleman referred to, where we do examine, having instances where contracts are reported with confidentiality clauses and they do not have them.

The exercise that we went through was trying to understand, given the level of data integrity in a Senate order, the integrity of what is reported in annual reports, which is similarly poor, and also what is reported in terms of the GaP system, which is also poor. The question for us is: why is that the case? We looked at this quite seriously. Yes, there are issues in terms of overlap and inconsistencies in data, and you can look at harmonising those so that you are reporting the same data. But, once you get to that point, for something which is a Senate order, which is a lot of the data in there, much more data should be in GaPS-AusTender. So in terms of deriving the Senate order, with the exception of identifying those contracts where there are confidentiality issues, that data should be able to be sourced from the Senate order if you harmonise the requirements. So, yes, harmonisation gets us part of the way there, but the real thing for us is that agencies look upon the Senate order as being a separate exercise.

**Senator FORSHAW**—You said you had 55 per cent of 31 agencies?

**Mr Boyd**—We looked at 31 agencies in detail, and 55 per cent of those agreed with us. We examined their reporting and 55 per cent came back and said, 'Yes, we agree that our Senate order reporting omits consultancies.' They have not reported those contracts. They agree with that. They acknowledge that.

**Senator FORSHAW**—We have heard about this before, I think, but thank you for clarifying that.

**Senator MURRAY**—I think your points on integrity are fair ones. My last question is this: one of the obvious alternatives is to have a revamped AusTender system operate for a period in parallel with the order. If the committee were to take that view, the question then would be: for how long? Would the ANAO have a feeling as to how long would be a legitimate time for the ANAO to evaluate the system, properly implement it, properly bed it in and, at some future date, when amalgamation could be considered?

**Mr Boyd**—From our perspective, the key thing is performance. Looking at the low level of integrity that currently exists across the three regimes, we would think that, to be confident, you would want to see the level of performance improve significantly and then be able to remove such a thing. These sorts of issues—how you run systems in parallel and how you can be confident that we have actually got an improvement rather than simply a reduction in reporting—are the essence of the discussions we have been having with the department of finance. We have canvassed with them the need for there to be strong guidance, the need for there to be training of people and the need for the systems to be able to be used by people. Also, there is a role there for us in terms of some sort of post-implementation audit activity. But, ultimately, from our perspective, and having regard to the concern expressed by the Auditor-General, there should not just be a reduction in requirements if it is going to lead to a reduction in transparency and accountability to the parliament. It needs to come with an improved level of performance from agencies.

From our perspective, the incentive for agencies is that they can derive some efficiencies, and our work on consultancies pointed to the likely cost savings that would arise if there is a rationalisation, but there must also be a benefit to come to the parliament in that the level of improvement in reporting should be commensurate with any savings they realise. In fact, we would expect that reporting should increase markedly. As I pointed out with respect to some of the statistics, currently the level of integrity in that data is at a very low level for something that has been in place for a long period of time and that has been subject to regular audit by the ANAO. We would have expected by this stage that agencies would be doing far better.

**Senator MURRAY**—I have to guess at the reasons for that. My guess would be that this is not a high order of priority in agencies. It is not something that chief executives meet and get extremely excited about.

**Mr Boyd**—But it is also not data that the agencies rely upon for their own decision-making information. They are looking at what is happening with the Commonwealth procurement guidelines and the US free trade agreement more generally; there is a great deal more import now put on things such as GaPS-AusTender being accurate, complete and reliable. With that sort of effort going in, with the enhancements that Finance is making to the system itself and with the other important accountability mechanisms such as confidentiality in contracts, the benefits that should come from those sorts of improvements might then be able to be realised in terms of reporting, having regard to what is intended behind the Senate order.

**Senator MURRAY**—Given that the history of this is that the application of high standards has been slow, if I can put it that way, I would expect that finalising the system, putting it into agencies, training people, then monitoring and auditing it and making sure that the standards rise would take at least three years. That is my feeling, given what I have seen occur in the Public Service with respect to systems and processes. So if the committee were to consider that an

alternative would be to have the order operate in parallel with the revamped AusTender system, I would have thought the review of that position could not occur before a period of three years had passed. Is that a reasonable conclusion to draw?

