COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Reference: Review of Auditor-General's reports Nos 7 to 34 (2005-06)

WEDNESDAY, 14 JUNE 2006

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JOINT STATUTORY COMMITTEE OF

PUBLIC ACCOUNTS AND AUDIT

Wednesday, 14 June 2006

Members: Mr Anthony Smith *(Chair)*, Ms Grierson *(Deputy Chair)*, Senators Mark Bishop, Hogg, Humphries, Murray, Nash and Watson and Mrs Bronwyn Bishop, Mr Broadbent, Dr Emerson, Dr Jensen, Miss Jackie Kelly, Ms King, Mr Laming and Mr Tanner

Members in attendance: Senators Hogg and Nash and Ms Grierson, Mr Laming and Mr Tanner

Terms of reference for the inquiry:

To inquire into and report on:

Review of Auditor-General's reports Nos 7 to 34 (2005-06)

WITNESSES

ANDERSON, Mr David, First Assistant Secretary, Corporate Strategies Division, Department of the Environment and Heritage **1**

BOYD, Mr Brian, Executive Director, Australian National Audit Office **1**

COLEMAN, Mr Russell, Executive Director, Australian National Audit Office **1**

GRANT, Mr John, Division Manager, Procurement Division, Department of Finance and Administration **1**

MACGILL, Mr David, Assistant Secretary, Parliamentary and Government Branch, Government Division, Department of the Prime Minister and Cabinet **1**

MALLETT, Mr Julian, Senior Director, Performance Audit Services Group, Australian National Audit Office **1**

MEERT, Mr John, Group Executive Director, Australian National Audit Office **1**

O'LOUGHLIN, Mr Steve, Acting Branch Manager, Procurement Policy Branch, Department of Finance and Administration **1**

SHEEHAN, Mr Stephen, Chief Financial Officer, Finance Branch, Business Group, Department of Health and Ageing **1**

WILLIAMS, Mr Greg, First Assistant Secretary, People Resources and Communications Division, Department of the Prime Minister and Cabinet **1**

Committee met at 11.40 am

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

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WILLIAMS, Mr Greg, First Assistant Secretary, People Resources and Communications Division, Department of the Prime Minister and Cabinet

ACTING CHAIR (Ms Grierson)—Welcome. I open the second public hearing to examine the two reports tabled by the Auditor-General in September last year and January this year. We are again taking evidence on Audit report No. 11 2005-06: *The Senate order for departmental and agency contracts (calendar year 2004 compliance)* and Audit report No. 27 2005-06: *Reporting of expenditure on consultants.*

I ask participants to remember that only members of the committee can put questions to witnesses if this hearing is to constitute formal proceedings of the parliament and attract parliamentary privilege. If other participants wish to raise issues for discussion, I would ask them to direct comments to the committee. It will not be possible for participants to respond directly to each other—that is probably a very good idea.

Secondly, given the short time available today, statements and comments by witnesses should be relevant and succinct. I remind witnesses that the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and will attract parliamentary privilege.

I convey the apologies of the chairman, Tony Smith. He has been called back to his electorate today for a funeral, so I will chair this meeting. If there are no opening statements, we will proceed. We ended our last hearing mentioning that Health and Ageing, who were not present at the time, had achieved better outcomes than some of the other departments. It was suggested by the Audit Office that you had taken considerable measures to improve performance in these two areas. Would Health like to comment on that?

Mr Sheehan—We have a coordinated approach that includes a centralised procurement policy and reporting centre that has a staff dedicated to reporting our Murray motion and consultancies for the annual report, and it also does some analysis around our gazettal area. The process for any of this type of reporting includes, obviously, staff at a divisional area who, in their local business management units, coordinate responses from individual branches. That is quality assured by their division head and comes to the central reporting centre. It is also quality assured by the staff in that area, who, if they have any issues, send it back to the divisional representatives for further clarification. It is quite a resource intensive process, but the general level of accountability for this is quite high, and we take this very seriously.

ACTING CHAIR—And training—do you get involved?

Mr Sheehan—We can go through the Murray motion process as an example. The letters are sent out in May. We have what we call a dummy run for the first 11 months so that we do not get to July and have our staff bombarded with processes that include financial statements or a range of other reporting mechanisms. So we start the process quite early. After the 11 months are done, if there are any issues, say, around confidentiality clauses or potential reporting of such, a lot of those are cleared in June, as they are being done now—last week and this week. And then in July we normally have not a minimal but a reasonable amount of work to do. One of the issues for us is that the number of contracts that we report is quite large and they are spread across a whole range of areas, so it does require intensive coordination.

ACTING CHAIR—Thank you. Before I pass to my colleagues, I would just mention that it was pointed out in the audit report that the contract-reporting rate for PM&C was not high because all contracts were incorrectly listed as containing confidential provisions—and I know that is an area that my colleagues might like to pursue as well. I would not like to take up the time at the moment, so I will pass to one of my colleagues.

