

The Auditor-General  
Audit Report No.4 2012–13  
Performance Audit

**Confidentiality in Government Contracts:  
Senate Order for Departmental and Agency  
Contracts (Calendar Year 2011 Compliance)**

Australian National Audit Office

© Commonwealth of Australia 2012

ISSN 1036-7632

ISBN 0 642 81272 1 (Print)

ISBN 0 642 81271 3 (On-line)

Except for the content in this document supplied by third parties, the Australian National Audit Office logo, the Commonwealth Coat of Arms, and any material protected by a trade mark, this document is licensed by the Australian National Audit Office for use under the terms of a Creative Commons Attribution-NonCommercial-NoDerivatives 3.0 Australia licence. To view a copy of this licence, visit

<http://creativecommons.org/licenses/by-nc-nd/3.0/au/>

You are free to copy and communicate the document in its current form for non-commercial purposes, as long as you attribute the document to the Australian National Audit Office and abide by the other licence terms. You may not alter or adapt the work in any way.

Permission to use material for which the copyright is owned by a third party must be sought from the relevant copyright owner. As far as practicable, such material will be clearly labelled.

For terms of use of the Commonwealth Coat of Arms, visit It's an Honour at <http://www.itsanhonour.gov.au/coat-arms/index.cfm>.

Requests and inquiries concerning reproduction and rights should be addressed to:

Executive Director  
Corporate Management Branch  
Australian National Audit Office  
19 National Circuit  
BARTON ACT 2600

Or via email:

[webmaster@anao.gov.au](mailto:webmaster@anao.gov.au)





Canberra ACT  
20 September 2012

Dear Mr President  
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit across agencies with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure to the Parliament. The report is titled *Confidentiality in Government Contracts: Senate Order for Departmental and Agency Contracts (Calendar Year 2011 Compliance)*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name.

Ian McPhee  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

## AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

For further information contact:  
**The Publications Manager**  
**Australian National Audit Office**  
**GPO Box 707**  
**Canberra ACT 2601**

**Telephone:** (02) 6203 7505  
**Fax:** (02) 6203 7519  
**Email:** [webmaster@anao.gov.au](mailto:webmaster@anao.gov.au)

ANAO audit reports and information about the ANAO are available at our internet address:

<http://www.anao.gov.au>

### **Audit Team**

Emilia Schiavo  
Joe Keshina  
Bill Bonney  
Nathan Williamson

# Contents

Abbreviations and Glossary .....	8
<b>Summary .....</b>	<b>9</b>
Summary .....	11
Introduction .....	11
Audit objective, criteria and scope .....	13
Overall conclusion .....	14
Key findings .....	18
Summary of agencies' responses to the proposed report .....	22
<b>Audit Findings .....</b>	<b>25</b>
1. Introduction .....	27
Background .....	27
Previous ANAO Senate Order audits .....	29
Audit approach .....	29
Report structure .....	31
2. Confidentiality Provisions in Contracts .....	32
Background .....	32
Reported use of confidentiality provisions .....	32
Use of confidentiality provisions in a sample of contracts .....	33
Reporting of confidentiality type and reason .....	44
Communicating the key requirements of the Order .....	46
Parliamentary and ANAO access clauses .....	47
Conclusion .....	49
3. Compliance with the Senate Order Requirements .....	51
Background .....	51
Agencies' Internet contract listings .....	52
Ministers' letters of advice .....	58
Compliance of the audited agencies .....	62
Audited agencies' Senate Order procedures .....	63
Conclusion .....	67
4. The Senate Order and AusTender .....	68
Reporting requirements .....	68
Consistency of the confidential information in Senate Order listings and AusTender reporting .....	69
Comprehensiveness of agencies' Senate Order listings .....	73
Consolidation of procurement reporting and AusTender .....	74
Conclusion .....	76

<b>Appendices .....</b>	<b>79</b>
Appendix 1: Agencies' responses to the proposed report.....	81
Appendix 2: The Senate Order for Departmental and Agency contracts .....	90
Appendix 3: The Confidentiality Test.....	92
Appendix 4: Recommendations from previous ANAO audit reports on the Senate Order (Calendar Year 2004 to Calendar Year 2010 compliance) .....	93
Index.....	95
Series Titles.....	96
Current Better Practice Guides .....	97

## Tables

Table S.1	Summary of FMA Act agencies' compliance with the Senate Order.....	21
Table 2.1	Description of the two confidentiality provision types.....	35
Table 2.2	Contract analysis results: appropriateness of the use and reporting of confidentiality provisions (by agency) .....	37
Table 2.3	Examples of specific and general confidentiality information in contracts .....	38
Table 2.4	Example: contract template schedule item.....	39
Table 2.5	Information that may or may not meet the requirements of the Confidentiality Test.....	41
Table 2.6	Appropriate options for how confidentiality is reported on AusTender .....	45
Table 2.7	Parliamentary and ANAO access clauses.....	49
Table 3.1	Results from the review of all FMA Act agency Internet listings .....	54
Table 3.2	Summary of FMA Act agencies' compliance with the Senate Order.....	55
Table 3.3	Cost of complying with the Senate Order.....	58
Table 3.4	Summary of audited agencies' compliance with the Senate Order.....	62
Table 4.1	Consistency of Senate Order listings and AusTender entries (for sampled contracts) .....	70
Table 4.2	Comparison of reported confidentiality provision type(s) and reason(s) reported across Senate Order listings and AusTender entries .....	71

## Figures

Figure S.1	Contract analysis results: appropriateness of the use and reporting of confidentiality provisions .....	19
Figure 2.1	Proportion of contracts reported as containing confidentiality provisions by audited agencies .....	33
Figure 2.2	Contract analysis results: appropriateness of the use and reporting of confidentiality provisions .....	36
Figure 2.3	Trends in the appropriate use of confidentiality provisions in contracts .....	43
Figure 3.1	Template for contract listing .....	51
Figure 3.2	Timeliness of Internet contract listings for 2011 .....	53
Figure 3.3	Tabling of Ministers' letters on or before the due date for 2007 to 2011 .....	59
Figure 3.4	Timeliness of Ministers' letters of advice for 2011 .....	60

# Abbreviations and Glossary

---

AEC	Australian Electoral Commission
agencies	Agencies include Departments of State, Departments of the Parliament and ‘prescribed agencies’ for the purposes of the <i>Financial Management and Accountability Act 1997</i> .
agency agreement	An agreement between Australian Government agencies that articulates respective agency responsibilities but is not legally enforceable.
ANAO	Australian National Audit Office
AusTender	The Australian Government’s web-based procurement information system.
confidentiality provisions	The clauses of a contract that operate to create the contractual confidentiality obligations for the parties to the contract in respect of information that is specified in the contract.
DHS	Department of Human Services
Finance	Department of Finance and Deregulation
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMG	Financial Management Guidance
FMIS	Financial Management Information System
SEWPaC	Department of Sustainability, Environment, Water, Population and Communities
the Guide	Finance publication— <i>Buying for the Australian Government</i>



# Summary



# Summary

---

## Introduction

1. The Senate Order for Departmental and Agency Contracts (the Senate Order/the Order)<sup>1</sup> was introduced in 2001 to improve public access to information about Australian Government contracting. The main principle on which the Order is based is that parliamentary and public access to government contract information should not be prevented, or otherwise restricted, through the use of confidentiality provisions, unless there is sound reason to do so.

2. Since 2001, successive governments have agreed to comply with the spirit of the Order and its subsequent amendments. Under the Order, Ministers must table letters of advice that all agencies<sup>2</sup> which they administer have placed on the Internet lists of contracts valued at \$100 000 or more, by no later than two calendar months after the end of each financial and calendar year. The lists are to:

- include the details of each contract which has not been fully performed or which has been entered into during the previous 12 months; and
- indicate whether the contracts contain confidentiality provisions or any other requirements of confidentiality, and a statement of reasons for the confidentiality.

3. The Senate Order also requests that the Auditor-General annually examine a number of the contracts listed with confidentiality provisions and report any inappropriate use of these provisions.<sup>3</sup>

4. The Department of Finance and Deregulation (Finance) is responsible for providing agencies with policy guidance on procurement, including confidentiality in procurement and compliance with the Order. The Finance

---

<sup>1</sup> The Senate Order for Departmental and Agency Contracts can be found at Appendix 2.

<sup>2</sup> Agencies meaning those 'agencies' subject to the *Financial Management and Accountability Act 1997*.

