

# CHAPTER 2

## DISCUSSION

### Introduction

2.1 This inquiry has considered the two specific matters about the operation of the Senate order for departmental and agency contracts (Senate order) raised by the Minister for Finance (Minister) and the Auditor-General in their correspondence to the committee in late 2013, namely:

- the use of AusTender by agencies for reporting procurement contracts pursuant to the Senate order; and
- the ongoing role of the Auditor-General in monitoring compliance with the Senate order through annual compliance audits.

### AusTender

2.2 As noted in Chapter 1, the Senate order listing is only one of the procurement reporting obligations for agencies. At the public hearing, the Department of Finance (Finance) provided a comparative table of agencies' reporting obligations pursuant to the Senate order, AusTender and Annual Reports.<sup>1</sup>

2.3 Supporting the Minister's request to the committee in December 2013, Finance advocated the rationalisation of procurement reporting requirements for agencies:

Consolidating procurement reporting will clarify agency reporting obligations, and focus agency reporting effort to a single, and centrally supported system...<sup>2</sup>

2.4 Finance proposed that AusTender be used by agencies as a means to comply with the Senate order. AusTender is described in Finance's submission as 'the primary mechanism for public accountability and transparency of procurement information across the Commonwealth'.<sup>3</sup>

2.5 At the public hearing Ms Jan Mason, Deputy Secretary, Business, Procurement and Asset Management, Department of Finance, reiterated the reasons for this rationalisation:

Consolidating the reporting arrangements would see a decrease in reporting complexity, a removal of red tape and a reduction in the administrative burden and costs placed on agencies...

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1 Department of Finance, *AusTender and Rationalising Procurement Reporting Requirements*, 14 February 2014, p. 5.

2 *Submission 2*, p. 2.

3 *Submission 2*, p. 2.

Our views towards rationalisation reflect not only our confidence in the AusTender system but also its use as an accountability mechanism outside of agencies.<sup>4</sup>

2.6 Finance's submission argued that reporting procurement contracts on both AusTender and separately as part of the Senate order involves duplication of unnecessary costs for agencies, the ANAO and Finance. Finance stated that enabling departments and agencies to use AusTender to comply with the Senate order would 'reduce the reporting burden on agencies in a tight fiscal environment'.<sup>5</sup> Furthermore:

In 2012, excluding Finance and ANAO costs, this was estimated as \$6 per contract across 42,500 contracts. Finance anticipates this figure understates agency compliance costs, particularly in large agencies, where the costs in circulation and review by officials is not accurately or easily accounted for.<sup>6</sup>

2.7 In its submission, the ANAO noted that in its most recent audit on the Senate order it suggested Finance update the Senate order guidance to reflect the availability of AusTender as a reporting method for agencies. The ANAO concluded that '[i]f the guidance is updated it will support more complete and accurate public reporting'.<sup>7</sup>

### ***Generation of Senate order reports***

2.8 The relevant contract information for Senate order reports can be extracted from AusTender using the 'Reports' section or the 'Advanced Search' function, both of which can be accessed on the AusTender homepage.<sup>8</sup> The 'Senate order on confidentiality in procurement contracts Report' is now a standard report in the Reports section on AusTender. In order to generate the report, a user needs to select the:

- department or agency; and
- date range for the report;
- date type;
- value range for the report; and
- category of goods or services.<sup>9</sup>

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4 *Committee Hansard*, 14 February 2014, p. 1.

5 *Submission 2*, p. 2.

6 *Submission 2*, pp 2-3.

7 *Submission 1*, p. 3.

8 Department of Finance, *Submission 2*, p. 5; Ms Lynne Ford, Director, AusTender, Department of Finance, *Committee Hansard*, 14 February 2014, pp 7-8.

9 Ms Lynne Ford, Director, AusTender, Department of Finance, *Committee Hansard*, 14 February 2014, p. 8. See also AusTender webpage, Senate Order on Confidentiality in Procurement Contracts Criteria, at: [www.tenders.gov.au/?event=public.reports.CN.SenateOrder.form](http://www.tenders.gov.au/?event=public.reports.CN.SenateOrder.form) (accessed 7 April 2014).