Mr TANNER—I am interested in pursuing the commercial-in-confidence issues with PM&C and Finance generally, and your response to the ANAO findings, which seem to me to suggest that there is still a serious problem in this area with excessive use of commercial-in-confidence as a reason for nondisclosure of particular matters. This is an issue that this committee considered in the past when I was a member of it and when I was shadow finance minister, five or six years ago. This seems to suggest that, in spite of some efforts to improve the situation, maybe it has not improved as much as it ought to have. Could you respond first to that general assessment?

Mr Grant—The department of finance have done work across the Public Service to reduce the unnecessary use of commercial-in-confidence. We have put out a publication which deals particularly with commercial-in-confidence. We have raised the issue regularly in what we call our procurement forum, which is where, each month, we bring in usually up to 60 to 80

procurement officers from different agencies and talk to them about the issues. We have also included the issue twice, I think—and we are considering including it again—in our biannual series of seminars, where we go out to both Canberra and state sites to address issues that agencies have with the procurement framework or, alternatively, issues that we have with the way that they operate it. This matter has been raised in those seminar series.

In addition, we are currently looking at the publications that we have out, with a view, again, to making it simpler to understand what is required. Part of that will be to state very clearly that agencies and officers in agencies should not think about confidentiality as they are moving towards signing the contract; it should in fact be something that is dealt with up-front and well understood. So I think that there has been an improvement, but there is room for more improvement and we are trying to assist in that.

Mr TANNER—When I examined this issue in the past, one of the things that became clear to me was that on a significant number of occasions the desire for confidentiality was not coming from the commercial contractor; it was actually coming from the government, which is totally outrageous, in my view. Are you confident that, where commercial-in-confidence is claimed or is part of an agreement now, in all or almost all instances that is as a result of a demand by the private contractor, not the government?

Mr Grant—We would not be aware of that. Our confidence is not high that in all cases it is driven by the commercial contractor. That is exactly why we have been focusing on the officers who deal with it.

Mr TANNER—So in some cases it would be the individual department saying, 'Hey, we'd prefer to keep this under wraps'?

Mr Grant—I think sometimes agencies overclassify their requirements. Again, we have been working to get agencies to step back and look at their requirements and not overclassify them.

Mr TANNER—One of the things that I have found disturbing in the past, when I have gone into this issue in some detail, is that there is a considerable contrast in the level of disclosure in Australia compared with the United States. In many cases it was routine for matters that here were subject to commercial confidentiality, such as contractual matters, to be openly published on the internet in the US. Do you have a view as to whether we are now getting to a level of transparency that is, if not the same as in the United States, at least in the same ballpark?

Mr Grant—I am not really in a position to talk about the comparability. I am not totally au fait with the US approach. I do know that, when you look at the federal acquisition regulations and the like, the United States publishes a lot. Often the amount that is published can make it difficult to find the detail you want.

Mr TANNER—I want to ask you about one particular example that occurred about five years ago, which I think is an illustration of how bad things were then. I want to put this to you: are you confident that this kind of thing is no longer occurring? The member for Scullin asked a question on notice about the Job Network to the then Minister for Employment and Workplace Relations and now the Minister for Health and Ageing. That question asked: of the Job Network

providers in the eastern region of Melbourne, how many clients have they assisted in a given period? I cannot remember if it was one financial year or a couple.

So, in other words, it was a pretty straightforward question of taxpayers' money going to private organisations to deliver an outcome for the community. A fairly simple statistic was sought—namely, how many people were helped over a given period. The answer that came back from the minister to that question on notice was, 'This information is commercial-in-confidence.' I think that is a total joke. I was wondering if you could assure me that ridiculous examples of the misuse of commercial-in-confidence of that kind are no longer in evidence.

Mr Grant—I am not aware of the actual example. It is before my time.

Mr TANNER—I am using that as an illustration of where I think it is completely unjustifiable. Obviously you will have grey-area issues where it will depend on where you sit as to what your view will be. I think that particular one is totally indefensible. Leaving aside any judgment about whether you agree with my description of it, would you say that anything of that kind is still to be found around the place, or would you say there is much tighter regulation of use of commercial-in-confidence now?

Mr Grant—I think the work that we have put into expanding and understanding when and when not commercial-in-confidence clauses should be used would significantly reduce the worse end of the outcome. In terms of that example, I cannot tell you because I have not seen that example recently. But we have put a lot of work into getting legal officers and others who are responsible for procurement to understand that they should not be keeping information confidential unless there is a real and identifiable need to do that. So I would hope that would address the sort of issue you have raised.

Mr Grant—There is also promotion on our part for agencies to inform the market that confidential information may still be provided to the parliament or the courts and the like. There certainly seems to be quite a good uptake of that in the approaches to the market that we examine. That is quite a consistent feature of the activity.

Mr TANNER—With the parliament, would that typically be to parliamentary committees or individual MPs? Let us say that there is information that is commercial-in-confidence but—from what you have said and from what is in the papers, too—there is an opportunity for the parliament to get privileged access, I suppose, to that information. How would that typically occur—through a request from a committee or an individual MP?

