



## **Australian Government**

**Australian Government response to the  
Senate Reference Finance and Public Administration  
Committee Report:**

**Senate Order for Departmental and Agency  
Contracts**

NOVEMBER 2014

## Senate Reference Finance and Public Administration Committee Review of the Senate Order Recommendations and Government Response

The Government is committed to ensuring that contracting undertaken by non-corporate Commonwealth entities subject to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) is accountable and transparent. The Government recognises the role that the Senate Order on departmental and agency contracts has played to date in reinforcing transparency in Government contracting and welcomes the committee's report reviewing the operation of the Senate Order.

The Government strongly supports the committee's recommendation to trial AusTender as the means by which an entity would satisfy its reporting obligations under the Senate Order and revise supporting guidance accordingly. Meeting the obligations of the Senate Order through AusTender has the additional benefit of removing replication that exists across current reporting regimes and improves the quality and consistency of data reported. The Government also supports the committee's proposed name change to the procurement contracts report on AusTender.

The Government partially supports the committee's proposed changes to the Senate Order itself. The Government supports the reduced auditing of compliance with the Senate order. As the committee has acknowledged, non-corporate Commonwealth entities now enter fewer contracts containing confidentiality provisions and they are now less likely to incorrectly report contracts as containing confidentiality clauses. The Government also supports further technical amendments to the Standing Order by the committee. However, the Government does not support requiring Ministers to certify the accuracy of entity contract listings. Any potential benefits of this initiative are outweighed by the additional burden on entities of added assurance processes. Further, it does not support the extension of the application of the Senate Order to include corporate Commonwealth entities not currently required to meet the Senate Order. This is undesirable, given that corporate Commonwealth entities have differing responsibilities and compliance obligations, and in the majority of cases are not subject to the Commonwealth Procurement Rules.

# Senate Reference Finance and Public Administration Committee Review of the Senate Order Recommendations and Government Response

Recommendation	Government Response
<p>3.12 - The committee recommends the Department of Finance provide to the committee by 1 September 2014:</p> <ul style="list-style-type: none"> <li>• a link to a prototype of the AusTender website with agencies' compiled Senate order reports for the 2013-14 financial year; and</li> <li>• a copy of the revised version of Financial Management Guidance No. 8 <i>Guidance on the Listing of Contract Details on the Internet (Meeting the Senate order on Departmental and Agency Contracts)</i> in draft form.</li> </ul>	<p>Supported. AusTender is the authoritative source of information on Australian Government procurement. Using AusTender data to meet the various reporting requirements of non-corporate Commonwealth entities will enhance the accuracy of public reporting while simplifying compliance.</p>
<p>3.24 - The committee recommends the Department of Finance amend the title of the report in AusTender to 'Agency reports complying with the Senate order on procurement contracts and use of confidentiality provisions'.</p>	<p>Supported. The Department of Finance (Finance) will reflect the Committee's preferred title of the report on AusTender.</p>
<p>3.34 - The committee recommends that the Senate order be amended:</p> <ul style="list-style-type: none"> <li>• to provide that, following the tabling of the Auditor-General's report pursuant to paragraph (5) of the Senate order in 2014, the Auditor-General conduct an audit of compliance with the Senate order biennially for the next four years with reports due no later than 30 September 2016 and 30 September 2018;</li> </ul>	<p>Partially Supported: Refer below.</p> <p>Supported: The Auditor-General has indicated his support for this recommendation.</p>

<ul style="list-style-type: none"> <li>to provide that in the letter of advice tabled pursuant to paragraph (1) of the Senate order, that Ministers must certify that none of the contracts included in the list contain inappropriate confidentiality provisions as measured against the Department of Finance's guidance;</li> </ul>	<p>Not supported. Certification may enhance entities' compliance with the Senate Order. However, additional review processes will involve costly external providers or longer internal assurance or clearance processes, and will place an additional burden on entities. Further, data from ANAO's most recent 2012-13 Senate Order audit suggests that the proportion of contracts reported as containing confidentiality provisions across Government agencies is low. Only 4 per cent of contracts were reported as containing confidentiality provisions in the 2012 calendar year Senate Order listings. Therefore, the benefits of the committee's proposed changes appear to be outweighed by the additional costs.</p>
<ul style="list-style-type: none"> <li>to reflect legislative changes as a result of the <i>Public Governance Performance and Accountability Act 2013</i>, so the Senate order applies to Commonwealth entities; and</li> </ul>	<p>The Government considers the committee's recommendations to simplify the Senate Order reporting requirement through AusTender and the revision of guidance as better initiatives for enhancing compliance.</p> <p>Not supported. The <i>Public Governance, Performance and Accountability Act 2013</i> was implemented to, among other things, modernise Commonwealth resource management and to address increasing regulatory and compliance burdens on Commonwealth entities. While both corporate Commonwealth entities and non-corporate Commonwealth entities are captured under a single Act, entities retain differing responsibilities and compliance obligations including reporting requirements. This includes the majority of corporate Commonwealth entities not being bound by the Commonwealth Procurement Rules or the requirements to report procurement contracts awarded on AusTender. Consistent with advice provided to the Committee in 2007, the Government does not support the extension of the Senate Order and considers its current scope to non-corporate Commonwealth entities should be retained.</p>
<ul style="list-style-type: none"> <li>with respect to any further technical aspects of the Senate order which are found, in consultation between the Clerk of the Senate and the committee, to require amendment.</li> </ul>	<p>Supported. Noting the responses to the other recommendations in relation to proposed changes to the Senate Order, the Government supports this recommendation.</p>