2.9 In terms of the date type that the report can be generated for, Ms Lynne Ford, Director, AusTender, Department of Finance, explained the dates could be sorted by publish date, by the date that the contracts were entered into and by 'active during period'.<sup>10</sup>

2.10 Throughout the course of this inquiry the prospect of pre-generated Senate order lists being made available on AusTender has been alluded to:

[A]gencies will now provide a link to an AusTender report for the relevant reporting period...<sup>11</sup>

If the Committee prefers to retain the Senate Order, for procurement contracts, Finance proposes that a biannual list by agency be published on AusTender consistent with the current Senate Order timeframes.<sup>12</sup>

An option that the committee may like to consider in enhancing reporting processes is for AusTender to generate a Senate order listing on behalf of agencies. This would provide agency listings collectively, rather than separately on agency websites.<sup>13</sup>

2.11 However, the committee was informed that although AusTender currently has the capacity to make these types of reports available, they are not, at present, automatically generated. On this point, Ms Mason indicated that the functionality for AusTender to run automatically generated reports could be created 'relatively easily'.<sup>14</sup>

2.12 In correspondence to the committee the Clerk of the Senate, Dr Rosemary Laing, advised:

If the system is not capable of generating a report – in other words, a list of the reportable contracts – then it is unlikely to be suitable for compliance purposes. If, however, the system is able to generate such reports, then it has the potential to be an efficient means of satisfying the Senate order, if the report is produced grouping contracts by individual agency.<sup>15</sup>

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10 *Committee Hansard*, 14 February 2014, p. 8.

11 Correspondence from Minister for Finance, Senator the Hon Mathias Cormann, to Senator the Hon Kate Lundy, Chair, Senate Finance and Public Administration References Committee, dated 2 December 2013.

12 Department of Finance, *Submission 2*, p. 2.

13 Ms Jan Mason, Deputy Secretary, Business, Procurement and Asset Management, Department of Finance, *Committee Hansard*, 14 February 2014, p. 1.

14 *Committee Hansard*, 14 February 2014, p. 2.

15 Correspondence from Clerk of the Senate, Dr Rosemary Laing, to Senator the Hon Kate Lundy, Chair, Senate Finance and Public Administration References Committee, dated 6 March 2014.

2.13 The committee sought clarification from the Minister as to whether it was intended that AusTender would provide pre-generated lists of Senate order contracts. The Minister assured the committee that 'Senators will not be expected to generate reports themselves'.<sup>16</sup> Furthermore, he continued:

Pending the Committee's view, duplication of procurement contract reporting against the Senate Order and on AusTender could be reduced by Finance publishing bi-annually and prominently on AusTender, an aggregated list of relevant procurement contract notices on behalf of agencies. Agencies will reference this list in their Senate Order listings.<sup>17</sup>

2.14 The Minister also proposed changes to the Senate order to reduce duplication of reporting of contracts:

[T]he Committee may like to consider streamlining the Senate Order to capture contracts 'published' in the six month reporting period, rather than contracts 'active' during the past 12 months. This will remove duplicate contracts reported across Senate Order lists. These represented approximately 21,000 of the 30,000 procurement contracts listed in 2012-13. This will provide greater prominence to the current procurement decisions of agencies without the loss of contract information.<sup>18</sup>

### ***Data integrity***

2.15 One particular concern the committee has with using AusTender for complying with the Senate order is ensuring the integrity of the data in AusTender reports. In its submission the ANAO referred to the findings of its annual audits of compliance with the Senate order:

Since 2007, ANAO audits have included a limited comparison of the contract information reported by the audited agencies in the Senate Order listings to the information reported on AusTender. The audits have identified issues with the completeness, accuracy and timeliness of agencies' contract reporting in both media. Examples of this have included agencies inadvertently excluding contracts, double reporting contracts, reporting purchase orders as contracts or, in some instances, not recording the same contract information (such as differing contract periods, values, data and/or types of confidentiality provisions used) consistently in both media.<sup>19</sup>

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16 Correspondence for Senator the Hon Mathias Cormann, Minister for Finance, to Senator the Hon Kate Lundy, Chair, Senate Finance and Public Administration References Committee, dated 27 March 2014.

17 Correspondence for Senator the Hon Mathias Cormann, Minister for Finance, to Senator the Hon Kate Lundy, Chair, Senate Finance and Public Administration References Committee, dated 27 March 2014.

18 Correspondence for Senator the Hon Mathias Cormann, Minister for Finance, to Senator the Hon Kate Lundy, Chair, Senate Finance and Public Administration References Committee, dated 27 March 2014.

19 *Submission 1*, p. 3.