Mr O'Loughlin—I am not exactly sure when the parliament acts as the parliament or the like. That is outside my area of expertise. But certainly—

Mr Coleman—I support the Finance view, and our audits support the fact that an increasing number of contracts do contain provisions which provide for access by the parliament and the courts. My understanding is that that means properly constituted parliamentary proceedings, which would be something like a parliamentary committee.

Mr TANNER—But presumably not an individual MP?

Mr Coleman—I might be corrected, but that is not my understanding.

Mr O'Loughlin—We advise agencies that parliament and its committees have the power to require the disclosure of Commonwealth contracts and contract information to enable them to carry out their functions.

Mr Williams—I will just reply on the specific issue for PM&C. When we became aware that confidentiality was an issue last year on some of our contracts, we took steps to improve training in the department. We also had the ANAO come down to our premises and talk about the issues. We have revised our procurement process guidance checklist to draw particular attention to the need to consider the contractors' confidential information issue, and that now forms part of our pro forma, so that people who are engaging in a contract process—in a process that is likely to end up in a contract—must go through that process. We have highlighted the four tests there and indicated that, unless all four criteria are met, there is no basis for confidentiality. As, I guess, a final save before contracts are signed, they are looked at by our central area in the department. So we believe we have processes in place that should ensure that this is not an issue for future contracts.

ACTING CHAIR—So, PM&C, you would anticipate that incorrect applications of this to contracts—making provisions confidential that are not—should diminish?

Mr Williams—We believe that all future contracts we sign will be consistent with the requirements on confidentiality.

ACTING CHAIR—We hope that is the case. The ANAO also recommended in recommendation No. 3 that adequate documentation of the reasons for agreeing to identify specified information in contracts as confidential should be developed and should be assured. What have you done to ensure that adequate documentation of the reasons why confidentiality is applied in contracts occurs and that the reasons are stated correctly?

Mr Williams—It will be a requirement on the checklist that, where confidentiality provisions are invoked, there will be a basis for arriving at that decision. When that is looked at by the central procurement area, they will look at the contract and at the reasons being put forward, and a corporate view will be taken. So it will not just be left to the area of the department that is going through the contract process.

ACTING CHAIR—So, either Finance or PM&C, is there a template for this? Are there some good pro formas? Are there some best-case examples of how this should be done?

Mr Grant—There is not a template per se, but there is a whole-of-government advice on this requirement. In fact, we are revising—

ACTING CHAIR—When does that date from?

Mr Grant—Steve, the advice is?

Mr O'Loughlin—A February 2003 advisory.

Mr Grant—As we said last time, we are revising that advice at present to update it and, again, to clarify some issues.

ACTING CHAIR—I would have thought that since 2003 we would have seen a greater increase in the use of contracts and the use of outsourcing processes, and I would have thought perhaps that might have been fairly necessary to update.

Mr Grant—I am not sure there has been an increase, notwithstanding that there are a lot of contracts and the use of consultants. As I said, we are reviewing it now. Sometimes it takes a while to get the message across, so after publishing the document we had to follow it up with training and awareness through our procurement forums and seminars. We had to get some feedback from agencies about the application. Now what we are doing, based on some experience, is updating it, which we hope will again lift the level of compliance.

ACTING CHAIR—ANAO, what would you consider to be adequate documentation of the reasons to agree to identify information as confidential?

Mr Coleman—Again, I do not think there is one simple answer to that. We would certainly expect some evidence that a contractor has put forward reasons why they feel that the material should be kept confidential, and they should be some matters of substance, not just the fact that they do not think it should be disclosed. We think there should also be some indication of the consideration that the agency has given to that and documentation of the final judgment. That does not have to be an extensive piece of work. In some circumstances it can be quite short, quite brief.

ACTING CHAIR—But the process has to be followed and there has to be some evidence that the process has been followed.

Mr Coleman—There has to be some evidence of the agency's consideration of the case rather than just a confidential decision made without any evidence that it has been properly considered.

ACTING CHAIR—I would like to ask the agencies: do you think that contractors apply that without thought of their obligations? Do you think it has become common practice for that to be included in contracts when you are dealing with people?

Mr Williams—I think it varies between contractors. The sorts of issues that they are concerned with are their intellectual property, any trade secrets, any commercial strategies—I suppose that is almost bordering on intellectual property. They are concerned about that and also about information that might be in the contract that is of commercial value to competitors or potential competitors. They are the sorts of things that, in my experience, contractors worry about. In some cases you can argue a case that is not supported by what is going to go into the contract and argue back, but they all understand that what is in the contract is open to be audited by the Auditor-General and is accessible by the courts. I think it is those key areas where they think there is a disadvantage to them potentially by having that information public.

ACTING CHAIR—Did you want to comment on that, Mr Anderson?

Mr Anderson—I was essentially going to reinforce those comments. In our department we have got a range of procedures we go through, and each contract really is considered individually as to whether any confidentiality provisions should apply. We have a sort of checklist we go through and then our in-house legal adviser will have a look at that—so we do not agree to confidentiality provisions lightly. There has to be a strong commercial business case for them.

ACTING CHAIR—Audit Office, is that what you saw evidence of? What sorts of things did you see that were getting covered by confidentiality that were not really appropriate?