**Mr Boyd**—It certainly does not sound out of bounds. If we were going to run the two systems in parallel, you would need them to be run in parallel for at least a year and then assess them at the end of that year. Obviously, you are then into the second year, so you would not want to have the two systems running until you finished your review of that first year. Logically, that suggests you have at least two years of operating in parallel before you would then consider removing one of the two requirements.

**Senator FORSHAW**—Can I follow up on the issue of confidentiality. As I understand it, your report indicates that there has been an improvement in that there is less use of the confidentiality provision but that there are still some problems with how that is interpreted and what parts of contract information are classified as confidential and whether or not they are correctly classified in that way. You might comment on that in your findings in your latest report.

Also, I am particularly concerned, with the department proposal to do away with the order when you go to this new AusTender system, about whether or not that would lead to greater use of the reliance on confidentiality provisions and less adherence, if you like, to actually putting all of the information that should be on the system on the system. In the absence of having an order that says you must put this information on the public record—

**Mr Boyd**—Our work earlier this year comparing across the three regimes would find that, to be blunt, having an order as it currently sits has not delivered that outcome to the Senate.

**Senator FORSHAW**—I appreciate that, and that is why I am trying to get at whether or not a move to a new system would make it better, worse or whatever.

**Mr Boyd**—Our aim when we examined across the three regimes was to find which data they use and what they use it for. Human nature in these things being what it is, if you are relying upon the data yourself for a purpose that you find useful, you will put far more effort into actually making that data complete and accurate so that you can rely upon it yourself in your own decision making. In that sense the agencies do not use the Senate order for their own management decision making. The information that is used out of the three regimes to extend any of it is what is in GaPS-AusTender. As I flagged earlier with the US free trade agreement, and now you have the requirements there for not only reporting but also flagging opportunities, a lot more emphasis is being put on that area. A lot of the difficulties we found with the accuracy and completeness of reporting of consultancies both in the Senate order and in annual reports were essentially around the fact that this is a separate exercise performed at different points in time when the reporting is required. It is not something which is in-built and part of the ongoing management of the organisations. Therefore it is treated as being in large part an extra exercise on top of our existing responsibilities. Our interest was that, if we could actually build this into their ongoing management operations, it would presumably increase the chances of the data being complete and accurate.

**Mr Coleman**—It is worth pointing out that, as you mentioned, over a period of time—and I guess the agencies were starting from a low base—there has been quite a significant reduction in

contracts that are listed as containing confidential information. In the latest audit we found that agencies that got large contract activity, like AusAID and DFAT, have virtually no contracts listed with confidentiality provisions in them. As for going backwards, that requirement is now embedded in government policy requirements, so as long as that remains—and we would assume it would—there would really be no reason or any incentive, I would not have thought, for agencies who have taken some quite significant steps to arrive at that current position to revert to some previous practices. It is very much part of the policy position that they have adopted, and they try very hard to ensure that that policy position is in fact implemented.

**Senator FORSHAW**—I cannot speak for other senators, but I think most would agree that one of the issues for us always—and this particularly comes up in estimates hearings—is that, where a claim for confidentiality is made, it immediately triggers the question: what is the motivation for the claim and how do we then test whether or not it is legitimate? It is a chicken and egg type of thing. How do we know something should be classed as confidential if you cannot actually see it? But it also goes to the issue of whether or not it is simply a misunderstanding rather than a deliberate act.

**Mr Coleman**—Some of it, as we mentioned earlier, is just misunderstanding. Some of it, we suggest, is poor judgement, but increasingly we find it is just misunderstanding. It is worth mentioning that the large majority of contracts that we look at now contain a standard provision which provides for parliamentary access, irrespective of whether there are confidential provisions in them. That should hopefully give the parliament and this committee some comfort that if they do require access the contract provides for that access.

**Senator FORSHAW**—My point was that, having at least got to that stage—notwithstanding Mr Boyd's legitimate concerns that if the current system of the order plus internal better management and strengthening of the policy position and the role of the Audit Office as well in overseeing this means that we have improved—then moving away from the current Senate order would be a big concern for me.