2.16 In its submission Finance expressed confidence in the ongoing accuracy of AusTender. In particular, Finance referred to the rationalisation of reporting obligations as enabling agencies to focus their 'data quality effort'.<sup>20</sup>

2.17 However, Ms Lynne Ford, Director of AusTender, noted that agencies are responsible for the accuracy of data entered into AusTender:

The information is the agency's information and they provide the information to AusTender and they have responsibility for its accuracy.<sup>21</sup>

2.18 In its submission Finance also referred to agencies' responsibility to ensure the correct reporting of data in AusTender, but stated that Finance 'plays an active part in this process to promote compliance through a dedicated and ongoing support program'.<sup>22</sup>

2.19 This ongoing support program includes:

- a central AusTender helpdesk, a 9am-5pm telephone support line and out-of-hours support by arrangement;
- a dedicated agency email address for procurement policy queries;
- regular one-on-one agency AusTender training and refresher sessions;
- a weekly schedule of one-on-one meetings between Finance and agency procurement and policy reporting staff;
- online AusTender user guides and procurement policy documentation; and
- monthly procurement 'frequently asked questions' and procurement bulletins which are circulated to more than 2 500 Australian Public Service staff.<sup>23</sup>

2.20 The Clerk of the Senate indicated that, in her view, data integrity was not an area that needed to be 'actively policed'.<sup>24</sup> The Clerk provided the following explanation for this view:

This may sound surprising but the fact is that chief executives are responsible for effective management of their agencies and are therefore responsible for the accuracy of data provided on such platforms as AusTender. Legislative obligations on chief executives will be strengthened by the new Public Governance and Public Accountability Act and damage to reputation caused by administrative inadequacies is sufficiently career-limiting as to provide a useful incentive to data integrity.<sup>25</sup>

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20 *Submission 2*, p. 4.

21 *Committee Hansard*, 14 February 2014, p. 5.

22 *Submission 2*, p. 3.

23 Department of Finance, *Submission 2*, pp 3-4.

24 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator the Hon Kate Lundy, Chair of Senate Finance and Public Administration References Committee, 6 March 2014, p. 3.

25 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator the Hon Kate Lundy, Chair of Senate Finance and Public Administration References Committee, 6 March 2014, p. 3.

2.21 Finance provided the following further information to the committee on monitoring compliance:

FMA Regulation 7 requires officials performing duties in relation to procurement must act in accordance with the Commonwealth Procurement Rules (CPRs). The CPRs detail the mandatory requirements for reporting information on AusTender at paragraphs 7.5 to 7.19. If an agency does not comply with these requirements, each instance should be reported as noncompliance with FMA Regulation 7. Reported instances of non-compliance with FMA Regulation 7 are included in Finance's report to the Parliament under the category, the commitment of public money by agencies.<sup>26</sup>

### *Accessibility of AusTender*

2.22 In its submission, Finance provided the following information on the accessibility of the AusTender interface:

The AusTender website has been designed to be accessed across various platforms and by web browsers that are in common use. Its design complies with relevant Web accessibility standards articulated in [Web Content Accessibility Guidelines (WCAG)] 2.0.<sup>27</sup>

2.23 At the public hearing, officers from Finance noted the flexible design of the AusTender site and again highlighted that it can be used on various platforms, including mobile phones and tablet devices. The officers also indicated that an AusTender mobile app 'is coming...somewhere in the future'.<sup>28</sup>

2.24 In terms of the technical aspects of the site, Ms Ford explained:

[AusTender is] a dual site...and the sites are linked by a high-speed IKON connection for database replication. We have virtually a hot site. Indeed, we would move seamlessly between the two sites depending on what was required. It would not be obvious to the users.<sup>29</sup>

2.25 Ms Ford provided the following information on the security of the AusTender website:

In terms of user security, that is password protected. There are certain things you can do on AusTender that you do not need to log in for, but defining your business profile against which business opportunities are notified, taking documents, if you are interested in a tender, and lodging a tender would all be done through an account that is password protected.

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26 Department of Finance, answer to question on notice, 14 February 2014, p. 8.

27 *Submission 2*, p. 5.

28 See Ms Lynne Ford and Ms Yvette Sims, Department of Finance, *Committee Hansard* 14 February 2014, p. 11.

29 *Committee Hansard*, 14 February 2014, p. 6.

