

## Consultancies and Contracts

Audit Report No. 11, 2005–06, Senate Order for Departmental and Agency Contracts

Audit Report No. 27, 2005–06, Reporting of Expenditure on Consultants

### Introduction

6.1 The Committee reviewed two audit reports dealing with the reporting of consultancies and contracts. These were Audit Report No. 11, 2005–06: *Senate Order for Departmental and Agency Contracts*<sup>1</sup> and Audit Report No. 27, 2005–06: *Reporting of Expenditure on Consultants*<sup>2</sup>.

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1 ANAO Audit Report No. 11 2005–06, *The Senate Order for Departmental and Agency Contracts (Calendar Year 2004 Compliance)*, September 2005.

2 ANAO Audit Report No. 27 2005–06, *Reporting of Expenditure on Consultants*, January 2006.

## **Audit Report No. 11, 2005–06: Senate Order for Departmental and Agency Contracts**

### **Background**

- 6.2 The report outlines the results of the seventh audit of *Financial Management and Accountability Act 1997* (FMA Act) agencies' compliance with the Senate Order for departmental and agency contracts (the Senate Order), to list contract details for the 2004 calendar year reporting period on the Internet.
- 6.3 The audit was conducted in accordance with the Senate Order request for the Auditor-General to undertake an annual examination of agency contracts listed on the Internet, and report whether there had been any inappropriate use of confidentiality provisions.
- 6.4 The Senate Order was originally made in June 2001 and has been amended several times, most recently on 4 December 2003. The Order intends to underline the principle that information in government contracts should not be protected as 'commercial in confidence' unless there is a sound reason to do so.
- 6.5 The Senate Order originated from a perception that with increased outsourcing and contracting to the private sector, there was an increasing risk that rights of access to information relating to government services could be diminished. The Joint Committee of Public Accounts and Audit (JCPAA) commented in Report 379 that 'accountability and parliamentary scrutiny are being eroded through the application of commercial-in-confidence to all or parts of government contracts'.<sup>3</sup>

### **Audit objectives and scope**

- 6.6 The objectives of the audit were to assess agency performance in relation to compiling their Internet listings as required by the Senate Order and the appropriateness of the use of confidentiality provisions in Commonwealth contracts.
- 6.7 The audit involved a detailed examination in seven agencies of the processes used to compile their Internet listings and the use of confidentiality provisions in contracts.

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3 ANAO Audit Report no. 11, 2005–06, p. 51.

- 6.8 Specifically, the audit objectives were to examine in the selected agencies:
- whether all the details as required by the Senate Order were included in the agency's Internet contract listing;
  - the process by which the agency's Internet listing was prepared, and assess whether the process was likely to lead to the list of contracts placed on the Internet being complete;
  - the process by which the agency determined which contracts placed on the Internet contained confidential provisions or were considered to be confidential, and assess whether the process was likely to be appropriate;
  - a selection of contracts listed as confidential and determine whether the use of such provisions was appropriate; and
  - a selection of contracts which have been excluded from the Internet listing because the whole contract was deemed to be confidential and assess whether the contract should have been listed.
- 6.9 The seven agencies selected for review were:
- Australian Customs Service (Customs);
  - Australian Electoral Commission (AEC);
  - Department of Family and Community Services (FaCS);
  - Department of Immigration and Multicultural and Indigenous Affairs (DIMIA);
  - Department of the Prime Minister and Cabinet (PM&C);
  - Department of Transport and Regional Services (DoTaRS); and
  - Department of Veterans' Affairs (DVA).

## Overall audit conclusions

- 6.10 Overall, the ANAO concluded that although agencies' Internet listings generally complied with the Senate Order, the percentage of contracts listed as containing confidential information, that were considered by the ANAO as being appropriately listed, was low. This situation could be attributed to inadequate guidance being provided in some agencies to staff with contract negotiation responsibilities, as well as a lack of training and/or the provision of awareness-raising sessions to these staff.

- 6.11 Importantly, the audit found that all the agencies reviewed had included in their template contract, and the majority of contracts, a clause providing for the disclosure of information to the Parliament and its Committees.
- 6.12 The results of the ANAO's audits over the last three years indicate a need, at least in some agencies, to improve their awareness of, and compliance with, the Senate Order. The need for agencies to revise their procurement and related guidance material in the light of revisions to the Commonwealth Procurement Guidelines (CPGs), which took effect from 1 January 2005, represents a good opportunity for agencies that have not already done so, to review and as necessary improve their guidance of material relating to the Senate Order. Agencies should also reinforce the importance of compliance with the Order in procurement-related training and awareness sessions undertaken. This is particularly important in circumstances where agencies have a devolved procurement environment where line managers are responsible for the negotiation and management of contracts, including making judgements about the confidentiality of contract provisions.