<sup>3</sup> In 2003, the Senate Order was amended to request that the Auditor-General provide an annual report to the Senate (by no later than 30 September each year), rather than twice-yearly as specified in the original Order.

publication, Financial Management Guidance (FMG) No.8—*Listing of Contract Details on the Internet (Meeting the Senate Order on Departmental and Agency Contracts)* (January 2004) provides guidance to support agencies in developing their Senate Order Internet listings.<sup>4</sup> Further, Finance’s whole-of-government guidance—*Buying for the Australian Government* (the Guide)—contains the Confidentiality Test, which is designed to assist agencies to determine the appropriate inclusion of confidentiality provisions in contracts.<sup>5</sup> The Test consists of four elements:

- the information to be protected must be specifically identified;
- the information must be commercially ‘sensitive’;
- disclosure would cause unreasonable detriment to the owner of the information or another party; and
- the information was provided under an understanding that it would remain confidential.<sup>6</sup>

5. In addition to the Senate Order, agencies must comply with a range of procurement reporting requirements, including annual reports<sup>7</sup> and AusTender.<sup>8</sup> While there are similarities in the contract information required to be reported, each of the requirements has different reporting criteria and some contract information needs to be presented in multiple formats to meet each reporting obligation.

---

<sup>4</sup> Department of Finance and Deregulation, FMG No.8—*Listing of Contract Details on the Internet (Meeting the Senate Order on Departmental and Agency Contracts)* [Internet]. January 2004, available from <<http://www.finance.gov.au/publications/fmg-series/08-listing-of-contract-details.html>> [accessed 20 February 2012].

<sup>5</sup> Prior to the release of the Guide in May 2011, the Confidentiality Test was contained in FMG No.3—*Guidance on Confidentiality in Procurement* (July 2007).

<sup>6</sup> Department of Finance and Deregulation, *Buying for the Australian Government*, ‘Confidentiality throughout the Procurement Cycle: Practice’ [Internet]. May 2011, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/practice.html>> [accessed 20 February 2012].

<sup>7</sup> Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, ‘Consultants’ [Internet]. 28 June 2012, available from <[http://www.dpmc.gov.au/guidelines/docs/annual\\_report\\_requirements.pdf](http://www.dpmc.gov.au/guidelines/docs/annual_report_requirements.pdf)> [accessed 6 August 2012].

<sup>8</sup> AusTender is the Australian Government’s web-based procurement information system, see <<https://www.tenders.gov.au/>>.

## Audit objective, criteria and scope

6. This audit is the fourteenth in a series of audits and fulfils the Senate's request for the Auditor-General to provide an annual report on compliance with the Order.

7. The audit objective was to assess the appropriateness of the use and reporting of confidentiality provisions in Australian Government contracts for 2011. The audit criteria were:

- (a) *Financial Management and Accountability Act 1997* (FMA Act) agencies comply with the requirements of the Senate Order.
- (b) Confidentiality provisions are used appropriately (with regard to the Confidentiality Test) in a sample of contracts reported to contain confidentiality provisions.
- (c) Audited agencies' reporting of confidentiality information is consistent across Senate Order listings and AusTender reporting.

8. Further, a follow-up of Finance's progress to consolidate procurement reporting requirements and their activities to better communicate to agencies the key requirements of the Order and explain guidance materials, was undertaken.<sup>9</sup>

9. At 31 December 2011, there were 108 FMA Act agencies.<sup>10</sup> Ninety-eight of these agencies were included for the purposes of the overall audit analysis (part (a) of the audit criteria). Of the 10 agencies excluded from the analysis, four are exempt from the Senate Order.<sup>11</sup> The remaining six agencies were

---

<sup>9</sup> See ANAO Audit Report No.2 2011–12, *Confidentiality in Government Contracts: Senate Order for Departmental and Agency Contracts (Calendar Year 2010 Compliance)*, p. 15.

<sup>10</sup> Excludes the Interim Independent Hospital Pricing Authority, which was replaced by the Independent Hospital Pricing Authority.

<sup>11</sup> The Australian Security Intelligence Organisation and the Australian Secret Intelligence Service are exempt from the Senate Order for reasons of national security. The three parliamentary departments are also exempt as they are not Departments of State administered by Ministers. Nevertheless, the Department of the Senate publishes an Internet listing 'in the interest of transparency' and its results have been included in the audit analysis.

created during the second half of 2011<sup>12</sup> and did not publish Senate Order listings on their websites, nor were they included in Ministers' letters.<sup>13</sup>

10. The agencies selected for detailed contract analysis in the audit (parts (b) and (c) of the audit criteria) were: the Australian Electoral Commission; CrimTrac; the Department of Human Services<sup>14</sup>; and the Department of Sustainability, Environment, Water, Population and Communities. Agency selection took into account a number of elements, including: agencies' involvement in previous Senate Order audits; the type of agency (such as Department of State or prescribed agency); and the size and nature of the agencies' contract listings, particularly the proportion of contracts listed with confidentiality provisions.

11. To assess agencies' compliance with the Senate Order, the ANAO had regard to a number of Finance's procurement guidance publications. FMG No.8 was used to review agencies' contract listings and the Guide's Confidentiality Test was followed to assess whether confidentiality provisions were used appropriately for a sample of contracts reported to contain confidentiality information.

## Overall conclusion

12. The primary focus of the Senate Order is to reduce the unjustified inclusion and/or incorrect reporting of confidentiality provisions in government contracts. Such actions can have unintended consequences and reduce transparency through: unduly affecting agency decisions to release contract information; and misinforming the Parliament and the public about government contract information that they can or cannot access.

---

<sup>12</sup> Includes the Australian Institute of Criminology and the Australian Law Reform Commission (both formerly *Commonwealth Authorities and Companies Act 1997* bodies) and the following new agencies: Independent Hospital Pricing Authority; National Health Performance Authority; Australian Skills Quality Authority; and Tertiary Education Quality and Standards Agency.

<sup>13</sup> The Australian Law Reform Commission was included in the Attorney-General's letter as having no contracts valued at over \$100 000 during 2011, however there was no corresponding statement on their website.

<sup>14</sup> During 2011, the *Human Services Legislation Amendment Act 2011* integrated the services of Centrelink and Medicare Australia into the Department of Human Services (1 July 2011). DHS advised that from 4 October 2011, the separate systems and procurement policies maintained by the newly integrated services were replaced by a new single SAP system, along with new single procurement policies, procedures, and business processes.

13. The 2011 Senate Order listings contained 39 223 contracts for goods and services totalling \$156.5 billion, of which 2391 contracts (six per cent) were reported as containing confidentiality provisions. The reported use of confidentiality provisions by agencies was lower than in 2010 (nine per cent), and continues to reflect a significant decline from the 24 per cent reported in 2001, the year the Order was introduced.<sup>15</sup>

14. Of the 98 FMA Act agencies examined, 91 per cent published contract listings, or a statement that no contracts had been entered into by the agency, on the Internet by the due date of 29 February 2012. In contrast, Ministers' letters covering just over half of the agencies were tabled on time. This result continues the decline in the timeliness of tabling Ministers' letters since 2008, when 83 per cent of letters were tabled on time.

15. Despite a decline in the proportion of contracts reported as containing confidentiality provisions, specific confidentiality provisions in contracts continue to be incorrectly used and reported. The ANAO's examination of a sample of 132 contracts reported to contain confidentiality provisions showed that 51 contracts (39 per cent) passed the Confidentiality Test, while 81 contracts (or 61 per cent) were incorrectly reported as containing confidentiality provisions.

16. Incorrect reporting can often be attributed to one of two factors: agencies misclassifying information as confidential, and/or misinterpreting general confidentiality provisions as meeting the Confidentiality Test. The audit results showed that:

- Pricing information was the most common type of contract information misclassified and incorrectly reported as confidential. More than three-quarters of the 59 contracts listed as containing confidential pricing information did not contain commercially sensitive pricing information when assessed against the Confidentiality Test.
- Twenty-three of the sample contracts only contained general confidentiality provision(s) and as such did not indicate the specific contract information to be protected, as required by the Test.

---

<sup>15</sup> Since 2009, the proportion of contracts with confidentiality provisions is representative of contracts listed by all FMA Act agencies rather than a sample of contracts from audited agencies.