Mr Coleman—I guess a mixture of things, but one of the things there still are issues around is price, and particularly hourly rates that are in contracts. I think the Finance guidance is quite clear and certainly the perspective we have is that it is hard to mount a case that just a disclosure of hourly rates would be of detriment to the contractor. But there are certainly instances where contractors have argued a contrary view.

Senator NASH—What is that contrary view?

Mr Coleman—They are arguing that the disclosure of it would be of detriment to them.

Senator NASH—Do they go on to expand what sort of detriment that would be?

Mr Coleman—Generally not, in our experience. It is a ballpark type position they take. More and more, I think, agencies are questioning that. We do find instances, but I think they are getting less, where the agencies have accepted that point of view on the face of it. I would suggest that more and more agencies are understanding the importance of it and the need to make these judgments, even though we do find, obviously, some judgments that we think are incorrect. So in the area of price there is still some—sometimes quite legitimate—discussion between the agency and the contractor.

ACTING CHAIR—So do you think that contractors are being required to break down their price adequately into the cost elements?

Mr Coleman—It varies from contract to contract as to just what the nature of the contract is, what the payment arrangements are. There is any number of variations there. In some cases, if it is broken down, contractors can legitimately argue that it might disclose profit margins, for instance. That is certainly an area where if that is the case—and again the Finance guidance makes it clear—then that could be accepted as a legitimate reason to keep information confidential.

ACTING CHAIR—As long as that was documented and assessed.

Mr Coleman—That is correct.

Mr TANNER—The trouble is when they are refusing to disclose overall price.

Mr Coleman—That is correct.

Mr Grant—Chair, is it helpful for me to read three elements of our guidance to agencies? It is what we tell them about confidentiality.

ACTING CHAIR—You read it, and we will tell you if it is helpful.

Mr Grant—This comes out of the document *Guidance on Confidentiality of Contractors' Commercial Information: Financial Management Guidance No. 3*.

ACTING CHAIR—And that is the document we were talking about a moment ago?

Mr Grant—That is correct. It says:

> Information should be provided to potential contractors to ensure they understand:
>
> (a) that the approach of the Commonwealth is not to make contractual information confidential, so far as possible;
>
> (b) the accountability requirements of the Commonwealth, including that of parliamentary committees, audit and the FOI Act; and
>
> (c) that information may be required to be disclosed by law.

It also says:

> Tender responses and Tender Evaluation Reports would generally be treated as confidential. Information contained in unsuccessful tender responses would normally remain confidential.

ACTING CHAIR—Audit officers, is that sort of upfront information put out there with most contracts?

Mr Coleman—Yes, we find it is. We find that agencies have generally adopted that in the documentation that they send to the market, yes.

ACTING CHAIR—Agencies, would you agree that it is a standard practice for you to always put that in your tender documents?

Mr Anderson—Yes.

Mr Williams—Yes.

ACTING CHAIR—In the last hearings, the issue of seeking legal advice over and over again by many departments on the same point was raised. It did appear that advice was being sought on the same point, by Finance particularly, and then not circulated to other agencies.

Mr Grant—I do not recall that discussion.

ACTING CHAIR—Are there any means whereby you can circulate legal advice on this sort of matter to other agencies when they are all doing the same sort of process?

Mr Grant—Under the legal services directions, agencies are required to circulate information that may have an effect beyond their departments.

ACTING CHAIR—Do you ever check that that is done?

Mr Grant—We certainly ensure internally that, if we have such information, we circulate it. Each agency would be responsible for that, as the legal services directions apply to each agency.

ACTING CHAIR—Are they required to give you a copy of the advice that they get?

Mr Grant—I am not an expert in this area, but my understanding is that, if an agency receives advice that may have an impact broader than the agency, it is required to circulate that advice. Is that not correct?

Mr Macgill—I am not sure that the legal services directions go that far. As I understand them—and it is some time since I have had to deal with them—the directions require an agency that is seeking advice on a bit of legislation that is administered by another agency to consult the administering agency before going to the AGS, or whatever solicitors they are using, and provide a copy of the advice to the administering agency once the legal advice comes in.

ACTING CHAIR—So is there a central repository for all these advices that have been sought? We did comment last time on the great number of times legal advice was being sought on this matter.

Mr Grant—Not that I am aware of. I must admit I do not remember that part of the conversation. I will go back over the record.

ACTING CHAIR—And there is no process whereby that sort of legal advice is scanned and therefore circulated, not on request but as part of an automatic process?

Mr Grant—Not that I am aware of, no.

ACTING CHAIR—Audit Office, do you have an issue with that? Are there efficiencies to be gained here? Is there a process that ensures that agencies are not getting the same legal advice on the application of the FMA to their contracts?

Mr Boyd—The officials from Finance are probably right in the sense that the issue arose more generally in terms of a number of the audit reports where that had certainly been the case—a number of agencies obtaining the same advice. It becomes quite difficult too because, as officials from PM&C have noted, a legal services direction is applied when you are seeking advice on legislation per se, but there are always finer points of judgment as to whether you are seeking advice on the legislation itself or the application of the legislation to your specific circumstances. Therefore, what we have seen through our audit work is that there are a lot of instances where advice on similar points of issue are obtained by many different agencies, often from different law firms, and agencies obviously have different perspectives.