## ANAO recommendations

- 6.13 The ANAO made three recommendations in total, which are detailed in Table 6.1.

Table 6.1 ANAO recommendations, Audit Report No. 11, 2005–06

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1.	The ANAO recommends that agencies, that have not already done so, implement additional controls designed to ensure the completeness and accuracy of their Internet listings. These controls could include reconciling the Senate Order listing to AusTender information and/or contract details included in their Financial Management Information System (FMIS). <i>All responding agencies agreed.</i>
2.	The ANAO recommends that agencies provide further guidance, together with training and/or awareness-raising sessions on the requirements of the Senate Order, to all staff responsible for negotiating contracts. <i>All responding agencies agreed.</i>
3.	The ANAO recommends that agencies ensure adequate documentation of the reasons for agreeing to identify specified information in contracts as being confidential. <i>All responding agencies agreed.</i>

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## The Committee's review

- 6.14 The Committee held a public hearing on 14 June 2006 with witnesses from the Department of Finance and Administration (Finance), PM&C and the ANAO.

- 6.15 At the public hearing, the main issues addressed by the Committee included:
- content of internet listings and processes for preparing listings; and
  - confidential provisions in contracts.

## Internet listings

- 6.16 The Committee is pleased that, consistent with previous audits, in most cases, agencies had published their listings on their websites in a timely manner and the presentation of listings complied with the requirements of the Senate Order.<sup>4</sup>
- 6.17 In relation to the processes agencies had in place to ensure the accuracy of listings, the ANAO found that, whilst all sample agencies had controls in place, most should improve their existing procedures by implementing additional controls. The ANAO suggested that such controls could include the reconciliation of listings with contract details in their Financial Management Information System (FMIS) and/or their AusTender listing.<sup>5</sup>

## Confidential provisions in contracts

- 6.18 One of the main objectives of the Senate Order is to require agencies to adopt a considered decision in relation to the inclusion of confidential information in Australian Government contracts.<sup>6</sup> The ANAO found that a low proportion of contracts audited (25 percent) met all four of Finance's tests for evaluating confidential information.<sup>7</sup>
- 6.19 Although the ANAO suggested that the overall policy frameworks within agencies had improved over time, it acknowledged that there had been some failings in individuals understanding and appropriately applying those policy frameworks.<sup>8</sup>

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4 ANAO Audit Report No. 11, 2005-06, p. 23.

5 ANAO Audit Report No. 11, 2005-06, p. 28.

6 ANAO Audit Report No. 11, 2005-06, p. 30.

7 ANAO Audit Report No. 11, 2005-06, p. 37.

8 ANAO, *Transcript of Evidence*, 22 May 2006, p. 2.

- 6.20 The Department of the Senate expressed its disappointment that there did not seem to be significant improvement in agencies' compliance with the requirements of the Senate Order.<sup>9</sup>
- 6.21 Similarly, the Committee was very concerned that the audit found that the excessive use of confidential provisions in contracts remained a serious problem. Finance outlined its role in providing advice and training across the public service to ensure that procurement officers in agencies take a considered approach to decisions to include confidential clauses in contracts.<sup>10</sup>
- 6.22 In response to concerns that the desire to include confidentiality clauses came from agencies rather than contractors, Finance conceded that its:
- ... confidence is not high that in all cases it is driven by the commercial contractor ... 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.<sup>11</sup>
- 6.23 The ANAO found that all audited agencies had included in their standard tendering documentation and contract templates information on the Australian Government's accountability framework, including its policy in relation to confidential information and disclosure to the Parliament and its Committees.<sup>12</sup>
- 6.24 The ANAO suggested that agencies had moved away from accepting contractors' reasons for protecting particular information as confidential, particularly information such as hourly rates. The ANAO suggested that agencies had started to question the legitimacy of some of these claims of confidentiality, although noting that further improvements could be made.<sup>13</sup>
- 6.25 Similarly, Finance argued that there had been a significant improvement in agencies' appropriate use of confidential clauses in contracts, and was confident that further improvements would take place over time.<sup>14</sup>

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9 ANAO, *Transcript of Evidence*, 22 May 2006, p. 2.