17. The 2011 results demonstrate that irrespective of whether an agency has centralised or decentralised procurement management arrangements, there remains scope to: implement more rigorous quality assurance processes for reporting information about confidentiality provisions in contracts; and better tailor guidance materials to support procurement models.

18. Finance plays a central role in supporting agencies by developing whole-of-government procurement guidance and communicating the key requirements of the Order. Recent activity in this area has included the 2011 release of the Guide, a web-based whole-of-government guide on procurement which rationalised a number of procurement guidance materials. Finance is proposing to review agency uptake of the Guide in 2012. The review will provide Finance with agencies' views on the useability of the Guide, and the opportunity to identify whether it has contributed to increasing the understanding of agency staff on the appropriate use and reporting of confidentiality provisions in contracts.

19. While acknowledging that agencies have multiple procurement reporting requirements, it is important that the accuracy and consistency (where applicable) of the information reported improves. For contracts in the ANAO's sample that had a corresponding AusTender entry, a comparison of the information reported in AusTender with the contract review results showed that confidential information was incorrectly reported in AusTender for approximately 60 per cent of the entries. The examination of AusTender data also indicated that agencies' Senate Order listings may not include all contracts required to be reported by the Order, and that agencies could make better use of AusTender information to identify entries for Senate Order listings.

20. The ANAO has previously observed that multiple procurement reporting requirements are a factor influencing the shortcomings in both Senate Order and AusTender contract reporting. Accordingly, two ANAO audits have recommended that opportunities to consolidate procurement reporting requirements be examined.<sup>16</sup> The results in this audit show that there

---

<sup>16</sup> ANAO Audit Report No.27 2005–06, *Reporting of Expenditure on Consultants*, p. 24; and ANAO Audit Report No.7 2010–11, *Confidentiality in Government Contracts: Senate Order for Departmental and Agency Contracts (Calendar Year 2009 Compliance)*, p. 51.



continues to be merit in rationalising procurement reporting and that it is timely for further action to be taken towards that end.

21. Finance supports consolidating procurement requirements and, since 2005, has advocated for AusTender to be the sole procurement reporting requirement for Australian Government agencies.<sup>17</sup> The Government has also previously indicated support for the requirements of the Senate Order to be met through an improved AusTender system.<sup>18</sup> More recently, the Finance discussion paper on the Commonwealth Financial Accountability Review raised the significant cost, both in terms of time and resources, involved with reporting requirements that overlap and suggested that it may be timely to undertake a cost-benefit analysis of existing requirements to inform a possible rationalisation.<sup>19</sup>

22. While Finance continues to investigate the use of AusTender as the single procurement reporting tool for agencies, the department has progressed consolidating procurement reporting obligations. Recently, the annual reporting requirements for consultancy contracts were amended to remove the requirement for agencies to provide a list of consultancy contracts (valued at \$10 000 or more) in their annual reports from the 2011–12 reporting period onwards.<sup>20</sup> Consultancy contract information will instead only be included at an aggregate level, with a note referring readers to AusTender for further information on individual consultancies.

23. Progress to consolidate procurement reporting requirements will allow agencies to focus their attention on fulfilling a single reporting requirement. However, there are differences in the scope of contract arrangements reported through the Senate Order and on AusTender. For example, Senate Order lists

---

<sup>17</sup> 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. 33; and ANAO Audit Report No.7 2010–11, op. cit., p. 20.

<sup>18</sup> Australian Government, *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)*, released 26 August 2008, pp. 2–3.

<sup>19</sup> Department of Finance and Deregulation, *Commonwealth Financial Accountability Review: Is Less More? Towards Better Commonwealth Performance: Discussion Paper*, March 2012, p. 76.

<sup>20</sup> Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, 'Consultants', op. cit.

include non-procurement related contracts such as those for the provision of grants. Therefore, any consolidation of reporting arrangements should take into account these differences and not diminish the existing focus on transparency in reporting of confidential information in Australian Government contracting.

24. Further, rationalising procurement reporting obligations in isolation may not necessarily result in more accurate and timely contract reporting. Regardless of the procurement reporting obligations, this audit highlights that there remains scope for agencies to:

- better tailor guidance and training materials to help ensure that key processes, such as identifying the appropriate use of confidentiality provisions (particularly pricing information and the difference between general and specific confidentiality provisions), are commonly understood and applied; and
- implement enhanced processes to support data capture, reporting and quality assurance.

25. There also remain opportunities for all parties involved to ensure that appropriate arrangements are in place to achieve the timely publication of Senate Order lists on the Internet and the tabling of Ministers' letters.

## Key findings

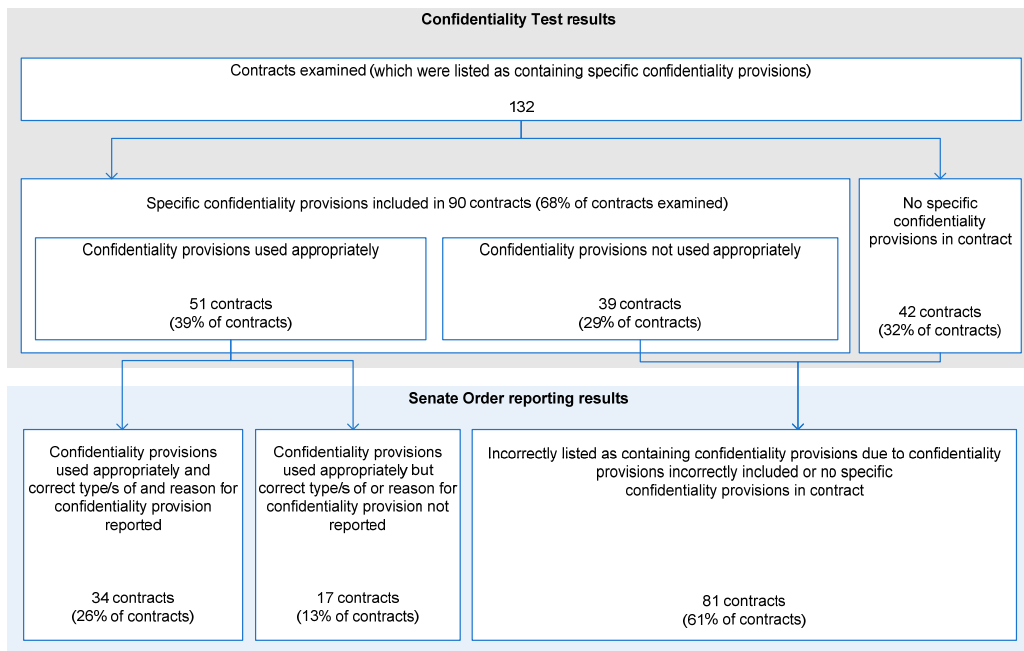
### Confidentiality provisions in contracts (Chapter 2)

26. Agencies reported 39 223 contracts (totalling \$156.5 billion) in their 2011 contract listings, 2391 of which were reported as containing confidentiality provisions. The ANAO examined 132 of the 2391 contracts from the four audited agencies.

27. As illustrated in Figure S.1, 42 of the 132 contracts (32 per cent) did not contain specific confidentiality provisions and 39 contracts (29 per cent) were assessed as including specific confidentiality provisions that were not justified having regard to the Confidentiality Test. These 81 contracts were incorrectly listed in the Senate Order as containing confidentiality provisions. Of the 51 contracts (39 per cent) in the audit sample that were correctly listed as containing confidentiality provisions, 34 (26 per cent of the total contracts examined) also reported the correct type(s) of, and reason(s) for, confidentiality.

**Figure S.1**

**Contract analysis results: appropriateness of the use and reporting of confidentiality provisions**



Source: ANAO analysis.

28. The misclassification of pricing information as confidential information continues to be a common finding. Of the contracts reported to contain confidential costing/pricing information, a large proportion (78 per cent) were assessed as not containing commercially sensitive costing/pricing information with regard to the Confidentiality Test.

29. The audit results show that there is scope for agencies to more accurately use specific confidentiality provisions and report confidential information for Senate Order purposes. The audited agencies should consider the value of reviewing their approaches for capturing and recording confidential contract information in conjunction with strengthening quality assurance processes and guidance materials. In this regard, for the contracts examined, the inclusion and appropriate completion of a template clause or schedule item to record confidentiality information significantly increased the likelihood that the contract contained a specific confidentiality provision.