**Mr Coleman**—One of the things we have observed in some of our work in this area—and we are just completing an audit on the implementation of the Commonwealth procurement guidelines which will come out in the new year—is a lack of inclusion of contracting type activity in day-to-day or month-by-month management reports. It is an issue that we are continuing to encourage agencies to build into their processes. We are finding some agencies are more willing to do that. If these reports go to senior management, hopefully greater attention will be paid to these sorts of issues.

**Senator FORSHAW**—I understand from your latest report released in September that you have suggested DOFA could enhance its guidance in this area of confidentiality criteria. Can you expand on that?

**Mr Coleman**—As you would know, there are two confidentiality requirements. One is in relation to the inclusion of any confidential information in contracts and the other is in relation to other provisions of confidentiality. The reality is that most Commonwealth contracts contain provisions which relate to other provisions of confidentiality, like the need to keep privacy information confidential and so forth. Over the last few audits and on getting feedback from agencies we have found some confusion between those two provisions. One of the reasons for

that is the material could be clarified and improved based on the experience of agencies with those provisions. Finance have taken that on board and they accept that.

**CHAIR**—DOFA and the Audit Office have a special arrangement, I understand, with ASIS and ASIO to allow the AO to audit these agencies' compliance with the orders. That is correct, is it?

**Mr Bonney**—It is not a special arrangement as such but we did include them in the Senate order a couple of years ago. The work was done in the sixth audit.

**CHAIR**—So there is nothing special about the relationship that you have in relation to your auditing of compliance with those contracts?

**Mr Bonney**—No, not that I am aware of.

**Mr Coleman**—No, there are no special arrangements there. They would be subject to audit coverage in the normal way. But what we did find in that previous audit that Mr Bonney referred to was that a couple of those organisations did indicate that they would not list contracts in the Senate audit for reasons of national security.

**CHAIR**—So it is only special in terms of the nature of what they are prepared to disclose publicly.

**Mr Coleman**—Yes, that is correct.

**CHAIR**—Okay. Has there been any refusal in the past, to your knowledge, of those organisations to comply?

**Mr Bonney**—No. We have only invited them to be in the audit once and that was audit No. 6. They were more than happy to be involved. The only issue for them was the extent of discussion that we included around them in the public report.

**CHAIR**—To your knowledge, have they refused to comply with the Senate order in the past?

**Mr Bonney**—Not that I am aware of, apart from what Mr Coleman mentioned, that they would rely on the national security exemption from listing their contracts on their websites.

**CHAIR**—Okay. I guess that would constitute a technical refusal. It might be for entirely valid reasons but—

**Mr Coleman**—Agencies are able to make that judgement. That is part of the policy construct. It is a judgement that those agencies have made to exclude those contracts from the listing.

**CHAIR**—So it is specifically provided for under those sorts of circumstances?

**Mr Coleman**—That is correct.

**CHAIR**—How often has the Audit Office conducted these audits? Are you saying it is just the once?

**Mr Bonney**—Just the once at those two organisations; that is right.

**CHAIR**—Were there any particular findings from that audit?

**Mr Bonney**—I am speaking from memory. I was not involved in the fieldwork at ASIO but I was involved in the fieldwork at ASIS. They were in what you might call a period of development—they had only recently put together a contract register to capture this sort of information. That is now up and running, and they are also developing the infrastructure around that in terms of how to capture that information. As I say, that was a couple of years ago now.

**CHAIR**—I guess you do not necessarily flag in advance when you are next going to audit in relation to these things.

**Mr Bonney**—No, we make the judgement on the agencies that we are going to include in each Senate order at the time we prepare the detailed planning.

**CHAIR**—As there are no further questions, thank you for your attendance this morning.

[10.04 am]

**EVANS, Mr Harry, Clerk of the Senate, Department of the Senate**

**CHAIR**—Welcome and good morning. We will go straight to questions.

**Senator MURRAY**—Mr Evans, my clear prejudice is for as much accountability and openness as possible with respect to contracts that are let by the government, either directly or indirectly through third parties, to ensure that the parliament and the public have proper oversight and proper access to what is genuinely non-confidential. There are two questions arising from that. Firstly, do you think the existing guidelines with respect to confidentiality as supplied by DOFA are too broad—in other words, is there still too much falling into the confidential area? Secondly, what additional steps do you think could be taken to improve the public disclosure of contracting information?