10 Finance, *Transcript of Evidence*, 22 May 2006, pp. 2-3.

11 Finance, *Transcript of Evidence*, 22 May 2006, p. 3.

12 ANAO Audit Report No. 11, 2005-06, p. 35.

13 ANAO, *Transcript of Evidence*, 14 June 2006, p. 7.

14 Finance, *Transcript of Evidence*, 14 June 2006, p. 17.

- 6.26 The Committee was pleased to hear that, in response to findings of the ANAO audit, PM&C had revised its procurement checklist to draw particular attention to the need to consider contractors' confidential information in light of the four tests outlined in Finance's *Guidance on Confidentiality of Contractors' Commercial Information* (Finance's Guidance).<sup>15</sup>
- 6.27 The Committee was satisfied that there had been a concerted effort, by many agencies, to actively inform contractors that confidential information may still be provided to the Parliament or the courts.<sup>16</sup> The ANAO advised that many agencies now included up-front information in their contracts stating that information within the contract may be disclosed to the Parliament and as required by law.<sup>17</sup> Notwithstanding, the Committee sees merit in this advice being included in all agencies' tender and contract documentation.

### Recommendation 8

**The Committee recommends that all agencies include in their proforma contract and tendering documentation, advice pertaining to the Australian Government's accountability framework.**

- 6.28 The ANAO found lacking, in some agencies, the adequacy of guidance material provided to staff, as well as the timeliness of training and awareness sessions provided to staff, particularly staff in line areas with procurement responsibilities.<sup>18</sup> The Committee notes Finance's efforts to provide awareness sessions to Australian Government agencies, but urges all agencies to take seriously their responsibility to provide detailed and timely training to all new and ongoing procurement officers.
- 6.29 Given that the Committee is charged with scrutinising the economic performance and accountability of government agencies, and despite improvements that have been made in relation to the use of confidentiality provisions in government contracts, it is anxious to ensure that confidential provisions are not included in contracts unless absolutely necessary.

15 PM&C, *Transcript of Evidence*, 14 June 2006, p. 5.

16 Finance, *Transcript of Evidence*, 14 June 2006, p. 4.

17 ANAO, *Transcript of Evidence*, 14 June 2006, p. 8.

18 ANAO Audit Report No. 11, 2005-06, p. 35.

## Recommendation 9

The Committee recommends that all departments, that have not yet done so, incorporate into their procurement process documentation:

- details of the four tests for the inclusion of confidential clauses in contracts, as detailed in Finance's *Guidance on Confidentiality of Contractors' Commercial Information*; and
- advice highlighting the importance of procurement officers seeking specific reasons for the use of confidential clauses, and for these reasons to be clearly documented.

6.30 The Committee noted that ANAO's Recommendation No. 3 referred to agencies ensuring that the reasons for including confidential clauses in contracts are adequately documented, and sought clarification from the ANAO in relation to the form that this documentation should take. The ANAO did not wish to prescribe the specific form that such documentation should take, but broadly stated that there should be:

... some evidence that a contractor has put forward reasons why they feels that the material should be kept confidential, and they should be some matters of substance, not just the fact that the 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.<sup>19</sup>

## Finance's role

6.31 When asked for its view on some agencies' tendencies to continually over-use confidentiality provisions in their contracts, Finance responded that:

We basically support the recommendations of the ANAO. We have in fact recently re-released a department of finance publication which deals with the Senate order and confidentiality of reporting. We have raised it at our procurement conference, in

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<sup>19</sup> ANAO, *Transcript of Evidence*, 14 June 2006, p. 6.



our procurement seminars and in our procurement development forum, and we continue to work to improve the knowledge and the application of these requirements.<sup>20</sup>