So sometimes the Commonwealth can be in possession of numerous pieces of advice on substantially the same matter which come to different conclusions. Sometimes the circumstances

merit that being the case, but obviously from our perspective there are a couple of issues: (a) having a settled Commonwealth-wide approach to particular issues is something we see some merit in, and (b) the cost, if you like, of seeking advice on the same point on many different occasions. Sometimes it is fairly apparent to us when we look at the advice and it has been obtained from the same firm that it is in large part a copy and paste of the earlier advice. But the fee does not seem to have been reduced significantly!

ACTING CHAIR—That is a good point. Finance, do you think there are some cost benefits in taking on that responsibility? If it is so that agencies are getting the same legal advice on the same matters and paying for it over and over again, would it be sensible to have some way of processing that that everyone can benefit from?

Mr Grant—I would have to see to what extent people are seeking the same advice over and over. My understanding is that already there are a range of forums in both procurement and the broader financial framework which allow these issues to be raised and discussed. So I would have to look into it further.

ACTING CHAIR—I ask the three agencies here: can you give us any statistics for, say, the last financial year on how many times you sought legal advice on a contract?

Mr Anderson—With regard to Environment and Heritage, there would be a very limited number of occasions on which we would have gone outside to get legal advice. As I mentioned before—

ACTING CHAIR—When you say 'gone outside', do you mean outside your own department?

Mr Anderson—Outside of the department, yes. We have our own in-house legal advice and they happen to specialise in contract management; that is one of their primary areas.

ACTING CHAIR—So you are not talking about the AGS; you are talking about your own internal advice?

Mr Anderson—Our own internal advice. I think there are only a handful of times we would have gone outside of the department to AGS for advice on contracts. We obviously go out on design of programs and broader program delivery matters, but the number of actual approaches to the market on design of contract would be very limited.

ACTING CHAIR—What about Health and Ageing?

Mr Sheehan—To be honest, I would not know. I suspect that the potential would be minor, but to be honest I do not know.

ACTING CHAIR—You are hoping so. PM&C, do you have any idea of the number of times you may have sought legal clarification or advice?

Mr Williams—I really cannot give a definitive answer, but we do get legal advice on the nature of the contract we are entering into for particular contracts—

ACTING CHAIR—Do you mean in drawing up the contracts?

Mr Williams—Yes. The only issue I can recall us seeking legal advice on in recent times is indemnities, where contractors have sought indemnities or we have sought to impose indemnities on contracts.

ACTING CHAIR—But, even in drawing up the contracts, the legal advice would be making sure, I would have thought, that it complies with these orders—the Senate order et cetera.

Mr Williams—Or protecting the Commonwealth's interests—in a sense, looking to put provisions in the contract that protect us as the seekers of services.

ACTING CHAIR—Yes. Audit Office, did you see the sorts of conditions or criteria that were being used in seeking legal advice? Was it on the construction of contracts? Was it making sure that there was compliance with the legal requirements?

Mr Boyd—Legal advice was sought on a whole range of different aspects in terms of contracting. We produced a report in the not very distant past that looked at legal service arrangements across the Commonwealth. One of the clear things in that report was that expenditure on legal services is continuing to grow. As to the exact nature of the advice, it varies across departments. Some departments, as some of the officials today have mentioned, have in-house counsel. Others rely almost exclusively on outside counsel. Many agencies have panel arrangements in place and have a number of firms on the panel. How people obtain their legal advice varies markedly in terms of whether it is internal or external and how many opinions they may seek on one particular matter.

ACTING CHAIR—Finance, do you have a view? Have you ever had a look at the use of legal advice—whether the costs are accelerating, the number of times it is done and whether there are duplications where savings could be effected?

Mr Grant—To my knowledge, no. I come back to the fact that we are not aware of agencies seeking legal advice which is repetitive.

ACTING CHAIR—The other issue raised in the first hearing was compliance certificates, which we hoped would be developed and would apply in 2005-06. Has that occurred? I am sorry, that is a different matter and it was not in your area. So I will leave that. The other area we looked at was using GaPS to report correctly. Do have a comment on that?

Mr Grant—You may recall that at our last discussion I indicated that GaPS is transitioning into AusTender and we are aiming to improve the reporting capability of AusTender—for example, we would expect that the new functionality, which should be available by 1 July 2007—

CHAIR—Is that still the case?

Mr Grant—Yes, that is what we expect. We would expect that the new functionality would allow agencies to put into a single place for contracts above $10,000 the details of the value of contracts let and, included in that, indicate whether it is a consultancy, the confidentiality

provisions and the like in terms of the reporting framework. So we would hope that from 1 July 2007 we will have a central reporting framework for the nature of the information that is sought, other than expenditure.

ACTING CHAIR—How do you think that might overcome the considerable delay by agencies in reporting that data on GaPS?