**Mr Evans**—Senator Murray referred to his prejudice. I do not think it is a prejudice; I think it is a principle. I did not see any problem with the DOFA guidelines as such. The problem is policing the system, if you like, to ensure that departments think about confidentiality provisions in contracts, and put them in only when they believe them to be justified and then explain them adequately—and of course be ready to satisfy the Audit Office that they are justified. I think the guidelines about what confidentiality provisions might cover necessarily have to be fairly broad because of the wide range of circumstances they have to cover.

**Senator MURRAY**—I am starting to believe that both the Audit Office in its reports and the agencies in their reports should list what sorts of contracts are not disclosed as well as what is disclosed. I do not think there is an easy mechanism to know, with respect to a particular agency, that non-procurement contracts might or might not be there or that contracts with respect to security issues might have been excluded. I think there needs to be a system whereby the public and the parliament are automatically advised of what is not available. Do you think that is a step which would improve accountability and disclosure?

**Mr Evans**—Yes, I would agree with that. I think that is a gap. The parliament and the public should be able to see what kinds of contracts are being kept as totally confidential.

**Senator MURRAY**—As you know, Clerk, when this was originally introduced it was opposed by the government and supported by non-government senators, but my impression is that since then the government has accepted the Senate order as a legitimate and useful mechanism that assists management and accountability. I am therefore uninclined to believe that it would have a motive for closing down that disclosure area. But if the new DOFA system, the AusTender system, is introduced without a parallel reporting system from the Senate—at least for a while, until such time as we can see the results—I do see a danger that in fact non-compliance and less disclosure could result because Finance and the ANAO have no mechanisms for comprehensive appraisal right across all agencies and for enforcement. How do you react to that view?

**Mr Evans**—I was going to say from Senator Murray's initial sentences that Senator Murray is very trusting.

**Senator MURRAY**—It is one of my weaknesses.

**Mr Evans**—I think the view that he has put is correct and that sort of view is the basis of parliamentary accountability and accountability of all kinds. I do not think you should abandon something that improves accountability unless and until what is going to be put in its place at least affords equal transparency and equal accountability. As I suggested in the supplementary note I put to the committee dated 12 October after the previous hearing, I think there is a fairly easy way of keeping the Senate order in place as departments transfer to the AusTender system and in fact keeping it in place thereafter even when the system is up and running satisfactorily.

**Senator MURRAY**—My feeling is that that decision does not have to be made now. What has to be made now is a decision as to whether parallel reporting systems continue. You heard me ask the question of the ANAO as to whether it would be necessary to see the implementation, training and application of the new regime. Because I would expect it to be a low-order priority for agencies just by the way the world is, my sense of things is that around three years would be a minimum period to see a parallel system running.

**Mr Evans**—Yes, I would think that that is not too pessimistic an estimate. But, as I said in the supplementary note, I do not know that we should keep talking about the Senate order and the AusTender system as parallel systems or separate systems. If the order is left in place during a transitional period while the AusTender system is getting up and then the order is amended with the concurrence of the Senate to accurately reflect the AusTender system, then it is really one and the same system. But, as I said, by keeping the order in place completely consistent with the AusTender system, you signal to departments and agencies that this is a matter in which the Senate maintains a continuing interest. It is not as though the Senate has vacated the field, and that attaches a certain greater authority and importance to the question of disclosure of contracts—leaving aside, of course, the problem of the non-procurement contracts where there is a gap.

**Senator MURRAY**—I am glad we have got there, because that, to me, is the most important interaction I want to have with you today: if the Senate order were to be regarded as an integrated part of the new AusTender system, what does it seek to achieve? I want your view on that, but my view is that what it does most of all is to request the ANAO to report to the parliament. The government cannot lay down that requirement; it can make the same request the parliament does but, as you know, the ANAO is formally bonded to the parliament by law. It is the parliament to which it reports. My feeling is that this mechanism provides one of the principal, regular reporting regimes that the ANAO indulges. I can think of no other constant, regular accountability report that it produces.

**Mr Evans**—Yes, that is certainly so. That is the other gap that would be left by the revocation of the order—the request from the Senate to the ANAO to regularly review the operation of the system—and certainly that should be left in place.