- 6.32 In response to suggestions that Finance's Guidance was somewhat difficult to understand and could be open to manipulation, Finance informed the Committee that it was in the process of reviewing this publication. It estimated that it would have a draft revised Guidance available for circulation over the coming months.<sup>21</sup> The draft revised guidance was issued in March 2007 following the Senate Standing Committee on Finance and Public Administration's report, *Departmental and agency contracts: second report on the operation of the Senate order for the production of lists of departmental and agency contacts (2003-2006)*.<sup>22</sup> It defended the amount of time that had transpired since the last Guidance was issued (February 2003), arguing that it takes some time to gauge the effectiveness of the advice before taking a decision to issue revised guidance.<sup>23</sup>
- 6.33 The Committee was interested to learn about Finance's role in facilitating and monitoring agencies' compliance with the requirements of the Senate Order. Finance responded that it has a role in providing advice to agencies, including:
- ... ensuring that people in departments understand what is required, but we do not have a role in terms of monitoring or enforcement.<sup>24</sup>
- 6.34 The Committee was concerned that there did not seem to be any systematic cross-agency monitoring of compliance with the Senate Order. Finance's view was that the ANAO was responsible for monitoring compliance, although the Committee does not accept this view, noting ANAO advice that:
- Successive Auditors-General have agreed to undertake an audit each year of compliance, but certainly we would not accept a monitoring responsibility over this. At the end of the day each agency's head is responsible.<sup>25</sup>

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20 Finance, *Transcript of Evidence*, 22 May 2006, p. 2.

21 Finance, *Transcript of Evidence*, 22 May 2006, p. 3.

22 Pers. Comm. John Grant, Division Manager, Procurement Division, Finance. 6 March 2007.

23 Finance, *Transcript of Evidence*, 22 May 2006, p. 4.

24 Finance, *Transcript of Evidence*, 22 May 2006, p. 3.

25 ANAO, *Transcript of Evidence*, 22 May 2006, p. 5.

6.35 The Senate observed that it could impose sanctions for the wilful breach of this order and that it expected that:

... government would be keen to be seen to be complying with the order to the best of its ability and may well set up some kind of additional monitoring section in the responsible agency.<sup>26</sup>

6.36 Notwithstanding the implications of agencies operating in a devolved financial framework, and agency heads being ultimately responsible for their organisation's compliance with statutory requirements, the Committee feels strongly that a central agency should have responsibility for monitoring and enforcing, in a whole-of-government context, compliance with the requirements of the Senate Order.

### **Recommendation 10**

**The Committee recommends that the Department of Finance and Deregulation be given authority to monitor agencies' compliance with Finance's *Guidance on Confidentiality of Contractors' Commercial Information* in relation to the Senate Order.**

## **Audit Report No. 27, 2005–06: *Reporting of Expenditure on Consultants***

### **Background**

6.37 In 2003–04, 73 agencies were covered by the FMA Act and therefore subject to this audit.

6.38 Consultancy expenditure in 2003–04 was reported as \$361 million by these agencies, which have three separate obligations to report on their use of consultants:

- the Requirements for Annual Reports by Departments, Executive Agencies and FMA Act Bodies published by the Department of Prime Minister and Cabinet (after approval by the JCPAA) requires agencies to publish details in their annual reports of all consultancies let in the financial year and valued at over \$10,000;

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26 Department of the Senate, *Transcript of Evidence*, 22 May 2006, pp. 7–8.

- the CPGs require agencies to report all contracts (including consultancy contracts) greater than \$2,000 in the Gazette Publishing System (GaPS); and
- the Senate Order requires FMA Act agencies to report on their website all contracts (including consultancy contracts) greater than \$100,000 and to identify those contracts that contain confidentiality provisions.

## Audit objective and scope

6.39 The objective of the audit was to assess the accuracy and completeness of Australian government agencies' reporting of expenditure on consultants across the 73 agencies subject to the FMA Act in 2003–04.

## Overall audit conclusions

- 6.40 The ANAO concluded that agencies should take greater care in reporting expenditure on consultants. The ANAO found, in terms of the accuracy and completeness of reporting across the three reporting regimes, that none of the 73 FMA Act agencies had correctly reported in all three regimes.
- 6.41 In response to the audit, most of the 73 agencies affected by the audit acknowledged inadequacies in their reporting and 85 percent advised the ANAO that they would take some form of corrective action.
- 6.42 There are overlaps between each of the reporting regimes and it is often necessary to report the same consultancy contract in all three regimes. Different data is required in each, however, and the ANAO found that this had contributed to the difficulties agencies experienced in reporting accurate and complete data.
- 6.43 The ANAO's key recommendation was that the relevant central agencies, in consultation with stakeholders, examine options for improving the accuracy of reporting of Government procurement and rationalising the number of reporting regimes with a view to addressing the overlaps and inefficiencies evident in the current approach.

