

## **Government Response to**

### **Senate Finance and Public Administration References Committee Report**

*Re-booting the IT agenda in the Australian Public Service, final report on the Government's information technology outsourcing initiative, August 2001*

Number	Recommendation	Government Response
1	<p>Although the secretariat to the Humphry Review no longer exists, the Committee recommends that DOFA, acting as a responsible body and a department of State, immediately undertake the task of obtaining advice from the National Archives of Australia on the status of documents and material received and generated by the Humphry Review. If they are deemed to be Commonwealth records the department should ensure their proper management and disposal.</p>	<p>Support.</p> <p>Finance has had discussions with the National Archives of Australia on the status of documents and material received and generated by the Humphry Review. All documents and material received and generated, with the exception of the submissions to the inquiry, have been treated as Commonwealth records in the normal course. Mr Humphry returned the submissions based on legal advice that they were not Commonwealth records. Finance has since confirmed that the original or a copy of all submissions made to the Humphry Review are now held by the Senate Committee and, as such, are clearly Commonwealth records.</p>
2	<p>The Committee recommends that as part of the strategic planning for IT outsourcing and, in particular, where the value exceeds \$10 million, agencies be required to set aside ample time to prepare and release draft tender documents for industry comment. It further recommends that agencies consider releasing an invitation to register interest as part of a pre-qualification phase of the tender process with follow-up public information seminars and briefs.</p>	<p>Support in principle.</p> <p>After the Government's response to the Humphry Review, IT outsourcing has been devolved to agencies. The timing and processes of industry participation will be a matter for each agency as it goes through its outsourcing process, while remaining consistent with the requirements of the <i>Commonwealth Procurement Guidelines and Best Practice Guidance</i> (CPGs).</p>
3	<p>The Committee recommends that tender documentation made available to bidders clearly identify, at the very least, the relative importance of the separate evaluation components—technical, corporate, financial and industry development. They should also indicate the evaluation criteria given top priority within each of these components.</p>	<p>Support in principle.</p> <p>Ethics, accountability and transparency are principles of the CPGs. Agency managers are required to have regard to the CPGs; however, the devolved management framework means that each agency is accountable for these matters.</p>
4	<p>The Committee recommends that, for any future tender process for IT outsourcing, the evaluation plan be finalised and approved before the RFT is issued.</p>	<p>Support in principle.</p> <p>The Committee's recommendation that evaluation plans are finalised and approved before the RFT is issued is supported; good process reduces the</p>

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		potential for legal liability. However, the devolved management framework means that each agency is accountable for these matters.
5	<p>The Committee recommends that the Government re-introduce mandatory competency standards for all officers undertaking procurement functions.</p>	<p>Do not support.</p> <p>The Government does not support the Committee's recommendation to reintroduce mandatory competency standards. Formalised competency standards are but one means of ensuring that officials undertaking procurement functions are competent.</p> <p>Chief Executives (FMA Act agencies) and Directors (CAC Act entities) are responsible for all aspects of procurement. The CPGs (Section 2) specify that Chief Executives should ensure that staff undertaking procurement have appropriate skills and training. The CPGs highlight that competency based training can help officials and provides links to information on the 'Procurement and Contract Management' training certificates.</p>
6	<p>Consistent with the Department of Finance and Administration's policy responsibility for Commonwealth contracting and procurement, the Committee recommends that the competency standards and training should be developed by that department. This is to be done in consultation with the Public Service and Merit Protection Commission to ensure consistency with the Australian Public Service Values.</p> <p>Further to the Government's response to Mr Humphry's recommendation 3, the Committee recommends that the Public Service Commissioner report in the annual State of the Service report on the implementation of the Initiative together with the competency framework.</p>	<p>Partially support.</p> <p>While the Government does not support the reintroduction of mandatory competency standards (see response to recommendation 5), the Government does support the Committee's recommendation regarding the annual reporting on the implementation of the IT Outsourcing Initiative.</p> <p>The devolved management framework means that Chief Executives and Directors are responsible for managing their agency's procurement functions and should ensure that staff undertaking procurement have appropriate skills and training.</p> <p>The APS Commission will be available to assist agencies in ensuring that staff skills and training are consistent with the APS values. The APS Commission currently offers training programs on contracting and procurement for APS staff at various levels. The content of these training programs takes into account APS values and all agencies are able to utilise these programs. Other training providers also offer competency based</p>