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We protect the inputs through secure sockets layer [SSL] technology so that the session between an agency or a public user and AusTender is encrypted. In addition to that, tenders themselves are also encrypted. They are held on the servers in an encrypted state. In the process of opening a tender box, that decryption process happens all within an SSL session, and then that is pulled down behind agency firewalls, the session is closed and the tenders are held encrypted.<sup>30</sup>

### ***Procurement contracts***

2.26 One of the primary limitations of AusTender with respect to the Senate order is that it can only be used for procurement contracts. The Minister, in correspondence to the committee, noted that 'grants, non-procurement contracts and any other contracts not captured by AusTender' would still need to be reported through the current mechanism of the publication of lists on agencies' websites.<sup>31</sup>

2.27 The Clerk of the Senate in correspondence to the committee referred to this matter, outlining how the requirements of the Senate order could be met with respect to different types of contracts:

[T]he committee is aware that the system does not cover non-procurement contracts. A separate mechanism is required to report these, including publication on an agency website. The result may be that the order is satisfied by notification to the Senate of information published in different locations. Letters from ministers might therefore certify that information in relation to procurement contracts may be found on AusTender, in the agency report generated for the purpose, and, in relation to non-procurement contracts, on the agency website. Provision of links in the letter and from the website to AusTender would facilitate access.<sup>32</sup>

2.28 Ms Yvette Sims, Assistant Secretary, Procurement Policy Branch, Department of Finance, also noted that the AusTender platform is being used as a model to build a similar site for grants.<sup>33</sup> The Senate Finance and Public Administration Legislation Committee received a summary of the so-called 'AusGrant' website at the Budget Estimates hearings in May 2013.

AusGrant will cover the outward-facing side of grants activity for the whole of government. So, it will cover the application process—the front end—and the reporting process—the back end. And it will be a single place where grant recipients or grant applicants can go to navigate their way through or into the application processes. And then, at the other end, they and parliament and others can see, through the reporting process, what

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30 *Committee Hansard*, 14 February 2014, p. 6.

31 Correspondence from Senator the Hon Mathias Cormann, Minister for Finance, to Senator the Hon Kate Lundy, Chair, Senate Finance and Public Administration References Committee, 2 December 2013.

32 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator the Hon Kate Lundy, Chair, Senate Finance and Public Administration References Committee, 6 March 2014, p. 2.

33 *Committee Hansard*, 14 February 2014, p. 3.

grants have been put in place and how they have gone. So, it will be a significant benefit to the not-for-profit sector but also has significant accountability benefits to parliament.<sup>34</sup>

### ***Threshold for AusTender***

2.29 The Commonwealth Procurement Rules require *Financial Management and Accountability Act 1997* (FMA Act) agencies to report contracts on AusTender which are valued at or above \$10 000.<sup>35</sup>

2.30 During Additional Estimates 2013-14 hearings, the Secretary for the Department of Finance, Mr David Tune, informed the Senate Finance and Public Administration Legislation Committee that the threshold for reporting contracts on AusTender will be lifted from \$10 000 to \$20 000.<sup>36</sup> Mr Tune described the lifting of the reporting threshold as a 'smallish change, which will basically reduce the reporting burden for agencies'.<sup>37</sup>

### ***Public Governance, Performance and Accountability Act 2013***

2.31 In correspondence with the committee the Clerk noted, regardless of the committee's decision in respect of AusTender, the Senate order would need to be updated to reflect changes as a result of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

2.32 Currently the Senate order defines 'agency' to mean an agency within the meaning of the FMA Act. On 1 July 2014 the PGPA Act will replace the FMA Act and the *Commonwealth Authorities and Companies Act 1997* (CAC Act), and put in place a single framework for the governance, accountability and performance of Commonwealth entities.

2.33 In its first report on the operation of the Senate order, the committee recommended that, from 1 January 2004, the Senate order be extended to cover CAC Act bodies.<sup>38</sup> The government did not support this recommendation:

The Government is not in favour of extending the Order to CAC Act bodies as they operate under a completely different legislative and governance framework compared with their [FMA Act] counterparts.

This arrangement was endorsed by the Parliament when it enacted a separate legislative framework for these bodies in the form of the CAC Act.<sup>39</sup>

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34 Dr Stein Helgeby, Department of Finance and Deregulation, *Budget Estimates Hansard*, 29 May 2013, p. 34.

35 Commonwealth Procurement Rules, 1 July 2012, paragraphs 7.16 and 7.17.

36 *Additional Estimates Hansard*, 25 February 2014, p. 87.

37 *Additional Estimates Hansard*, 25 February 2014, p. 87.

38 See Senate Finance and Public Administration References Committee, *Departmental and agency contracts: Report on the first year of operation of the Senate order for the production of lists of departmental and agency contracts*, December 2002, p. 44.