## ANAO recommendations

6.44 The ANAO made three recommendations, which are detailed in Table 6.2.

Table 6.2 ANAO recommendations, Audit Report No. 27, 2005–06

1.	The ANAO recommends, having regard to the significant number and value of ongoing contracts that it has omitted from its Senate Order listings, that the Department of Defence set, and report against in the future Senate Order listings, the expected time by which full compliance will be achieved. <i>The Department of Defence disagreed.</i>
2.	The ANAO recommends that the Department of Finance and Administration and the Department of the Prime Minister and Cabinet, in consultation with key Parliamentary Committees, affected agencies and other relevant stakeholders, examine options for improving the accuracy and completeness of reporting of Government procurement, including the merits of rationalising the number of reporting regimes. <i>All but one of the responding agencies agreed.</i> <i>The Bureau of Meteorology agreed with qualification.</i>
3.	The ANAO recommends that FMA Act agencies appropriately correct omissions or incorrect inclusions of information which relate directly to their reported expenditure on consultants in their next annual report. <i>All but one of the responding agencies agreed.</i>

## The Committee's review

- 6.45 The Committee held a public hearing on 14 June 2006 with witnesses from Finance, PM&C, the Department of the Environment and Heritage (DEH), the Department of Health and Ageing (Health), and the ANAO.
- 6.46 At the public hearing, the main issues addressed by the Committee included:
- reporting of consultancies in annual reports;
  - reporting of procurement in the Gazette Publishing System;
  - reporting of consultancies in Senate Order; and
  - inefficiencies across reporting regimes.

## Reporting consultancies in annual reports

- 6.47 The ANAO audit found that reporting of consultancies in annual reports was not as accurate as it should have been. The Committee was interested to learn what changes had been made to improve accuracy of consultancy information in annual reports.
- 6.48 PM&C explained that the audit was based on reporting of 2003–04 consultancies under the annual reporting guidelines in place at that time. The requirements were changed considerably for 2004–05 annual reports, which would not have been picked up by the ANAO's audit. Departments now had access to proformas to assist with reporting of consultancies in

annual reports, and PM&C was confident that the amended requirements would improve the accuracy of information reported.<sup>27</sup> PM&C had also consulted with a number of departments before formulating the new requirements, and was therefore confident that implementation could be achieved.<sup>28</sup>

- 6.49 DEH confirmed that the revised guidelines and guidance from central agencies, as well as investigations by the ANAO, had assisted in clarifying ambiguities, and was therefore confident that its 2004–05 annual report would show marked improvement on 2003–04 reporting.<sup>29</sup> Health also assured the Committee that its 2004–05 reporting would be an improvement on the previous year’s results.<sup>30</sup>

## Reporting procurement in the Gazette Publishing System

- 6.50 The Committee noted that data is directly entered into AusTender by relevant agencies, rather than coordinated by a central agency. The Committee was concerned to ensure that appropriate areas of each agency take responsibility for ensuring that data entered into AusTender is accurate and complies with relevant reporting requirements. In particular, the Committee noted the need for the Department of Defence (Defence) to incorporate a monitoring role into one of its central coordination areas, perhaps within the Defence Materiel Organisation.
- 6.51 DVA noted that the agency head was ultimately accountable for its compliance with reporting requirements. It argued that the Department’s procedures were adequate, but that a staffing issue had led to those processes not working adequately.<sup>31</sup>
- 6.52 In light of Finance’s advice regarding improvements to AusTender (subsequently implemented), the Committee was interested to learn how these changes would overcome the considerable delay in agencies reporting data on the GaPS/ AusTender system. Finance advised that, although there would be no in-built ‘trigger’ to alert them to late entries in AusTender, the ‘system, in its enhanced mode, is being designed to draw

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27 PM&C, *Transcript of Evidence*, 14 June 2006, p. 12.