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		<p>procurement training.</p> <p>Furthermore, the existing Certificate IV in Government (Procurement &amp; Contracting) was developed by the Public Service Education Training Australia (PSETA - which has representatives from all Commonwealth, State and Territory governments). The Government encourages agencies to use the competency training framework established by PSETA as it is identified as best practice in the CPGs.</p> <p>The APS Commission commenced reporting on the implementation of the Initiative through its 2000-01 State of the Service Report.</p>
7	<p>The Committee recommends that all RFTs for IT outsourcing, which contain clauses allowing the Commonwealth broad discretionary rights to alter the RFT or to exclude a tenderer from the process or any similar decision, also include a clause which places a clear and definite obligation on the Commonwealth to provide in writing the reasons for the variation, amendment, cancellation or termination. RFTs should be consistent with the Commonwealth Procurement Guidelines.</p>	<p>Support in principle.</p> <p>Clauses to alter the RFT, or to exclude a tenderer from the process, are common in commercial procurement and are employed to protect the Commonwealth. For FMA Act agencies, a decision to invoke such a clause needs to be defensible under the framework requiring efficient, effective and ethical use of resources. In line with the CPGs, agencies should document the reasons for variation, amendment, cancellation or termination of a RFT. However, each agency should decide on the most appropriate and effective means of notifying tenderers. The Government does not consider it necessary to mandate that this be provided in writing.</p> <p>For CAC entities, a decision to vary, amend or cancel an RFT would need to be consistent with the obligations and responsibilities requiring good faith, care and diligence when making business decisions.</p>
8	<p>The Committee recommends that:</p> <ul style="list-style-type: none"> <li>• The Government review the Commonwealth Procurement Guidelines with a view to making them</li> <li>• more explicit and detailed for agency heads and less likely to broad and uncertain interpretation. An annual review is also recommended to ensure their</li> </ul>	<p>Partially support.</p> <p>The Minister for Finance and Administration released revised <i>Commonwealth Procurement Guidelines and Best Practice Guidance</i> (CPGs) in February 2002. The CPGs will be reviewed and updated as required.</p> <p>The Government does not support the Committee's recommendation to</p>

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	<p>continuing relevance.</p> <ul style="list-style-type: none"> <li>• All officers performing duties in relation to the procurement of property or services be required to 'act in accordance with', rather than simply 'have regard to', the core policies and principles detailed in the Guidelines. Such officers must make written records of any actions that are not in accord with the Guidelines and their reasons for doing so.</li> <li>• The outcome of the review of the accompanying <i>Competitive Tendering and Contracting: A Guide for Managers</i> include a document that provides greater detail about procurement practices and procedures.</li> </ul>	<p>require officers to 'act in accordance with' the CPGs. The CPGs strike a balance between prescription and empowerment so as to encourage agencies to obtain the best value for money from procurement. This approach is appropriate in the devolved environment created by the FMA Act.</p> <p>FMA Regulation 8 requires officials performing duties in relation to the procurement of property or services to 'have regard to' the CPGs. The Government encourages CAC Act bodies to adhere to the principles outlined in the CPGs.</p> <p>The CPGs require officials to keep written records when action does not accord with the CPGs in line with Regulation 8(2) of the FMA Regulations and as identified within the CPGs.</p> <p>Finance will continue to review the content and level of information made available to FMA agencies and will issue advice as required. This may be through formal publications to replace existing documents, or through additional Best Practice Advice on the Finance website.</p>
9	<p>The Committee recommends that DOFA undertake a review of available guidance on probity issues associated with the procurement process, taking into account the new and revised probity guidelines of the Victorian, Tasmanian and South Australian State governments. The review should form the basis of a revision of the Commonwealth Procurement Guidelines.</p>	<p>Support.</p> <p>The Minister for Finance and Administration released revised CPGs in February 2002 that require officials to consider seeking probity advice. The Government agrees that the experiences of other jurisdictions are informative and will continue to review policy guidance with a view to updating it as appropriate.</p>
10	<p>The Committee recommends that for future IT outsourcing contracts valued over \$10 million agencies contract the services of both a probity auditor and a probity adviser and that their roles involve separate and distinct tasks.</p>	<p>Support in principle.</p> <p>The devolved management framework means that this is a matter for individual agencies.</p>
11	<p>The Committee is strongly of the view that Commonwealth agencies should in future have confidence in being able to</p>	<p>Partially support.</p>