Mr Grant—They are expected to input the information within 42 days.

ACTING CHAIR—Would there be some trigger if that happens?

Mr Grant—There is no trigger, because we do not know. However, we spend a lot of time talking to agency procurement areas about their obligations and what they should be doing. I think that, with a system that is going to also provide them with better information, we should see a significant increase in uptake and compliance.

Mr O'Loughlin—The AusTender system, in its enhanced mode, is being designed to draw information from the procurement recording systems within each agency. We are working with a group of agencies at the moment to identify what the systems are, how they work and how they might interface with AusTender to make it easier for agencies to report. At the moment, in GaPS, at least in some agencies, there is quite a bit of manual handling of data to allow it to be uploaded into our system.

ACTING CHAIR—We have also dealt with the reporting of consultancies in annual reports. But, with PM&C, you were not there at the time. The ANAO finding was that there was not accurate reporting in annual reports, as there should have been. In light of that, have you considered any changes to the requirements?

Mr Macgill—I think that we anticipated the ANAO report to some extent. The report was based on the 2003-04 financial year and, presumably, on the guidelines that existed for reporting consultancies for that financial year. For the 2004-05 financial year, there were significant changes made to the annual reporting requirements—so that was before this report came out. There are now pro formas for departments to follow. There is an example of a particular table that they should insert into their own annual reports. I think it is difficult to see how much more we could direct them to get the right answer, as far as changing the requirements is concerned.

ACTING CHAIR—Finance, have you worked with PM&C on that, or is that done in isolation?

Mr Grant—We talk about reporting quite regularly.

ACTING CHAIR—So you think we are going to see lots of improvements in that area, do you?

Mr Macgill—Well, we do not just talk to Finance. We also talk to other departments to make sure that what we are proposing can be implemented for the coming financial year's annual report.

ACTING CHAIR—How long have the new guidelines been in place?

Mr MacGill—They would have been used for the first time in last year's annual reports.

ACTING CHAIR—Do any of the agencies want to report on how that changed or clarified things, or how it made it easier for you?

Mr Anderson—It certainly made it easier and clarified some of the ambiguities. In the 2003-04 audit our department was found wanting in some areas, but I think our 2004-05 scorecard would have shown a quantum leap forward. That is partly because of the probing by the Audit Office, of course, but also because of some helpful guidance from the central agencies.

ACTING CHAIR—Health, have you got your fingers crossed too? Do you think the Audit Office will find your reporting better?

Mr Sheehan—In the 2003-04 financial year we neglected to include some general commentary on procurement and our policy and the framework within which we operate. Last year, we met all the 13 criteria, so I am confident that if we were to have a similar sort of audit we would now get a clean sheet.

ACTING CHAIR—Finance, did anyone in your department look at the changes and the impact they were having?

Mr Grant—We do not review annual reports.

ACTING CHAIR—Would you be the department that would circulate that sort of changed requirement advice or guidelines, or would that be done by PM&C?

Mr Macgill—No, PM&C. The annual report requirements are approved by this committee every year, at around this time in fact.

ACTING CHAIR—Are you submitting those at the moment?

Mr Macgill—I think they were on the agenda for today's meeting. They are approved by this committee, and then we circulate them to all departments.

ACTING CHAIR—Because we will be doing that, what do you think have been the most central areas in which to make improvements in annual reporting?

Mr Macgill—The reporting of consultancies was obviously an issue and has been for, I think, two or three years. I think the issue was first raised at estimates hearings in 2002, and we made changes in subsequent years to the annual reporting requirements.

ACTING CHAIR—Audit Office, would you consider that an area that needed change or further guidance?

Mr Boyd—There are probably points at a couple of levels. The Department of Prime Minister and Cabinet have made changes to the requirements, and we saw them through the course of our

recent audit. There are the issues of what information is presented, and of making sure that all the information that is required is presented for each consultancy. One of the key issues which arose out of the report on the reporting of expenditure for consultants was that, with the three regimes in operation, we were not getting consistent data where one would expect it, such that the same contract, if it was a consultancy, was being reported across three regimes with a similar type of data.

That led us to our key recommendation. Rather than having a large number of recommendations to individual agencies, it seemed to us the key question was: what can be done to rationalise the various reporting regimes so that parliament and other stakeholders would be getting complete, accurate and reliable information? I think the annual report requirements are there to address that particular aspect of the regime, rather than across the three. PM&C has ownership of that aspect, but it does not have ownership, for example, of the GaPS-AusTender work. The question is, if we are going to have three systems, how could they work together better or should there be fewer systems?

ACTING CHAIR—Sometimes we think the complexities are designed to obscure information from us.

Mr Macgill—If every department and agency reported accurately against the three reporting systems, they would still not be understood, because people would not understand what they were reading. They would not understand the distinctions between the three systems and they would still get confused.

ACTING CHAIR—Have there been attempts to rationalise that in any way?

Mr Macgill—We are hoping that this process is part of that rationalisation.

Senator HOGG—So are we going to get something in plain English?

Mr Macgill—That would be useful.

Senator HOGG—It would be useful.