30. Irrespective of the terms of a contract, agencies may still be required to disclose confidential contract-related information to a parliamentary

committee or the ANAO. A high proportion of the contracts sampled contained appropriately worded parliamentary disclosure clauses (over 90 per cent) and ANAO access clauses (80 per cent). A factor which contributed to this result was the inclusion of these disclosure and access clauses in the audited agencies' standard contract templates.

### **Compliance with the Senate Order requirements (Chapter 3)**

**31.** The majority of agencies (91 per cent) published Senate Order contract listings by the due date of 29 February 2012. As at 30 June 2012, five agencies were yet to publish a listing. Over one-third of all the listings published complied with all elements of the Order, a similar result to 2010.

**32.** As illustrated in Table S.1, the ANAO's review of the contract listings found that a high proportion of the listings included information consistent with three requirements of the Senate Order, namely paragraphs 2(b)—contract details, 2(c)—confidentiality information and 2(d)—compliance information. However, 44 agencies included a total of 344 contracts that did not meet the information requirements of 2(a) of the Order. Errors in this area included listing: agency agreements<sup>21</sup>; contracts outside the reporting period; and contracts valued under \$100 000.

---

<sup>21</sup> FMG No.8 states that one of the elements that must be present for a contract to exist is 'an intention to create legal relations'. An agency agreement is an agreement between Australian Government agencies that articulates respective agency responsibilities but is not legally enforceable due to both agencies being part of the same legal entity—i.e. the Commonwealth.

**Table S.1****Summary of FMA Act agencies' compliance with the Senate Order**

	Compliance with Senate Order paragraph:			
	2(a) – contracts required to be reported	2(b) – contract details	2(c) – confidential information	2(d) – compliance information
Number of agencies compliant	49	83	91	74
Number of agencies non-compliant	44	10	2	19
Agencies that did not publish a listing (non-compliant with all of the requirements)	5	5	5	5
<b>Total agencies</b>	<b>98</b>	<b>98</b>	<b>98</b>	<b>98</b>

Source: ANAO analysis.

33. In contrast to the results for the contract listings, the proportion of Ministers' letters tabled by the due date was considerably lower and represents a continuation of the decline since 2008 in the timeliness of tabling Ministers' letters of advice. Letters covering 57 per cent of agencies were tabled by 29 February 2012. Letters for a further 33 agencies were tabled within the first week of March, resulting in 91 per cent of agencies being covered in Ministers' letters tabled by the due date, or within the following week. As at 30 June 2012, letters for two agencies were yet to be tabled.

34. Ministers' letters are an accountability mechanism required under the Senate Order and their timely tabling informs the Parliament and the public that contract listings have been published on the Internet. As such, all parties involved in this process should ensure that appropriate arrangements are in place to achieve this requirement of the Order.

35. Based on the review of audited agencies' Senate Order listings and their internal guidance and training, there is scope for agencies to:

- better tailor their guidance and training materials to support their procurement management arrangements, including incorporating the

requirements of the Order and, where relevant, providing information suitable to assist staff infrequently involved in procurement; and

- implement more rigorous quality assurance procedures to help identify contract reporting errors prior to publishing the listings on the Internet.

#### **The Senate Order and AusTender (Chapter 4)**

36. Of the contracts in the Senate Order audit sample that had a corresponding AusTender entry, a comparison of the confidentiality information reported across both requirements showed:

- significant inconsistencies in the information reported, including less than half of the contracts with corresponding entries being reported with matching confidentiality information for both confidentiality provision type(s) and reason(s) for confidentiality; and
- that for over half of the contracts, the confidentiality information reported in both AusTender and the Senate Order listings was incorrect when compared to the results of the ANAO's contract review.

37. The results of the ANAO's examination of AusTender data indicated that agencies' Senate Order listings may not include all contracts required to be reported by the Order. Thirteen contracts that had been reported in AusTender as containing confidentiality provisions had not been included in three of the audited agencies' respective 2011 listings. An assessment of the confidential information in these contracts also showed that five of the contracts appropriately contained confidentiality provisions when assessed against the Confidentiality Test. This result indicates that agencies could make better use of AusTender to identify contracts required to be reported, which may not have otherwise been captured through their listing compilation processes.

#### **Summary of agencies' responses to the proposed report**

38. The audited agencies provided the following summary responses, with each agency's full response included at Appendix 1.

#### **Australian Electoral Commission**

The AEC acknowledges the findings of the audit, and will carefully consider the ANAO's conclusions and suggestions in the context of its current procurement and contract management review.

## **CrimTrac**

CrimTrac notes that, while no specific findings were made in the Report, there were general issues identified regarding over-reporting of Confidentiality Clauses and mal-alignment of reporting on AusTender.

CrimTrac has introduced stronger governance measures aligning the capturing and reporting of confidentiality provisions. CrimTrac is committed to implementing measures to further improve its performance in this area, including providing specific training, refining quality assurance processes to improve data capture and establishing processes to ensure reporting is undertaken in a timely manner.

## **Department of Finance and Deregulation**

Finance welcomes the findings of the ANAO audit and notes the continued decline in the inappropriate use of confidentiality clauses in agency contracts. The audit highlights the improvements agencies have made in reducing the reporting of confidentiality clauses from 26 per cent in 2002, to six per cent in 2012.

The audit highlights, among other things, the challenge faced by agencies in complying with competing reporting requirements. As shown in the audit findings, this is resulting in agencies over-reporting procurement contracts in the Senate Order and is reducing the overall transparency of procurement activities.

In Finance's view, the Senate Order has achieved its goal to improve the transparency of procurement contracts and the use of confidentiality provisions. As part of the Commonwealth Procurement Rules (CPRs), agencies are required to report all procurement contracts valued above \$10,000 on AusTender within 42 days of entering the contract and to indicate if there are confidentiality provisions and the reason for those provisions. Instances of non-compliance with the reporting requirement are now included in agencies' annual certificates of compliance.

## **Department of Human Services**

The Department of Human Services agrees with the findings outlined in the report, and has implemented changes that address these findings.

## **Department of Sustainability, Environment, Water, Population and Communities**

The Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) acknowledges the observations of the ANAO and accepts the identification of areas for improvement.

SEWPaC has implemented a range of improvements since the release of the report. These initiatives include but are not limited to:

- guidance materials in the establishment of government contracts and inclusion of confidentiality tests;
- procedures and processes for the compiling, quality assurance checks and reporting of Senate Order contracts;
- education and information availability on the use of confidentiality in government contracts; and
- redrafting of specific contract templates to ensure compliance.

The department has implemented changes in the area of reporting of water entitlement contracts which were subject to a Request for Tender process post June 2011 and will be fully reported in subsequent reporting activities.



# Audit Findings



# 1. Introduction

---

*This chapter provides background information on the Senate Order and explains the audit approach.*

## Background

**1.1** The Senate Order for Departmental and Agency Contracts (the Senate Order/the Order)<sup>22</sup> was introduced in 2001 to improve public access to information about Australian Government contracting. The main principle on which the Order is based is that parliamentary and public access to government contract information should not be prevented, or otherwise restricted, through the use of confidentiality provisions, unless there is sound reason to do so.

**1.2** Since 2001, successive governments have agreed to comply with the spirit of the Order and its subsequent amendments. To accord with the Order, Ministers must table letters of advice that all agencies<sup>23</sup> which they administer have placed on the Internet lists of contracts valued at \$100 000 or more, by no later than two calendar months after the end of each financial and calendar year. The lists are to:

- include the details of each contract which has not been fully performed or which has been entered into during the previous 12 months; and
- indicate whether the contracts contain confidentiality provisions or any other requirements of confidentiality, and a statement of reasons for the confidentiality.

**1.3** The Senate Order also requests that the Auditor-General annually examine a number of the contracts listed with confidentiality provisions and report any inappropriate use of these provisions.<sup>24</sup>

---

<sup>22</sup> The Senate Order for Departmental and Agency Contracts can be found at Appendix 2.

<sup>23</sup> Agencies meaning those 'agencies' subject to the *Financial Management and Accountability Act 1997*.

<sup>24</sup> In 2003, the Senate Order was amended to request the Auditor-General to provide an annual report to the Senate (by no later than 30 September each year), not twice-yearly as specified in the original Order.