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	<p>source truly independent probity advice. It recommends that, consistent with Victoria's probity guidelines, the Government consider the establishment of a whole of government panel of probity auditors to assist agencies and departments avoid real or perceived conflicts of interest when establishing the probity standards that will guide their IT outsourcing tender processes.</p>	<p>The Government agrees that agencies should have confidence in being able to source independent probity advice. However, the Government does not support the establishment of a whole-of-government panel of probity advisers. While regarding probity as an essential element in the procurement process, a mandatory whole-of-government panel of probity auditors is not consistent with the framework of devolved management.</p> <p>Any establishment of a whole-of-government panel would duplicate existing agency arrangements; for example, a number of Commonwealth agencies have internal arrangements, including departmental panel arrangements, for legal and probity advice.</p>
12	<p>The Committee recommends that agencies include provisions in their contracts that require:</p> <ul style="list-style-type: none"> <li>• probity auditors to keep accurate records and provide sufficient information to allow for proper parliamentary scrutiny of the audit process; and</li> <li>• probity auditors' reports to be made public.</li> </ul>	<p>Partially support.</p> <p>The Government agrees that transparency with the tender process is necessary. It is up to agencies to consider the inclusion of provisions in their contracts that require probity auditors to keep accurate records and provide sufficient information to agencies to allow them to meet their accountability obligations to Parliament and the public. However, the CPGs require agencies to ensure that an outsourced provider maintains appropriate systems for recording decisions and reasons for making those decisions.</p> <p>The Government does not consider it necessary to mandate that probity auditors' reports be made public.</p> <p>Agencies should also be aware of the provisions under the Freedom of Information Act 1982 for disclosure of records.</p>
13	<p>The Committee recommends that the Government consider establishing a centre of IT outsourcing expertise in the Department of Communications, Information Technology and the Arts (DOCITA) concerned with the technological and industry development side of IT outsourcing but not necessarily the tendering and contracting process. The Committee proposes that the role of a service unit in</p>	<p>Do not support.</p> <p>The establishment of a central resource for agencies to use would create overlapping responsibilities between agencies and the central resource, and inefficient use of the resource. Given the broad range of issues on which advice may be sought, and the ad hoc nature of such responses, it may be more efficient to make use of consultancy services rather than establishing a</p>

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	<p>DOCITA would be far different from the OASITO model and be more consultative and helpful than the service unit now established in DOFA. It would have broader horizons on IT and would establish and form the hub of a network between IT outsourcing units in Commonwealth agencies. Further, it would assume an education and training role in IT outsourcing with its focus on IT planning for the future.</p>	<p>full time unit.</p> <p>However, the Government, on 21 June 2002, announced simplified industry development requirements for Information and Communication Technology (ICT) contracts to reduce the compliance burdens on bidders and agencies. DCITA will work cooperatively with agencies on the implementation of these requirements for future ICT contracts. In addition, DCITA will implement an ICT Small to Medium Enterprise (SME) facilitation package to enhance the ability of SMEs to lead and participate in government ICT contracts.</p>
14	<p>For agencies with distinctive data security needs, such as the science agencies, and agencies with high security needs, such as the Australian Federal Police, a credible argument has been put forward that IT outsourcing is far more complex. The Committee endorses recommendation 10 of the Humphry Review and recommends it be extended to apply to the evaluation of the implementation risks of all other agencies.</p>	<p>Support.</p> <p>In its response to the Humphry Review, the Government stated that, "Secretaries and agency heads will be held accountable for implementing the Government's policy through assessment of their performance". Agencies can now determine the appropriate model/s for outsourcing within the bounds of the Government's IT initiative. The management of implementation risks is a matter for each agency in ensuring the effective use of resources in the devolved management framework.</p>
15	<p>The Committee recommends DOCITA conducts an evaluation of the outcomes of the Initiative's intellectual property management clauses in existing contracts. The evaluation to include, but not exclusively, an examination of the generation of government royalties, the protection of government assets and the contribution to industry development.</p>	<p>Support in principle.</p> <p>The Government's objectives, as set out in the <i>Commonwealth IT IP Guidelines</i>, are to maximise the net national benefits from the development and ownership of such IT intellectual property as it requires. The guidelines advise that agencies must give careful consideration, on a case by case basis, to the interests of all prospective beneficiaries, including Australian industry, the Commonwealth agency or agencies concerned and the taxpayer.</p> <p>DCITA will take account of factors highlighted by the Committee when inviting agencies to contribute to the review of the <i>Commonwealth IT IP Guidelines</i> in 2003. As the guidelines were released in February 2001, most agencies had previously entered into outsourcing contracts. Agencies</p>