ACTING CHAIR—Finance, do you have any view on that?

Mr Grant—We support rationalisation.

ACTING CHAIR—Do you think, Audit Office, that if this were applied, developed and put in place correctly we would see more transparent reporting of consultancies and more accountability regarding the resorting to consultancies?

Mr Boyd—Those principles are difficult to disagree with. We have found that it is very difficult to disagree with a lot of what is currently required of agencies. The Department of Health and Ageing is here, for example, because as an agency with a lot of contracts they have done reasonably well overall in terms of reporting. But that does not come without some considerable effort and some considerable thought on their part into designing systems and procedures they need in their own circumstances to deliver that outcome. Yet from our

perspective we are looking not only at the information that stakeholders are receiving but also the efficiency with which that information is provided.

It struck us when we started comparing the three regimes that, whilst you are starting with essentially the same fundamental information—there is a contract, what that contract is for, the price and so forth—the various different nuances in the reporting systems and the different time frames and the different way information is presented starts adding complexity. Once you start adding complexity, in some respects it is a recipe for failure. It was quite understandable to us in some respects that agencies were struggling to meet all those requirements simply because they are quite involved.

There is a lot required of officers to understand the different requirements of each of those regimes. How do they effectively deliver the information you and others want in that sort of framework? That is why our key recommendation was that Finance and PM&C, together with stakeholders such as you—as was mentioned, this committee approves the annual report requirements; the Murray motion comes out of a Senate order and so forth—should work with people that are involved in developing those requirements to say, 'Do we need all of them or can we have a smaller number which provide this information?' That is the sort of process we are looking to encourage.

ACTING CHAIR—PM&C, do you think you have responded to that in your latest annual report requirements?

Mr Macgill—Only to the extent that the annual reporting requirements can do that. The annual reporting requirements are only one element. The annual reporting requirements have no bearing, for example, on how agencies deal with the Murray motion, and they cannot have. A lot of the annual reporting requirements and requirements generally for reporting on consultancies and other contracts have not been developed in the Public Service; they have been developed in response to calls for greater transparency. The Murray motion is an example of that.

ACTING CHAIR—I am sorry, we have not had the meeting on your annual reporting requirements paper. What agencies did you consult with in preparing that?

Mr Macgill—On this occasion there was no major revision; in fact, the changes are very minor. The departments that we spoke to were Finance and other agencies and departments—Environment, for example—which have a requirement in the annual reporting requirements to report certain information.

ACTING CHAIR—As members of parliament, we see the use of consultancies is continuing. We saw that through that audit report and we might see it in individual reports. How do we get an overall picture? How hard it is it for us to get an overall picture and how will it be an improvement for us to get a cross-agency view or snapshot of the use of consultancies and the reporting of such?

Mr Grant—Perhaps I can at least start to respond to your question. With the redevelopment of AusTender, we will be able to bring into a single picture the value of contracts, including consultancy contracts.

ACTING CHAIR—So you will be able to pull it out of everyone's reports?

Mr Grant—Yes. Secondly, it will identify contracts, it will identify consultancies, and it will identify whether there are confidentiality clauses included in the contracts.

ACTING CHAIR—And that is not possible at the moment?

Mr Grant—We do not think it is reliable at this stage. It will become more reliable with the redevelopment. The point I would make, though, is that it will provide that information and the value of the contract entered into. The actual expenditure, which is reported in the annual reporting, will not be captured by AusTender, because expenditure is piecemeal. You pay a bit at a time.

ACTING CHAIR—Yes, and it might go over several financial years.

Mr Grant—That is right, and that would be exceptionally expensive to put into AusTender. Notwithstanding that, public scrutiny—whether by the parliament or people—would see the maximum amount payable, coming out of the AusTender data. If that should change then it would show the adjustment. So, in effect, I think AusTender may go a long way to achieving your objectives by identifying the value of contracts entered into and any subsequent changes—and that is above $10,000, by the way—and then identifying whether it is a contract or consultancy and whether there are confidentiality clauses.

ACTING CHAIR—So, in AusTender, Finance should be able to print out a report that gives that sort of information?

Mr Grant—I would rather say that it would be available on the internet. It would be a very big report to print out, but it should be publicly available.

ACTING CHAIR—But you should be able to pull out that sort of data separately? Or do you mean that anybody should be able to pull out that data separately?

Mr Grant—That is right. Anyone should be able to, and we could too.

ACTING CHAIR—Audit Office, will that help to go towards your requirements?

Mr Boyd—I think we should take a step back. Finance is able to tell you a lot about what they are looking to do with AusTender and so forth, and PM&C can talk to you about what is going to happen with the annual report requirements. On where Finance is running, there is an internal red tape task force under way. I guess the key thing that our recommendation was also looking at was this: given that each of the agencies has their own responsibilities, in some ways an application of this idea of a whole-of-government approach to things is how we get the agencies with their own responsibilities, whether or not you have some lead agency type of arrangement, to come together and not just examine their own areas of responsibility—so Finance has AusTender and GaPS, and PM&C has annual report requirements—but pull them all together.