## Senate Order guidance

1.4 The Department of Finance and Deregulation (Finance) is responsible for providing agencies with policy guidance on procurement, including confidentiality in procurement and compliance with the Order. This guidance is set out in:

- Financial Management Guidance (FMG) No.8—*Listing of Contract Details on the Internet (Meeting the Senate Order on Departmental and Agency Contracts)*: articulates the rationale for the Order, outlines its requirements and is designed to provide guidance to support agencies in developing their Senate Order Internet listings.
- *Buying for the Australian Government* (the Guide): contains advice on managing confidentiality issues throughout the procurement process, and includes the Confidentiality Test (the Test)<sup>25</sup> which is designed to assist agencies to determine the appropriate inclusion of confidentiality provisions in contracts.

## AusTender

1.5 In addition to the Senate Order, agencies must comply with a range of procurement reporting requirements, including annual reports<sup>26</sup> and AusTender.<sup>27</sup> AusTender is administered by Finance and is the Australian Government's publicly accessible, web-based procurement information system. All *Financial Management and Accountability Act 1997* (FMA Act) agencies are required to use AusTender and, as such, the system is a key means of promoting transparency and accountability in Australian Government procurement.

---

<sup>25</sup> Department of Finance and Deregulation, *Buying for the Australian Government*, 'Confidentiality throughout the Procurement Cycle: Practice' [Internet]. May 2011, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/practice.html>> [accessed 20 February 2012].

<sup>26</sup> Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, 'Consultants' [Internet]. 28 June 2012, available from <[http://www.dPMC.gov.au/guidelines/docs/annual\\_report\\_requirements.pdf](http://www.dPMC.gov.au/guidelines/docs/annual_report_requirements.pdf)> [accessed 6 August 2012].

<sup>27</sup> The AusTender Internet page is <<https://www.tenders.gov.au/>>.

**1.6** Through AusTender, agencies are required to report all contracts that are valued at \$10 000 or above,<sup>28</sup> and similar to the Senate Order, must indicate whether a contract contains confidentiality provisions.

**1.7** While there are similarities in the contract information required to be reported in Senate Order listings and AusTender, the criteria for reporting contracts differ and some contract information needs to be presented in multiple formats to meet each reporting requirement.

## Previous ANAO Senate Order audits

**1.8** This audit is the fourteenth in a series of audits and fulfils the Senate's request for the Auditor-General to provide an annual report on agencies' compliance with the Order. Recommendations from previous audit reports on the Senate Order are listed in Appendix 4.

**1.9** While last year's audit did not make a recommendation, the report highlighted that for improvement in agencies' use and reporting of confidentiality provisions to occur:

...there would be benefit in Finance, in conjunction with agencies, exploring means to better communicate key requirements and explain areas of guidance often misinterpreted by agency staff.<sup>29</sup>

## Audit approach

### Audit objective, criteria and scope

**1.10** The audit objective was to assess the appropriateness of the use and reporting of confidentiality provisions in Australian Government contracts for 2011. The criteria used to assess agencies' compliance with the Senate Order were:

- (a) FMA Act agencies comply with the requirements of the Senate Order.

---

<sup>28</sup> Including Commonwealth contracts, standing offer arrangements and agency agreements, or amendments thereto.

<sup>29</sup> ANAO Audit Report No.2 2011–12, *Confidentiality in Government Contracts: Senate Order for Departmental and Agency Contracts (Calendar Year 2010 Compliance)*, p. 15.

- (b) Confidentiality provisions are used appropriately (with regard to the Confidentiality Test) in a sample of contracts reported to contain confidentiality provisions.
- (c) Audited agencies' reporting of confidentiality information is consistent across Senate Order listings and AusTender reporting.

**1.11** Further, a follow-up of Finance's progress to consolidate procurement reporting requirements and their activities to better communicate to agencies the key requirements of the Order and explain guidance materials, was undertaken.<sup>30</sup>

**1.12** The agencies selected for the audit were: the Australian Electoral Commission (AEC); CrimTrac; the Department of Human Services (DHS); and the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC). Agency selection took into account a number of elements, including: agencies' involvement in previous ANAO Senate Order audits; the type of agency (such as Department of State or prescribed agency); and the size and nature of the agencies' contract listings, particularly the proportion of contracts listed with confidentiality provisions.

## **Audit methodology**

**1.13** To assess agencies' compliance with the Senate Order, the ANAO used a number of Finance's procurement guidance publications. FMG No.8 was used to review agencies' contract listings and the Guide's Confidentiality Test was followed to assess whether confidentiality provisions were used appropriately for a sample of contracts reported to contain confidentiality information.

**1.14** The sample consisted of 132 contracts and was selected from the four agencies' 2011 listings. This consisted of all the contracts reported as containing specific confidential information in AEC's and CrimTrac's listings and a sample of contracts in DHS' and SEWPaC's listings. The number of contracts reviewed for each of the agencies was:

- 25 from AEC;

---

<sup>30</sup> ANAO Audit Report No.2 2011–12, op. cit.

- eight from CrimTrac;
- 45 from DHS; and
- 54 from SEWPaC.

**1.15** The majority of contracts in the audit sample have not been reviewed previously. However, given this is the fourteenth audit of the Senate Order the sample consists of a small number of contracts that were part of previous audit samples as well as contracts entered into under Head Agreements (formed under the same panel arrangement) in operation over several reporting periods.<sup>31</sup> Unless amendments were made to the confidential information reported and/or to the confidentiality provisions, the results for such contracts largely reflected that of previous reviews.

**1.16** The audit was conducted in accordance with the ANAO's auditing standards at a cost to the ANAO of approximately \$207 500.

## Report structure

<b>Chapter 2</b> Confidentiality Provisions in Contracts	Examines the appropriateness of the use and reporting of specific confidentiality provisions in a sample of Australian Government contracts.
<b>Chapter 3</b> Compliance with the Senate Order Requirements	Examines compliance with the Senate Order requirements to publish an agency listing and table a Minister's letter for 2011. The audited agencies' Senate Order reporting procedures were also examined.
<b>Chapter 4</b> The Senate Order and AusTender	Examines the audited agencies' reporting of confidentiality information in Senate Order listings and AusTender. Also reports on Finance's activities to progress the consolidation of procurement reporting and further improve AusTender functionality.

---

<sup>31</sup> Twenty-three of the 45 DHS sampled contracts commenced in 2011, but were entered into under Head Agreements formed under the same panel arrangement established in 2007.

## 2. Confidentiality Provisions in Contracts

---

*This chapter examines the appropriateness of the use and reporting of specific confidentiality provisions in a sample of Australian Government contracts.*

### Background

**2.1** The Senate Order is underpinned by the principle that Parliament and the public should not be prevented from accessing contract information unless there is a sound basis for determining that the information should be kept confidential. Readily available information on government contracts for property and services can lead to better results for the Australian Government and the public.

**2.2** The need for confidentiality should be assessed on a case-by-case basis and balanced against public accountability expectations and requirements. To determine whether confidentiality provisions have been used and reported appropriately, the ANAO examined:

- the trend in the reported use of confidentiality provisions from agencies' Senate Order contract listings;
- the use of confidentiality provisions for a sample of the audited agencies' contracts; and
- reporting of the confidentiality type and reason for the contract sample.

**2.3** The ANAO also examined the audited agencies' use of clauses relating to parliamentary and ANAO access for the sample of contracts.

### Reported use of confidentiality provisions

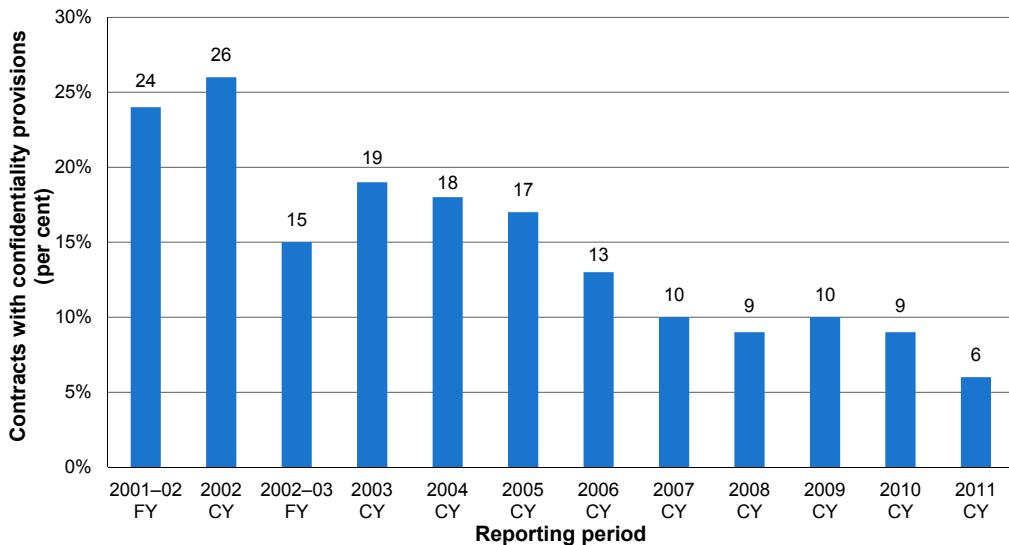
**2.4** The 2011 Senate Order listings contained 39 223 contracts for goods and services totalling \$156.5 billion, of which 2391 contracts (six per cent) were reported as containing confidentiality provisions. At an agency level, there was variability in the proportion of contracts reported as containing confidentiality provisions. While 65 agencies reported that six per cent or less of their contracts contained confidentiality provisions, six agencies reported that one-third or more of their contracts contained confidentiality provisions.



