



AUSTRALIAN SENATE

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Mr Alistair Sands  
Secretary  
Finance and Public Administration  
References Committee  
The Senate  
Parliament House  
CANBERRA ACT 2600

Dear Mr Sands

**SENATE ORDER FOR CONTRACTS**

Thank you for your letter of 19 March 2004 conveying the committee's invitation to make comments in relation to the committee's review of the second year's operation of the Senate's order for listing of departmental and agency contracts. I doubt that I am able to make any observations which will be new to the committee, but I hope that the following may be of some use.

The order has been the subject of several adjustments since it was first passed on 20 June 2001, with four separate batches of amendments made to the order. No other resolution of the Senate, and certainly no other order for documents, has been amended so extensively. This is not a sign of any defect in the essential concept of the order. On the contrary, it indicates an accountability measure worthy of development. It indicates the determination of the committee and the Senate to get the order exactly right, which in turn indicates the usefulness of the order, and also the willingness of the committee and the Senate to overcome perceived problems with the order as it was originally drafted. The attention given to the order by the Australian National Audit Office is also an indicator of the value of the order as an accountability mechanism.

The agreement by the Senate on 29 October 2003 to an order for details of advertising and public information projects undertaken by departments and agencies also indicates a belief in the value of this kind of measure.

In the list of issues of interest to the committee, the matters contained in the second to fourth dot points may be effectively assessed only by gathering information from the departments and agencies which respond to the order, and analysing the material contained in the list of contracts.

In relation to the two further matters listed for consideration, the government's response to the recommendations made in the committee's December 2002 report is generally favourable,

with the exception of the response to recommendation 3. That response rejects the committee's recommendation for information about contracts to be included in departments' and agencies' annual reports.

This response appears to embody what has become the dominant official philosophy of annual reports, namely, that if information may be found somewhere else, there is no need to include it in annual reports. The latter, however, were originally intended to be a summary of the activities of departments for accountability purposes and a place where information about those activities could be readily found. The view that annual reports should not contain any information located elsewhere has reduced their value as sources of information and as accountability documents. It appears to me that the inclusion in annual reports of the information suggested by the committee need not add greatly to the volume of the reports and should not require a great deal of additional work. The government should therefore be invited to reconsider that recommendation.

In relation to the proposed examination by the Audit Office of the security agencies' contracting processes, this seems to me to be a reasonable solution to the claim by those agencies for complete secrecy of their contracting. The Audit review should be a regularly-repeated exercise, not simply a one-time examination, and if the Audit Office does not have the resources for such regular reviews, they should be provided.

Finally, it is surprising that no one has by now sought to measure the need for the order for contracts by collecting data on the frequency with which the lists of contracts are consulted. I understand that the number of "hits" on the lists on departments' and agencies' web sites can be measured. Whatever aggregate number is revealed, someone is bound to suggest that the number does not justify the compilation of the list. In the expectation of such an argument being mounted sooner or later, it must be borne in mind that the publication of the lists is one of those accountability measures which achieves its aim simply by its mere existence rather than by the frequency of its operation. The publication of the lists compels greater openness in contracting, and compels more careful attention to claims for secrecy in contracting. It achieves these ends regardless of how frequently the list is consulted. Any claim that its effectiveness should be measured by its readership volume is analogous to a claim that the writ of habeas corpus should be abolished because no one takes out any such writs nowadays (to use the analogy, applicable to all such accountability measures, put to me by a Canadian lawyer/parliamentarian many years ago).

I would be pleased to assist the committee in any way I can in the course of its review.

Yours sincerely



(Harry Evans)