2.34 In the second report on the operation of the Senate order, the Senate Standing Committee on Finance and Public Administration recommended that the Senate order should apply to CAC Act bodies, as well as to FMA Act bodies.<sup>40</sup> Specifically, that Committee concluded:

Now that CAC body contracts are reported on AusTender and follow Finance commercial confidentiality guidance, the Committee can see little reason for excluding these bodies from coverage under the [Senate] order.<sup>41</sup>

2.35 The government did not support the recommendation, arguing:

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 *Financial Management and Accountability Act 1997*. CAC Act bodies also commonly operate with financial independence from the Government.

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.<sup>42</sup>

### **Role of the Auditor-General**

2.36 In its submission, the ANAO provided details on the improvements in the reporting of confidentiality provisions in government contracts over the period the Senate order has been in operation:

Over this period, the proportion of contracts reported as containing confidentiality provisions across Government agencies has declined significantly from 24 per cent for the 2001-02 financial year to four per cent for the 2012 calendar year.<sup>43</sup>

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39 Government Response to Senate Finance and Public Administration References Committee, *Departmental and agency contracts: Report on the first year of operation of the Senate order for the production of lists of departmental and agency contracts*, June 2003, p. 7.

40 See Senate Standing Committee on Finance and Public Administration, *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)*, February 2007, pp 47-48.

41 Senate Standing Committee on Finance and Public Administration, *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)*, February 2007, p. 48.

42 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)*, 26 August 2008, p. 6.

43 *Submission 1*, p. 2.

2.37 At the public hearing the Auditor-General, Mr Ian McPhee, emphasised his view that the Senate order has brought about real cultural change in agencies:

[W]e have now had 10 years or more of agencies being responsive to the Senate order requirements [and it] is a fair time to embed the thinking. To be frank with you, I think the earlier performance of agencies just stamping everything commercial-in-confidence was a little mindless. I saw it in my own organisation where we had contracts with accounting firms, and it seemed to be a matter of course that that was done. We have gone past that.<sup>44</sup>

2.38 The ANAO's submission noted it is difficult to make 'a definitive assessment of the year on year trends on the appropriateness of use of confidentiality provisions'.<sup>45</sup> However, the ANAO continued:

[The] audits have observed that where there has been inappropriate use of confidentiality provisions, it has been generally due to a lack of understanding in agencies of how to identify, apply and report the various types of confidentiality provisions under the Order.<sup>46</sup>

2.39 At the public hearing the Auditor-General noted that over-reporting of confidentiality provisions was one of the main problems that agencies had in respect of the Senate order:

If anything, there is over-reporting of information that agencies believe to be meeting the requirements of the Senate order. They are misunderstanding, in many cases, the requirements of the order, and across the years we have encouraged Finance to more clearly articulate the requirements. For instance, one of the classic areas where they misreport is where contracts have general requirements of confidentiality—that is, contractors and the agency have to meet the requirements of the Privacy Act, which are general requirements that are on all parties. People misunderstand that to be one of the matters that the Senate order is interested in. It is not. [The Senate] order is going to where people are claiming commercial in confidence, trade secrets or those sorts of confidentiality.<sup>47</sup>

2.40 The ANAO's submission noted that since 2011, the ANAO's audits have not made any new recommendations on the inappropriate use of confidentiality provisions.<sup>48</sup> There was a clear sense of frustration from the Auditor-General at the public hearing as he questioned the further effect of ANAO's annual compliance audits in addressing the inappropriate use of confidentiality provisions:

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44 *Committee Hansard*, 14 February 2014, p. 15.

45 *Submission 1*, p. 2.

46 *Submission 1*, p. 2.

47 *Committee Hansard*, 14 February 2014, p. 13.

48 *Submission 1*, p. 2.

At one level it is understandable that agencies get confused, but I think that after 10 years, during which we have been hammering away through 16 audit reports, there is a limit to how much we can do here. It is really a matter for, firstly, central agency guidance and, secondly, agency training.<sup>49</sup>

2.41 In terms of the guidance provided by Finance to agencies, the Auditor-General indicated that there were some 'problem areas' which could be addressed:

Finance have been responsive when we have suggested directly that they revise the guidance. I noticed in the latest report that there is one area where they have not yet updated the guidance, but by and large it has been updated. Personally I think a little bit more emphasis could be given to these two or three problem areas where agencies get confused. It does not take much to put out a concise note to agencies saying: 'Be aware that these are the common areas of problems. Please review your own performance and basically lift your game.'<sup>50</sup>