2.5 Figure 2.1 shows the proportion of contracts containing specific confidentiality provisions, as reported by agencies, since the Senate Order began in 2001.<sup>32</sup> The proportion of agency contracts reported as containing confidentiality provisions in 2011 was less than in 2010 (nine per cent, or 3397 of the 39 116 contracts), and continues to reflect a significant decline since the Order was introduced.

**Figure 2.1**

**Proportion of contracts reported as containing confidentiality provisions by audited agencies**



Note: FY: Financial Year; CY: Calendar Year.

Source: ANAO analysis.

## Use of confidentiality provisions in a sample of contracts

2.6 There are two broad types of confidentiality provisions (or clauses) that agencies can use in contracts to keep information confidential—general confidentiality provisions and specific confidentiality provisions. While general confidentiality provisions often restate legislative obligations for confidentiality such as the *Privacy Act 1988* or secrecy provisions, specific

<sup>32</sup> Since 2009, the proportion of contracts with confidentiality provisions is representative of contracts listed by all FMA Act agencies rather than a sample of contracts from audited agencies.

confidentiality provisions are used to protect information that is part of the contract or information obtained or generated in performing the contract.<sup>33</sup> A specific confidentiality provision is considered to be used appropriately if it meets the Confidentiality Test outlined in the Guide. The Test consists of four elements:

- Criterion 1: the information to be protected must be specifically identified.
- Criterion 2: the information must be commercially 'sensitive'.
- Criterion 3: disclosure would cause unreasonable detriment to the owner of the information or another party.
- Criterion 4: the information was provided under an understanding that it would remain confidential.<sup>34</sup>

**2.7** For Senate Order reporting purposes, where contract information meets the Test, agencies are required to report on the confidentiality provision type(s)—'contract contents' or 'contract outputs'<sup>35</sup>, and provide a statement of the reason(s) for confidentiality. Table 2.1 outlines the differences between the two confidentiality provision types and provides examples of how they may be used.

---

<sup>33</sup> Department of Finance and Deregulation, 'Confidentiality throughout the Procurement Cycle: Principles' [Internet]. May 2011, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html>> [accessed 20 February 2012].

<sup>34</sup> The complete Confidentiality Test is included in Appendix 3.

<sup>35</sup> Department of Finance and Deregulation, FMG No.8, 'Reporting of Confidentiality Agreements that are Negotiated After Signing of the Contract', op. cit.

**Table 2.1****Description of the two confidentiality provision types**

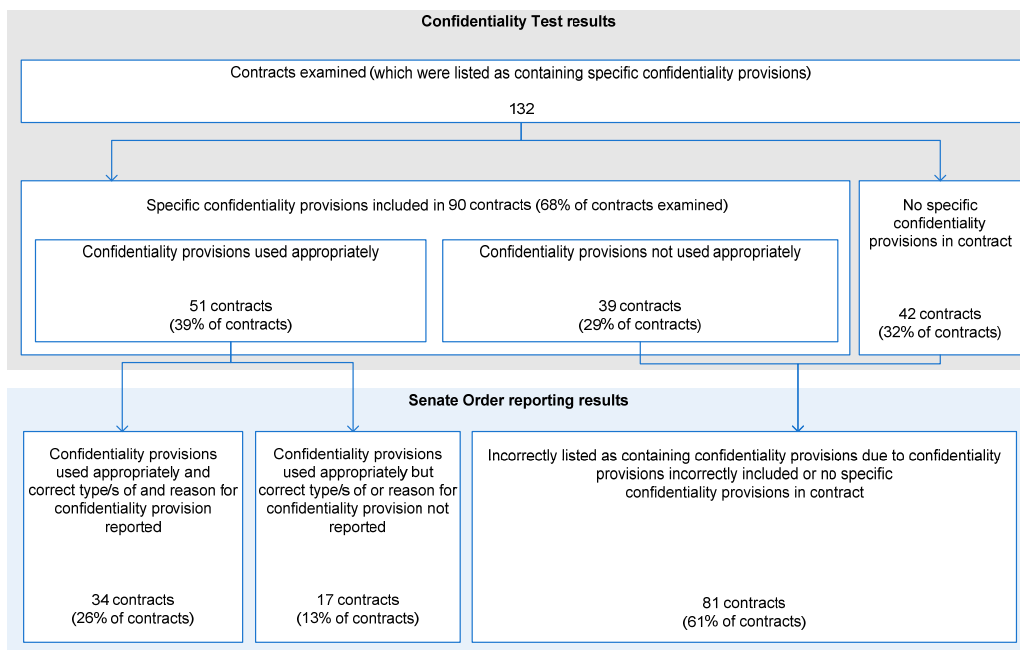
Confidentiality provision type	Description	Example of the use and reporting of the provision type
Contract contents	Relates to specific confidential information that is contained in the contract.	Contract: contains internal costing information. Listing details: <ul style="list-style-type: none"> <li>• 'Yes' for 'contract contents' provision type; and</li> <li>• costing/profit information as the stated reason.</li> </ul>
Contract outputs	Relates to confidential information obtained or generated in performing the contract.	Contract: specifies the results of a survey (or a research report) to be generated as part of the contract's performance. Listing details: <ul style="list-style-type: none"> <li>• 'Yes' for 'contract outputs' provision type; and</li> <li>• intellectual property as the stated reason.</li> </ul>

Source: ANAO representation of information in Finance's *Buying for the Australian Government*, 'Confidentiality throughout the Procurement Cycle'.

**2.8** To assess the appropriateness of the use and reporting of confidentiality provisions in agencies' 2011 Senate Order listings, the ANAO reviewed a sample of 132 of the 2391 contracts listed as containing confidentiality provisions. The ANAO's sample was selected from the four audited agencies' listings and the results of the appropriateness of the use (Confidentiality Test results) and the reporting (Senate Order reporting results) of confidentiality provisions are shown in Figure 2.2.

**Figure 2.2**

**Contract analysis results: appropriateness of the use and reporting of confidentiality provisions**



Source: ANAO analysis.

**2.9** The results for each of the four audited agencies are shown in Table 2.2.

**Table 2.2****Contract analysis results: appropriateness of the use and reporting of confidentiality provisions (by agency)**

Agency	Number of contracts reviewed	Passed Criterion 1 of the Test		Passed the Confidentiality Test		Correct confidentiality type and reason listed	
		No.	(%)	No.	(%)	No.	(%)
AEC	25	21	84.0	16	64.0	12	48.0
CrimTrac	8	6	75.0	5	62.5	5	62.5
DHS	45	42	93.3	14	31.1	7	15.6
SEWPaC	54	21	38.9	16	29.6	10	18.5
<b>Total</b>	<b>132</b>	<b>90</b>	<b>68.2</b>	<b>51</b>	<b>38.6</b>	<b>34</b>	<b>25.8</b>

Source: ANAO analysis.

**Confidential information in the contract is specifically identified (Criterion 1 and Criterion 4 of the Confidentiality Test)**

**2.10** For a contract to be assessed as meeting Criterion 1 of the Test, at least one contract provision must specifically identify the information to be protected.<sup>36</sup> As shown in Table 2.2, 90 of the 132 contracts (68 per cent) examined met Criterion 1, and were therefore considered to contain specific confidentiality provisions. The remaining contracts either contained general confidentiality provisions (23 contracts) or did not contain any confidentiality provisions (19 contracts).<sup>37</sup>

**2.11** In identifying and reporting confidentiality information, agencies continue to misinterpret general confidentiality provisions as meeting the Confidentiality Test. General confidentiality provisions do not meet the Test as they do not indicate the specific information to be protected. Based on the contracts reviewed, Table 2.3 provides some examples of the differences between specific and general confidentiality information.

