

**Government Response to**  
**Senate Standing Committee on Finance and**  
**Public Administration Report**

*Departmental and agency contracts*

*Second report on the operation of the Senate order  
for the production of lists of departmental and  
agency contracts (2003-2006)*

**Government Response to Senate Standing Committee on Finance and Public Administration Report: Departmental and agency contracts - Second report on the operation of the Senate order for the production of lists of departmental and agency contracts (2003-2006)**

**Response to Recommendations 1 – 13**

The Government is committed to ensure that the contracting undertaken by all Commonwealth *Financial Management and Accountability Act 1997* (FMA Act) agencies is accountable and transparent.

The Government recognises the role that the Senate Order on departmental and agency contracts (the Order) has played in reinforcing transparency in Government contracting. The Order has played a role in improving the treatment of confidential contractual information by FMA Act agencies and the Government supports the continuation of the Order through the initial period of operation of revised procurement reporting arrangements.

The Government agrees with the Committee's recommendations supporting the rationalisation of procurement reporting regimes. Recommendations 1 and 9 will allow for procurement reporting to be delivered through the improved AusTender system, removing overlap that exists across current regimes and improving the quality and consistency of data reported. The Government also supports Recommendation 13, as this will allow the Committee to amend the Order over time in response to changes in agency behaviour and the wider contracting environment.

The Government supports in principle Recommendation 2 which recommends that Finance, in consultation with the Australian National Audit Office (ANAO), relevant parliamentary committees and stakeholders, consider options for centralised reporting of non-procurement contracts. The Government is currently reviewing the administration of grants. An appropriate framework for public reporting of relevant grant payments will be considered as part of the review, taking into account the experience gained in operating the enhanced reporting arrangements through AusTender.

Consistent with the response to Recommendation 10 of the Report, the Government does not support the extension of the Order to cover *Commonwealth Authorities and Companies Act 1997* (CAC Act) bodies from 1 July 2007. The Government has taken this position as CAC Act bodies operate under separate legislative and governance arrangements than those of FMA Act agencies.

No.	Recommendation	Response
1	<p>The Committee recommends the order be retained while the new AusTender system for reporting procurement contracts is implemented, with departments and agencies tabling statements through their ministers in accordance with paragraph (1) of the order, that they had fulfilled their reporting obligations by placing the information required under paragraph (2) of the order in the AusTender system.</p>	<p><b>The Government supports this recommendation</b></p> <p>By meeting the requirements of the Senate Order through the improved AusTender system, the quality and consistency of contract information available to stakeholders will improve.</p> <p>In line with Recommendation 2 of Australian National Audit Office Audit Report No.27 2005-2006 – <i>Reporting of Expenditure on Consultants</i>, this arrangement is likely to improve the quality of data reported and achieve efficiencies for agencies due to the decreased number of reporting regimes.</p>
2	<p>The Committee recommends DOFA, in consultation with ANAO, relevant parliamentary committees and stakeholders, consider reporting arrangements for non-procurement contracts and explore the development of a reporting mechanism comparable to the new AusTender system for this category of contract, and report to the Committee the outcome of this process within six months of the tabling of this report.</p>	<p><b>The Government supports this recommendation</b></p> <p>The Government is committed to implementing accountability and transparency mechanisms across the whole financial management framework. In this regard, the Government is currently reviewing the administration of grants. An appropriate framework for public reporting of relevant grant payments will be considered as part of the review, taking into account the experience gained in operating the enhanced reporting arrangements through AusTender.</p>

3	<p>The Committee recommends agencies, if they have not done so already, implement ANAO recommendations to improve the accuracy and completeness of contract information with stronger internal controls and quality assurance for checking data, and report that they have done so through their ministers' tabling statements made under paragraph (1) of the order.</p>	<p><b>The Government supports this recommendation</b></p> <p>By improving internal processes and controls, the quality of data input into Senate Order listings will improve, as will the accuracy and completeness of Senate order listings.</p>
4	<p>The Committee recommends that to improve data quality and internal governance, agencies include procurement and contract activity in regular business and management reporting to agency executives and, where necessary, internal audit and governance committees.</p>	<p><b>The Government supports this recommendation</b></p> <p>Under the devolved financial management framework, agency chief executives are responsible for the management of their resources, which extends to the proper management and reporting of contracts.</p>
5	<p>The Committee recommends DOFA and agencies consult ANAO on examples from compliance audit testing which illustrate provisions that are classified appropriately and those that are not, for inclusion in guidance and training in relation to the order.</p>	<p><b>The Government supports this recommendation</b></p> <p>The Department of Finance and Deregulation (DFAD) will consult with the Australian National Audit Office (ANAO) and agencies to formulate further examples of correctly classified confidentiality provisions for inclusion in both the revised guidance on confidentiality in procurement and other guidance.</p>
6	<p>The Committee recommends all agencies provide adequate training and education to staff responsible for managing contracts and complying with the order, either through internal training or programs provided externally.</p>	<p><b>The Government supports this recommendation</b></p> <p>DFAD will promote this recommendation to agencies in its regular dealings with them on procurement policy.</p>