**Senator MURRAY**—When we are discussing these issues often people are bored by it because it is not of interest to many people. But effectively we are saying that, if several hundred

billions of contracts—and I use the word ‘billions’ deliberately—are let on a triennial basis through government, the public disclosure of contractual terms needs to be maintained and needs to be available. In what respect would that not be so under the new AusTender system if the Senate order were dropped?

**Mr Evans**—As I said, you have the problem of the non-procurement contracts, and I think that problem has to be solved somewhere along the line. If we are developing this excellent system for dealing with procurement contracts, I cannot see why we cannot equally develop the same system to deal with non-procurement contracts. That certainly is a good reason for leaving the Senate order in place and, as I said before, leaving the order in place also signals that this is a matter in which the Senate maintains a continuing interest. That lack of compliance can lead to trouble in a Senate committee and trouble in the Senate, as well other sorts of trouble. So, yes, I think the case for keeping the order in place is unanswerable.

**Senator MURRAY**—To conclude, your view is that it should be an integrated part, not a parallel part, of the overall tender reporting system.

**Mr Evans**—Yes, that would be my view. Senator Murray said that it is all very boring—

**Senator MURRAY**—Not for me.

**CHAIR**—Some may see it as boring but not Senator Murray!

**Mr Evans**—It ceases to be boring when some enormous problem occurs with some huge contracts and a great public scandal occurs, and then people say, ‘What safeguards did we have in place to prevent this sort of thing happening?’

**Senator FORSHAW**—We will find out later today, Clerk.

**Mr Evans**—The system that Senator Murray initiated is essentially a safeguard. It is designed to ensure that there are no major train wrecks down the track. Like all safeguards it operates simply by its very existence. It signals to everybody involved in this that the matter of contracting is being watched. If you say that the Senate is watching it, that adds to the authority of the safeguard.

**Senator WATSON**—What is the reason behind the differentiation between non-procurement contracts and procurement contracts?

**Mr Evans**—I do not know.

**Senator WATSON**—Is there fundamental reason to have that distinction?

**Mr Evans**—I cannot see any fundamental reason, no.

**Senator WATSON**—While you cannot, are you aware of the reason for the distinction?

**Mr Evans**—No. As I understand the evidence before this committee, the establishment of the AusTender system arose from a review of procurement; therefore, the AusTender system is

going to deal with procurement contracts. But that seems to me to be one of those historical accidents—that this has been initiated out of a review of procurement rather than a review of contracts generally. There may be some other basis, but I do not see a basis other than that.

**Senator FORSHAW**—Just to pick up where we left off with Senator Murray’s questions and your comment, I was going to say that having the Senate order is a lot cheaper than a royal commission, but I will not say that—even though I have already said it. I am also intrigued about this proposal in the context of putting forward a proposal for an internal management system within the departments, the public sector, albeit supposedly a public one and then it being put forward that there is no need for a parliamentary order. It seems to me that on one argument they are two different things. I suppose what you are getting at is that having the order signals an intention, but it also seems to me to be a novel idea—maybe well intentioned—to replace an order of the Senate with a system of administration that is essentially internal. Could you comment on that?

**Mr Evans**—I think that is perfectly valid. Having processes and systems in place internally in departments is very valuable and essential to accountability, but it is not the same as having external scrutiny by a representative legislature. Both things are necessary—one is not adequate without the other—and they should not be seen as substitutes.

**Senator FORSHAW**—Thank you for that. That has intrigued me, as I said. Whilst I could understand the arguments that are put forward, whether one agrees with them or not, to propose that certain procedures of the parliament be done away with to establish some new accountability system within departments themselves seems to me to be a very odd juxtaposition. I will leave it at that.

**Mr Evans**—Yes, there is a very great danger of an impression being created that the parliament has lost interest in something or is not interested in scrutinising something. In that sort of climate, internal accountability mechanisms can break down. They come to be neglected because we have not been asked a question about this for 10 years in the estimates hearing and therefore it is not important any more.

**CHAIR**—As there are no further questions, Clerk, thank you very much for your attendance.

**Committee adjourned at 10.21 am**