2.42 The Clerk of the Senate also referred to the guidance provided to agencies by Finance:

Another issue [for the committee] is the adequacy of the current guidance on confidentiality provisions and whether it incorporates all the lessons derived from the Auditor-General's numerous compliance reports...Clearly, the committee would wish to assure itself of the adequacy of this guidance, and such an assurance could be built into [the Senate] order; for example, by reference to guidance approved by the committee. This mechanism has been used elsewhere, including in relation to the preparation of departmental annual reports in accordance with guidelines approved by the Joint Committee of Public Accounts and Audit.<sup>51</sup>

### ***Ongoing compliance monitoring***

2.43 In correspondence to the committee the Clerk of the Senate also noted the improvement in the proportion of government contracts containing inappropriate confidentiality provisions. The Clerk commented that the ANAO's compliance audits 'appear to have had an educative effect and it may well be that the consumption of resources on annual audits can now only produce diminishing returns'.<sup>52</sup>

2.44 However, the Clerk indicated that the committee should give careful consideration to the implications of the Auditor-General no longer conducting annual compliance audits pursuant to the Senate order:

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49 *Committee Hansard*, 14 February 2014, p. 13.

50 *Committee Hansard*, 14 February 2014, p. 13.

51 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senate Kate Lundy, Chair, Senate Finance and Public Administration References Committee, dated 6 March 2014, pp 3-4.

52 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senate Kate Lundy, Chair, Senate Finance and Public Administration References Committee, dated 8 January 2014, pp 1-2.

It is also apparent, however, that the same problems of mischaracterising contracts as having confidentiality provisions when they do not, or inappropriately applying confidentiality clauses to situations that do not meet the confidentiality test, are continuing to occur. An important question for the committee, therefore, is what quality assurance would be available to the Senate if the annual compliance audits were to cease?<sup>53</sup>

2.45 At the public hearing the Auditor-General indicated that the ANAO, through its general audits of procurement, can 'continue to keep an eye on performance and put our hand up if it looks like there is some backsliding'.<sup>54</sup>

2.46 Ms Edel Kairouz, Executive Director, ANAO, explained how monitoring of confidentiality provisions in government contracts would be taken into account in general audits:

When we are doing our program audits, we apply the confidentiality test in the same way we currently do to the procurements within that program. We would look to see whether or not there were any specific provisions claimed in the contracts and test those against the confidentiality test to see if there were valid reasons for them being claimed. We would apply essentially the same process as we do at the moment and we would report that within the audit report.<sup>55</sup>

2.47 On notice, the Auditor-General expanded on the monitoring work that the ANAO could do outside of its current annual compliance audits and general audit program:

A further element of our approach to procurement related audits would be to undertake an audit of the use by agencies of AusTender. I expect to include this as a potential audit topic in the July 2014 Audit Work Program.

As always, the Committee is able at anytime to make requests to me to undertake particular audits. I have always sought to accommodate requests from the Committee in our program and will continue with this approach in our forward scheduling of audits.<sup>56</sup>

2.48 In further correspondence the Clerk of the Senate proposed another mechanism for encouraging agencies to use confidentiality provisions appropriately:

Currently, the order simply requires Senate ministers to provide letters of advice about the availability of the specified information. It would be consistent with the doctrine and practice of ministerial accountability if the Senate were to require its ministers to also provide a level of quality

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53 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator the Hon Kate Lundy, Chair, Senate Finance and Public Administration References Committee, dated 8 January 2014, p. 2.

54 *Committee Hansard*, 14 February 2014, p. 15.

55 *Committee Hansard*, 14 February 2014, p. 16.

56 Correspondence from Mr Ian McPhee, Auditor-General of Australia, to Senator the Hon Kate Lundy, Chair, Senate Finance and Public Administration References Committee, dated 24 February 2014.

assurance in respect of the confidentiality provisions in the listed contracts. In other words, the Senate could require ministers to table letters certifying that a list of the required contract information was available at a particular location (which could be on AusTender in a report generated by Finance for the purpose) AND that none of the contracts include inappropriate confidentiality provisions as measured against central agency guidance...Clearly, before signing such letters, ministers would need appropriate assurances from agency heads who would therefore have a greater incentive to be satisfied of the robustness of their own agency procedures in applying central agency guidance.<sup>57</sup>

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57 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator the Hon Kate Lundy, Chair, Senate Finance and Public Administration References Committee, dated 6 March 2014, pp 2-3. Emphasis in original.