7	<p>The Committee recommends DOFA include in guidance advice to the effect that, in relation to a refusal to disclose information based on a claim of commercial confidentiality for a contract, the Parliament, and its committees and members, may:</p> <ul style="list-style-type: none"> <li>• test the validity of any claim by reference to DOFA's process chart for agency staff dealing with confidentiality of information in contracts; and</li> <li>• refer the contract to the Auditor-General for examination.</li> </ul>	<p><b>The Government supports this recommendation</b></p> <p>The DFAD guidance on confidentiality has been revised to indicate that contracts should generally not include confidentiality clauses that limit the Commonwealth's ability to disclose information to the Parliament. The guidance requires agencies to test the validity of confidentiality claims before including confidentiality clauses in contracts.</p>
8	<p>The Committee requests ANAO consider including ASIO and ASIS regularly in its compliance audits under the order on a three-yearly basis.</p>	<p><b>The Government supports this recommendation</b></p> <p>The ANAO will include ASIO and ASIS in an audit of compliance with the Order in 2008 or 2009. The Auditor-General will take into account the outcomes of that audit, together with providing broad coverage across all other agencies, in determining when ASIO and ASIS will be included in a future audit.</p>
9	<p>The Committee recommends the Department of the Prime Minister and Cabinet (PM&amp;C), in the next set of guidelines for annual reporting, include a requirement for agencies to include a note in their annual reports referring readers to the AusTender site for information on contracts and consultancies. Depending on the outcome of any decision on the DOFA proposal to rationalise procurement reporting, it may be necessary for agencies to also include a note explaining changes to reporting requirements for procurement contracts.</p>	<p><b>The Government supports this recommendation (subject to the approval of the Joint Committee of Public Accounts and Audit)</b></p> <p>The Department of the Prime Minister and Cabinet have updated the Requirements for Annual Reporting to reflect the Committee's recommendation.</p>

10	The Committee recommends that the order be extended to cover CAC Act bodies from 1 July 2007.	<p><b>The Government does not support this recommendation</b></p> <p>The Government is not in favour of extending the coverage of the order to cover CAC Act bodies as they operate under a different legislative and governance framework than those agencies that operate under the <i>Financial Management and Accountability Act 1997</i>. CAC Act bodies also commonly operate with financial independence from the Government.</p> <p>The majority of CAC Act bodies are also not bound by the Commonwealth Procurement Guidelines, and the requirement for them to abide by the Senate Order through the use of the AusTender system could create confusion among agencies.</p>
11	The Committee reaffirms its suggestion that the Department of the House of Representatives comply voluntarily with the order. If the Senate agrees with this suggestion, the Committee requests the President of the Senate convey its suggestion to the Speaker of the House of Representatives.	<p><b>The Government notes this recommendation</b></p> <p>This is a matter for the House of Representatives and the Senate.</p>
12	The Committee recommends DOFA provide a general report on the implementation of the recommendations in this report and the performance of the new single reporting mechanism, by not later than the last day in September 2007.	<p><b>The Government supports this recommendation</b></p> <p>The Government agrees but notes that due to the election the timing requires adjustment.</p> <p>The Minister for Finance and Deregulation will write to the Committee about progress made implementing the committee's 13 recommendations by September 2008. DFAD will provide a report on the performance of the new single reporting mechanism (AusTender) by September 2008.</p>

13	The Committee recommends the Senate amend paragraph (7) of the order, to read: 'The Finance and Public Administration Committee consider the ongoing operation of the order and report on relevant developments from time to time'.	<b>The Government supports this recommendation</b>  Although this is a matter for the Senate, the Government supports the recommendation as it is appropriate for governance mechanisms to be regularly reviewed.
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