28 PM&C, *Transcript of Evidence*, 14 June 2006, p. 12.

29 DEH, *Transcript of Evidence*, 14 June 2006, p. 13.

30 Health, *Transcript of Evidence*, 14 June 2006, p. 13.

31 DVA, *Transcript of Evidence*, 14 June 2006, p. 22.

information from the procurement recording systems within each agency.<sup>32</sup>

- 6.53 Although this development could potentially improve the accuracy of data in AusTender, the Committee notes that such automated data transfer would require agencies' procurement recording systems to be reliable and contain highly accurate information.
- 6.54 The Committee notes and encourages Finance's initiatives to improve agencies' compliance with reporting requirements, including the provision of advice to agencies on improving the quality of data they enter in AusTender and supporting agencies through the Procurement Discussion Forum, Procurement Seminar Series and Annual Procurement Conference, and the establishment of a Procurement Agency Advice Branch.<sup>33</sup>

## Reporting consultancies under the Senate Order

- 6.55 Defence outlined some of its problems in complying with the requirements of the Senate Order. It observed that in 2005, Defence had entered into 5,522 new contracts valued at over \$100,000.<sup>34</sup> Whilst Defence argued that these new contracts alone equated to 500 pages of spreadsheet print-out, the Committee is of the view that those contracts also represent billions of dollars of the Australian public's money.
- 6.56 Nevertheless, Defence argued that it could not report ongoing contracts, as per the Senate Order's requirements, due to the sheer volume of new and ongoing contracts.<sup>35</sup> Although Defence advised that its past listings were available on its website, thus allowing some visibility of ongoing contracts, the ANAO noted that this approach did not comply with the Senate Order in full.<sup>36</sup>
- 6.57 The Committee was not satisfied with Defence's failure and apparent unwillingness to comply with the requirements of the Senate Order. Notwithstanding these concerns, the Committee notes the Department's difficulty in complying with the requirements as they stood at the time of the audit.

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32 Finance, *Transcript of Evidence*, 14 June 2006, p. 12.

33 Finance, Submission no. 2, pp. 2–3.

34 Defence, *Transcript of Evidence*, 22 May 2006, p. 15.

35 Defence, *Transcript of Evidence*, 22 May 2006, p. 16.

36 ANAO, *Transcript of Evidence*, 22 May 2006, p. 16.

## Inefficiencies across reporting regimes

### Duplicating legal advice

6.58 The Committee was also concerned that there seemed to be some inefficiencies in relation to several government agencies seeking separate legal advice on substantially the same matter. Further complicating the issue, the Committee noted that it was possible for the Commonwealth to 'be in possession of numerous pieces of advice on substantially the same matter which come to different conclusions.'<sup>37</sup>

6.59 Under legal services directions, agencies are required to circulate legal advice that may have implications beyond their own organisations, although this applies only to legal advice sought specifically in relation to legislation.<sup>38</sup> Finance informed the Committee that it was not 'aware of agencies seeking legal advice which is repetitive.'<sup>39</sup> The ANAO, however, was of a different point of view:

... 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 [as a result].<sup>40</sup>

6.60 The Committee was concerned to hear that there are no formal whole-of-government processes for ensuring that such legal advice is indeed distributed where appropriate, and that there is no central repository for the various legal advices sought by government agencies.<sup>41</sup> The Committee is of the view that considerable cost efficiencies may be gained by minimising the potential for government agencies to unnecessarily obtain legal advice, particularly if similar advice has been sought by the Commonwealth previously. The ANAO supports this position, noting:

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!<sup>42</sup>

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37 ANAO, *Transcript of Evidence*, 14 June 2006, p. 9.

38 ANAO and Finance, *Transcript of Evidence*, 14 June 2006, p. 9.

39 Finance, *Transcript of Evidence*, 14 June 2006, p. 11.

40 ANAO, *Transcript of Evidence*, 14 June 2006, p. 9.

41 Finance, *Transcript of Evidence*, 14 June 2006, p. 9.

42 ANAO, *Transcript of Evidence*, 14 June 2006, p. 10.

**Recommendation 11**

**The Committee recommends that, in an effort to minimise inefficient use of legal services, PM&C, Finance, and any other relevant bodies, implement monitoring systems to ensure that legal advices obtained by agencies, with implications broader than that specific agency's circumstances, are appropriately distributed to other relevant government agencies.**

**Recommendation 12**

**The Committee recommends that PM&C and Finance establish a repository of legal advices obtained by government agencies, for use by all government bodies where practicable.**

## Rationalising the reporting systems

6.61 The ANAO argued that the Parliament and other stakeholders do not currently have access to accurate and reliable data in relation to expenditure on consultants, because the existence of the three overlapping reporting regimes, with different reporting requirements and timelines, creates so much confusion.<sup>43</sup> The ANAO noted that:

... whilst you are starting with essentially the same fundamental information – there is a contract, what that contract is form 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.<sup>44</sup>

6.62 The ANAO noted that the operation of the three reporting regimes had resulted in inconsistent data being reporting across the different regimes. To the ANAO:

... 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

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43 ANAO, *Transcript of Evidence*, 22 May 2006, pp. 18–19.