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		<p>have been encouraged to adapt their IP management policies in the first instance and review contracts in relation to the guidelines as they fall due. DCITA will continue to promote the use of the IT IP Guidelines amongst Commonwealth Departments and Agencies.</p>
16	<p>The Committee notes that an intellectual property rights register is a feature of current contracts under the Initiative. It recommends that DOCITA investigate the feasibility of publicising and marketing this information, as well as details of intellectual property held by agencies that are not outsourced, with a view to maximising returns on Commonwealth intellectual property.</p>	<p>Support in principle.</p> <p>The Government is aware of the industry development benefits of appropriate intellectual property management between suppliers and Government, and will monitor the operation and effectiveness of the <i>Commonwealth IT IP Guidelines</i>. DCITA's review of the guidelines will take account of this recommendation by considering the effectiveness and take-up of the guidelines by agencies.</p>
17	<p>The Committee recommends that the Government give serious consideration to introducing legislation that will provide a greater degree of transparency in Commonwealth contracts by making them publicly available. The Victorian legislation, which requires contracts valued at over \$10 million to be placed on the Internet, provides a starting point. In this context the ANAO criteria would provide guidance on what, in such circumstances, would still be considered genuinely confidential and may be withheld from publication.</p>	<p>Do not support.</p> <p>The Government does not consider it necessary to make legislative changes to make Commonwealth contracts publicly available.</p> <p>Regulation 7(3) of the FMA Regulations indicate that "Commonwealth Procurement Guidelines may require that a matter must be published in the way set out in the Guidelines". The CPGs require officials to report agency agreements, Commonwealth contracts and standing offers with an estimated liability of \$2000 or more in the Gazette (the Gazette Publishing System which is online at <a href="http://www.contracts.gov.au">www.contracts.gov.au</a>) within six weeks of entering into the agreement. Consistent with the Senate Order regarding <i>Departmental and Agency Contracts</i>, the CPGs require that FMA agencies place lists of contracts valued at \$100,000 or more on their websites. The list should indicate whether the contract includes confidentiality provisions and the reasons for those confidentiality provisions.</p> <p>Further, Finance is currently finalising a strategic and technical review of the Gazette Publishing System (GaPS) which considers the possibility of utilising GaPS to assist in meeting the Senate Order regarding <i>Departmental and Agency Contracts</i> reporting requirements.</p>



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18	<p>The Committee recommends that budget funded agencies take immediate action to ensure that before they enter into any formal or legally binding undertaking, agreement or contract that all parties to that arrangement are made fully aware of the agency and contractor's obligation to be accountable to Parliament.</p>	<p>Support.</p> <p>The CPGs state that, "officials, departments and agencies are answerable and accountable for any plans, actions and outcomes that involve spending public monies" and "Agencies should include provisions in tender documentation and contracts that alert prospective providers to the public accountability requirements of the Commonwealth, including disclosure to Parliament and its Committees".</p>
19	<p>The Committee further recommends that any future Requests for Tender (RFTs) and contracts entered into by a Commonwealth agency include provisions that require contractors to keep and provide sufficient information to allow for proper parliamentary scrutiny, including before parliamentary committees, of the contract and its arrangements.</p>	<p>Support.</p> <p>See response to Recommendation 18.</p>
20	<p>The Committee recommends that DOCITA in close consultation with agencies develop and agree to an overall roadmap for ID under the IT outsourcing program. This strategic plan is to spell out the objectives and targets of ID under the IT outsourcing Initiative, to define and specify SME involvement, and establish the evaluation criteria, including the weighting to be assigned to ID in the overall evaluation of tenderers for an IT outsourcing contract. This information to be included in the RFTs.</p>	<p>Partially support.</p> <p>DCITA will continue to have prime carriage of policy in relation to industry development associated with ICT and Endorsed Supplier Arrangement (ESA) Government contracts. The Government, on 21 June 2002, announced a simplification of the industry development arrangements for Government procurement of ICT following a consultation process with agencies and industry. These arrangements reflect a self-regulatory approach to achieving industry development outcomes and include voluntary guidelines to encourage companies to undertake strategic activities in Australia.</p> <p>While the Government does not consider it necessary to mandate that weighting to industry development be included in RFTs, industry development requirements still apply. The cornerstone of these requirements is the obligation that all ICT suppliers to Government must be endorsed. The ESA includes an industry development component. For contracts of \$20 million and above, there is also a mandatory requirement</p>

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		for a minimum level of SME participation, with the level of participation to be determined by the nature of the contract. DCITA will work cooperatively with agencies in the implementation of this requirement.
21	The Committee recommends that the Government act immediately to remove barriers, such as onerous requirements including financial guarantees, that hamper the participation of SMEs in the Initiative.	<p>Support.</p> <p>The Government released an action plan, in October 2001, addressing inhibitors facing SMEs' access to Government contracts. The Government announced a SME facilitation package on 21 June 2002 which will be implemented in close consultation with agencies and industry. The Government's support does not mean that the terms and conditions aimed at protecting the Commonwealth's financial position should be removed, although the Government Information Technology Contract (GITC 4), linked to the ESA, includes mechanisms to eliminate the need for business to place guarantees with agencies each time they enter a contract. Decisions to remove requirements for financial guarantees and other requirements on bidders are risk management decisions for individual agencies under the devolved management framework.</p>
22	The Committee recommends that the Commonwealth adopt an open and transparent methodology for estimating cost savings for IT outsourcing. In developing this methodology, all relevant Commonwealth agencies, including ANAO and DOFA, are to be consulted, and a common methodology adopted.	<p>Support in principle.</p> <p>The Government supports open and transparent methods for estimating cost savings. However, the devolved management framework means that this is a matter for each agency as it moves through an outsourcing process.</p>