The role of the various parliamentary committees such as this one is to say, 'Okay, do we need all these requirements, and if so what form should they take?' to try and remove some of those

duplications and inefficiencies we see. So the work on AusTender, whilst good and so forth, does not from our perspective address the fundamental issue. For example, if AusTender-GaPS can do all this and is going to do some more—we are very good in the Commonwealth at adding new responsibilities and new tasks, but sometimes one needs to look at whether we need to remove some of the old ones, as they are no longer adding the value that can be added through another process.

ACTING CHAIR—We are approaching the time for the end of this hearing. However, I have to say to you that I go away with no comfort on commercial-in-confidence. I felt the answers perhaps do not show any strict change of agenda on that one. Am I being harsh, or do you think that changes will be made, such that there are disclosure and reasons and every contract has that guidance, and every department and agency is using those correct guidelines?

Mr Grant—I think you are being a little bit harsh. I think there has been a significant improvement, and I think that will continue.

ACTING CHAIR—How do you know that?

Mr Grant—It is based, I think, almost on a general assessment rather than a detailed review, but agencies in our dealings with them are a lot more aware of the requirement not to have confidential information unless it is absolutely necessary. We have a procurement advisory branch which deals with agencies and continues to push that message out. So I think that the feeling we get in dealing with agencies is that they are a lot more aware of their responsibilities in this regard.

ACTING CHAIR—As a member of parliament dealing with contractors who are delivering government services more and more these days, I find it difficult to work out whether they are spending the money, spending it well and spending it according to the contract. I find, as a member of parliament, that it is very hard to get that sort of information. When they are awarded a tender, they are supposed to deliver a service at a certain price. Often they are paid money in advance to deliver that service, yet it is really hard for us to get access to how they are spending that money. How do we change that and how do you give members of parliament some confidence that we can scrutinise economic performance and accountability within these contracts—not just in the drawing up of the contract but in a way that reveals ongoing expenditure and performance against the contracts?

Mr Grant—That is a very difficult question. In terms of letting a contract and then managing the implementation of that contract, officials are responsible for ensuring the efficient and effective expenditure of public money. Moneys generally are not paid over unless the contract elements have been performed. Where it is paid in advance, the next instalment is generally not paid over unless the officials are satisfied that the work that has been paid for has been done.

Senator HOGG—Is that a requirement of Defence?

Mr Grant—You would have to ask Department of Defence but—

ACTING CHAIR—Do you have to ask that, Senator Hogg?

Senator HOGG—They are our favourite department when it comes to nonperformance of tenders.

Mr Grant—It is across the Public Service through the Financial Management and Accountability Act. Officials are charged with that responsibility.

ACTING CHAIR—I am going to give you a real example: a tender for IHSS in the state of New South Wales where moneys are paid to the contractor in advance and therefore they deliver on it, yet I have a suspicion they are avoiding their financial responsibilities and pushing on some of the costs to non profit making charities or whatever in my area. How do I know if that is so? How do I know if they are doing it correctly and how do you know if contractors are spending their money correctly? Often, there is no review for 12 months.

Mr Grant—That is a matter for the responsible agency; it is not something that I can answer. All I can say is that the financial management framework places significant responsibility on chief executives and officials to ensure that public moneys are well spent.

ACTING CHAIR—If there is no transparency in the original contract of how that will be reported on, what sort of financial information will be available when it continues and it compounds throughout that contract? For me, it is critical that there be as much disclosure and transparency as possible in the original contract up front so that it cannot always be commercial-in-confidence. I am trying to apply the Audit Office report to what we as parliamentarians require. Is it possible in these contracts to always ensure that there is open transparency and accountability to the people of Australia through that original contract?

Mr Boyd—It is. A lot of it comes down to the design of the original contract. It even starts before that when you tender. One of key things is having a competitive tender process so that you are getting a contract which maximises value for money. Part of that up front is how you specify what service is being provided; how you structure your payments to ensure that you are getting some incentive for your contractor to perform the services in a timely manner and to the standard you expect; and how you manage the contract once you have got a good contract in place.

If you do not manage it well, you are not going to get those desirable outcomes at all stages of the contract life cycle. What do you do when you are nearing the end of the your contract? Are you going to retender if you have options to extend and how do you exercise and manage those? A lot of those things are in the management of the entire process, and reporting of the expenditure is not going to give you that sort of information. You are looking at finances in terms of how the agencies are discharging their responsibilities to handle these matters, including managing the money.

ACTING CHAIR—I will draw the committee to a conclusion, but we hold concerns that, if you do not get it right up front, you are not giving the people of Australia the assurance that their money will be well served and the services will be delivered appropriately.

Mr Macgill—I would like to correct something I said: I said we had consulted Environment in the process of reviewing our annual report requirements this year; we had not in fact consulted them.

ACTING CHAIR—They should have, shouldn't they? The committee may have additional questions on notice to put to witnesses, which the secretariat will forward to you. On behalf of the committee, I thank you all for giving up your time today and for giving evidence at this public hearing. I declare the public hearing closed.

Committee adjourned at 12.40 pm