44 ANAO, *Transcript of Evidence*, 14 June 2006, p. 15.



information? ... if we are going to have three systems, how could they work together better or should there be fewer systems?<sup>45</sup>

- 6.63 The complexities of the three systems were discussed, Finance suggesting that:

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.<sup>46</sup>

- 6.64 The DVA supported calls for the current reporting regimes being streamlined, arguing that the current system resulted in staff 'erring on the side of caution', thereby resulting in 'over-reporting' as identified by the ANAO audit.<sup>47</sup> PM&C and Finance were also supportive of the three reporting systems being rationalised.<sup>48</sup> For its part, Finance stated that it:

... support[s] the ANAO finding that it becomes very complex and very difficult for agencies to differentiate what information they should be providing for which system.<sup>49</sup>

- 6.65 Finance informed the Committee of progress on improving the functionality of AusTender, formerly known as GaPS.<sup>50</sup> Finance stated that this redevelopment would deliver enhanced functionality, be able to label consultancy contracts over \$100,000 and would provide the sort of information sought under each of the three reporting regimes. Finance's vision for the redeveloped AusTender system was that it would become 'a single point of [procurement] information'.<sup>51</sup> Finance informed the Committee that:

We would expect that the new functionality would allow agencies to put into a single place for expenditures 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 reporting framework. So we would hope that from 1 July

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45 ANAO, *Transcript of Evidence*, 14 June 2006, p. 14.

46 PM&C, *Transcript of Evidence*, 14 June 2006, p. 14.

47 DVA, *Transcript of Evidence*, 22 May 2006, p. 22.

48 PM&C and Finance, *Transcript of Evidence*, 14 June 2006, p. 14.

49 Finance, *Transcript of Evidence*, 22 May 2006, p. 19.

50 Finance, submission no. 2, pp. 3-4.

51 Finance, *Transcript of Evidence*, 22 May 2006, p. 21.

2007 we will have a central reporting framework for the nature of the information that is sought, other than expenditure.<sup>52</sup>

- 6.66 The Committee was interested to learn whether the new AusTender system would alert users when contracts had continued beyond their intended period of operation. Finance advised that, although AusTender would not have the capacity to generate reports of overdue contracts, timeframe data could be entered into the system and interested parties would have access to this information.<sup>53</sup>
- 6.67 Finance stated that the redeveloped AusTender system would report the value of all contracts over \$10,000, along with any subsequent changes to maximum contract value. AusTender would not, however, provide information on expenditure against these contracts, which is currently captured in agencies' annual reports.
- 6.68 Whilst supportive of changes to AusTender, the ANAO cautioned that these changes on their own would not address the fundamental challenges with three overlapping reporting regimes operating simultaneously.<sup>54</sup> The ANAO argued that there is a need for a holistic approach to rationalising the reporting system, and noted that:
- ... 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.<sup>55</sup>
- 6.69 Following the public hearings, Finance provided the Committee with a discussion paper on rationalising the procurement reporting regimes. The discussion paper proposed that the online AusTender facility becomes the single procurement reporting mechanism and subsequently, subject to agreement, the Senate Order and requirements for reporting consultancies in annual reports would be discontinued.
- 6.70 The Committee notes, however, that AusTender would provide information on procurement-related contracts only, whereas the Senate Order requires agencies to report on non-procurement activities such as grants and revenue contracts. The Committee also notes that AusTender will not provide information on actual expenditure against contracts or

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52 Finance, *Transcript of Evidence*, 22 May 2006, pp. 11–12.

53 Finance, *Transcript of Evidence*, 22 May 2006, p. 22.

54 ANAO, *Transcript of Evidence*, 14 June 2006, pp. 16–17.

55 ANAO, *Transcript of Evidence*, 14 June 2006, p. 17.

competitive tendering and contracting advice, which form part of the current annual report requirements.

- 6.71 The Committee notes the inefficiencies caused by overlaps in the three procurement reporting regimes at the time of the audit, and welcomes the subsequent measures to rationalise the procurement reporting regime, subject to the requirements of all stakeholders being met.