<sup>36</sup> The ANAO considers Criterion 4 to be met if Criterion 1 is met. This is based on an assumption that where a contract is signed by both parties and specific information in the contract has been nominated, it is assumed that both parties have entered into the contract on the understanding that the information is to remain confidential.

<sup>37</sup> Fifteen of the contracts found not to contain confidentiality provisions were for the purchase of water entitlements.

**Table 2.3**

**Examples of specific and general confidentiality information in contracts**

Specific	General
<ul style="list-style-type: none"> <li>• Price discount information</li> <li>• Specific contract information, related to statutory secrecy provisions</li> <li>• Agency’s security arrangements, including floor plans</li> <li>• Cultural secrets relating to assessment of culturally significant sites</li> <li>• The contractor’s tools, proprietary methodologies and processes</li> </ul>	<ul style="list-style-type: none"> <li>• All information and Commonwealth material</li> <li>• All terms and conditions of contract/all contract material</li> <li>• All pre-existing Intellectual Property of the contract</li> <li>• Information or documents that are marked confidential or are by their nature confidential</li> </ul>

Source: ANAO, from audited agencies’ contracts.

**2.12** There are two main processes that contribute to contracts being correctly listed in the Senate Order as containing specific confidential information:

- recording specific information that is to be kept confidential in the contract, where appropriate; and
- accurately identifying the presence of specific confidentiality provisions in contracts when recording contract data in agencies’ systems and when preparing the listing.

*Recording specific information that is to be kept confidential in the contract*

**2.13** Past audits have highlighted that agencies with contract templates which contain a section to prompt staff to identify and record specific confidentiality information are more likely to meet Criterion 1 of the Confidentiality Test. An example of a contract template schedule item to record specific confidential information is shown in Table 2.4.

Table 2.4

**Example: contract template schedule item**

Contract Provisions/Schedules/Attachments (contract contents)			
Item	Reason for confidentiality	Period of confidentiality	Reason for Period of Confidentiality
Enter Agency or Service Provider information	Select a reason(s)	Enter period	Provide reason(s)

Contract related material (contract outputs)			
Item	Reason for confidentiality	Period of confidentiality	Reason for Period of Confidentiality
Enter Agency or Service Provider information	Select a reason(s)	Enter period	Provide reason(s)

Source: ANAO.

**2.14** Three of the audited agencies have standard contract templates which contain a clause or schedule item designed to prompt staff to record any specific confidentiality information.<sup>38</sup> DHS' and AEC's templates also prompt staff to record the reason why confidential information was specified in the schedule. In addition, AEC's contract templates contain explanatory text prompting staff to refer to the Guide's section on *Confidentiality throughout the Procurement Cycle*. In 2011, all of DHS' and AEC's contracts that passed Criterion 1 contained a specific area or schedule for confidential information.

**2.15** As the results for AEC and DHS show, templates that contain a specific clause or item assist agency staff to record a contract's specific confidential information. Adopting this approach can also present an important reference point for staff with reporting responsibilities and help them to determine whether or not a contract should be reported as containing specific confidentiality provisions.

---

<sup>38</sup> CrimTrac advised that due to the size of the agency and the relatively small number of procurement activities the agency has not developed standard contract templates. CrimTrac either 'piggy backs' off other larger departments' agreements, or engages the agency's Legal and Policy Section and/or the Australian Government Solicitor to develop contracts as required.

**2.16** That said, the use of such a section does not necessarily result in accurate reporting in the Senate Order. The contract review found examples where a template clause or schedule item had been correctly completed as 'nil' or 'None specified', indicating that there was no confidential information in the contract. When these contracts were reported for the purposes of the Senate Order however, they were reported as containing confidential information. There remains scope for agencies to highlight to staff the importance of referring to and capturing the information recorded in such sections for reporting purposes. This will also contribute to the accuracy of confidentiality information in agencies' Senate Order listings by better aligning the information specified in the contract with what is being reported (see Chapter 3 for further discussion regarding agencies' processes to capture, collate and quality assure Senate Order information).

*Accurately identifying the presence of specific confidentiality provisions in contracts for the data used to prepare the listing*

**2.17** Agencies record confidentiality details for their contracts in a number of systems to fulfil various reporting requirements, including Senate Order listings and AusTender reporting. Generally, these details are first recorded in an agency's Financial Management Information System (FMIS) and/or Contract Register. Subsequently, this information is often uploaded onto AusTender.

**2.18** Agencies adopt different approaches to assigning responsibility for recording confidential contract information in their systems. These approaches range from centralised models, such as a central procurement unit, to devolved arrangements, whereby staff in the area managing the contract are responsible for recording the information. Two of the audited agencies, AEC and DHS, adopted largely centralised approaches, while the other two agencies had more decentralised arrangements.

**2.19** To compile their 2011 lists, SEWPaC and CrimTrac used information recorded in their FMISs. SEWPaC also used contract information extracted from AusTender, while CrimTrac used data from the previous Senate Order list. DHS used AusTender as the primary data source for their 2011 listing and AEC predominantly used details from the previous listing.

**2.20** Irrespective of the approach and whether recording of confidentiality information was undertaken centrally or otherwise, there was variability in the accuracy of the contract details reported across the four listings. This result highlights the importance of:



- confidentiality provisions being clearly documented in the contract;
- agencies providing tailored guidance and/or training to relevant staff, particularly where more decentralised arrangements are adopted; and
- agencies having a greater focus on the quality assurance of the contract information used to compile listings.

**Information is commercially sensitive and would cause detriment if made public (Criterion 2 and Criterion 3 of the Confidentiality Test)**

2.21 The Confidentiality Test states that for information to be considered confidential, it must be commercially sensitive and disclosure of the information would cause detriment to the owner of the information or another party. As outlined in Table 2.5, the Guide provides examples of how to apply the criteria, and identifies information that may or may not meet the Confidentiality Test.

**Table 2.5**

**Information that may or may not meet the requirements of the Confidentiality Test**

May meet the requirements of the Confidentiality Test	May not meet the requirements of the Confidentiality Test
<ul style="list-style-type: none"> <li>• Internal costing information or information about profit margins</li> <li>• Proprietary information, for example information about how a particular technical or business solution is to be provided</li> <li>• Pricing structures (where this information would reveal whether a potential supplier was making a profit or loss on the supply of a particular good or service)</li> <li>• Artistic, literary or cultural secrets. These may include photo shoots, historic manuscripts, or secret indigenous culture</li> <li>• Intellectual property including trade secrets and other intellectual property matters where they relate to a potential supplier's competitive position</li> </ul>	<ul style="list-style-type: none"> <li>• Performance and financial guarantees</li> <li>• Indemnities</li> <li>• The price of an individual item or group of items</li> <li>• Rebates, liquidated damages and service credits</li> <li>• Performance measures</li> <li>• Clauses which describe how intellectual property rights are to be dealt with</li> <li>• Payment arrangements</li> </ul>

Source: Department of Finance and Deregulation, 'Confidentiality throughout the Procurement Cycle: Practice', op. cit.

2.22 Of the 90 contracts that contained specific confidentiality provisions, 51 were considered to contain commercially sensitive information that would

cause detriment if made public. The most common types of information that the ANAO assessed as meeting this part of the Test included confidential costing or pricing structures, and information relating to cultural secrets and secrecy provisions.

**2.23** Of the 39 contracts that contained specific confidentiality information, but did not meet the Confidentiality Test, 33 related to costing/pricing information that was assessed as not being commercially sensitive. For the contracts that did not meet the Test, the information generally constituted ‘prices of an individual item or group of items’, rather than ‘internal costing information or information about profit margins’ or ‘pricing structures’.

**2.24** The misclassification of pricing information as confidential information potentially decreases price transparency, which in turn can reduce competition among tenderers and limit agencies’ abilities to generate cost efficiencies for government.<sup>39</sup> In this respect, there is potential benefit in agencies revising their policy and guidance materials, and staff awareness activities, to improve the understanding of the types of information that may or may not meet the requirements of the Test, in particular pricing information.

### **Appropriate use of confidentiality provisions over time**

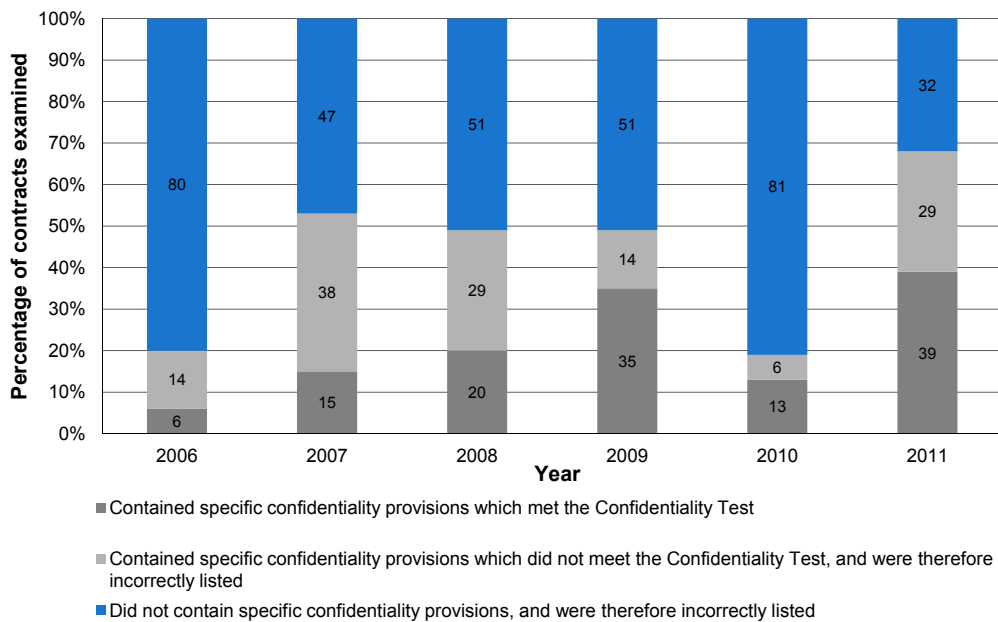
**2.25** Since 2001, the ANAO has used Senate Order listings to assess the appropriateness of the use of confidentiality provisions in a sample of contracts reported to contain specific confidential information. As shown in Figure 2.3, recent Senate Order audits have found that a small to moderate proportion of such contracts in agency listings contained specific confidentiality provisions that met the Confidentiality Test.

---

<sup>39</sup> Department of Finance and Deregulation, ‘Confidentiality throughout the Procurement Cycle: Practice’, op. cit.

Figure 2.3

## Trends in the appropriate use of confidentiality provisions in contracts



Source: ANAO analysis.

**2.26** In 2011, 39 per cent of the contracts examined (51 of 132 contracts) were assessed as containing confidentiality provisions which related to specifically identified information that was commercially sensitive. This was a significant improvement in comparison to the 2010 audit result (13 per cent of contracts examined), and represented the highest percentage of sampled contracts to contain confidentiality provisions that met the Confidentiality Test over the past six years.

**2.27** However, the results of this and other recent Senate Order audits indicate that contracts which do not meet the Confidentiality Test continue to be incorrectly listed by agencies as containing specific confidentiality provisions. Common reasons for why contracts do not meet the Confidentiality Test are that they only contain general or no confidentiality provisions; and/or they include specific confidentiality provisions which do not relate to commercially sensitive information.

**2.28** In this context, it remains important that agencies better communicate the key requirements of the Confidentiality Test to staff. Work in this area is particularly important and beneficial for staff who are involved infrequently in

procurement, and who have responsibility for decisions relating to the use of confidentiality provisions in contracts. Guidance and/or training that is tailored to support agencies' procurement management arrangements will assist agencies to more effectively communicate the key requirements to relevant staff.

## Reporting of confidentiality type and reason

**2.29** The Order requires agencies to indicate in their contract listings whether each contract:

...contains provisions requiring the parties to maintain confidentiality of any of its provisions [contract contents], or whether there are any other requirements of confidentiality [contract outputs], and a statement of the reasons for the confidentiality.<sup>40</sup>

**2.30** For contracts to be reported correctly, the confidentiality provision type(s) (contract contents or contract outputs) and reason(s) listed must align with the nature of the confidential information contained in the contract. The Guide provides a summary of the reporting of confidentiality types and reasons for AusTender reporting purposes (see Table 2.6). This information is useful for, and aligns with, Senate Order reporting requirements.

---

<sup>40</sup> Paragraph 2(c) of the Senate Order for Departmental and Agency Contracts.

Table 2.6

**Appropriate options for how confidentiality is reported on AusTender**

	AusTender 'Contract': Protecting information contained in the contract	AusTender 'Outputs': Protecting information obtained or generated in performing the contract
Where there are general confidentiality provision/s only	Report 'No'	Report 'No'
Where there are specific provision/s protecting information in the contract and information obtained or generated in performing the contract	Report 'Yes'	Report 'Yes'
Where there are specific provision/s protecting information in the contract only	Report 'Yes'	Report 'No'
Where there are specific provision/s protecting information obtained or generated in performing the contract only	Report 'No'	Report 'Yes'
Reasons available where a contract is reported as 'yes'	<ul style="list-style-type: none"> <li>• Costing/profit information</li> <li>• Intellectual Property</li> <li>• Privacy Act</li> <li>• Public Interest</li> <li>• Secrecy Provisions</li> <li>• Other</li> </ul>	<ul style="list-style-type: none"> <li>• Artistic, literary, cultural secrets</li> <li>• Intellectual Property</li> <li>• Privacy Act</li> <li>• Public Interest</li> <li>• Secrecy Provisions</li> <li>• Other</li> </ul>

Source: Department of Finance and Deregulation, *Buying for the Australian Government*, 'Additional Reporting on Confidentiality', available from <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/reporting-requirements/reporting-confidentiality/principles.html>.

**2.31** From the audit sample, of the 51 contracts that had appropriately used specific confidentiality provisions, 34 contracts also had the correct confidentiality type and reason listed.<sup>41</sup> The remaining 17 contracts were found to be incorrectly listed for confidentiality provision type and/or reason, with over half incorrectly listed for both provision type and reason. The majority of contracts that were incorrectly listed (13 of the 17) reported reasons either related to costing/profit or the reason 'Other—contract terms'. However, the

<sup>41</sup> For contracts listed with multiple types and reasons, the ANAO assessed a contract as being correctly listed where at least one of the types or reasons was correct based on an examination of the contract.

information in these contracts was confidential for other reasons, such as the protection of cultural secrets and in the public interest.

**2.32** Further, the results from the overall contract review showed a high incidence of contracts being incorrectly reported as containing confidential pricing information. Of the 59 contracts listing costing/pricing information as a reason for confidentiality, 46 were found not to contain commercially sensitive pricing information when assessed against the Confidentiality Test.

## Communicating the key requirements of the Order

**2.33** Notwithstanding that fewer Australian Government contracts are being reported as containing specific confidentiality provisions, the results in successive audits show that there remains scope to improve the appropriate use and reporting of confidentiality provisions in contracts. One factor that impacts on the use and reporting of these provisions is the level of staff understanding of the requirements.

**2.34** Agencies play an important part in this regard, through providing internal guidance materials on procurement and offering training to assist staff. Finance also has a central role in developing procurement guidance for all FMA Act agencies and communicating key requirements, such as the Senate Order, and the appropriate use of confidentiality provisions. In light of this, last year's audit observed that:

...there would be benefit in Finance, in conjunction with agencies, exploring means to better communicate key requirements and explain areas of guidance often misinterpreted by agency staff.<sup>42</sup>

**2.35** In the context of this audit, Finance advised that it undertakes a number of activities to raise awareness of the use of confidentiality provisions in contracts, including:

- the procurement policy area conducting weekly agency visits (on a rotational basis) which include highlighting the findings of relevant ANAO audits;
- producing and disseminating procurement bulletins; and

---

<sup>42</sup> ANAO Audit Report No.2 2011–12, op. cit., p. 15.

- hosting procurement discussion forums and procurement and contract management seminars.

**2.36** Finance also advised that the development of the web-based Guide has ‘simplified and modernised’ the way guidance on procurement is presented. The development of the Guide involved consolidating procurement guidance, and amalgamating in the Guide materials that were previously part of Finance’s Financial Management Guidance series. This included FMG No.3—*Guidance on Confidentiality in Procurement*, which contained the Confidentiality Test, and FMG No.15—*Guidance on Procurement Publishing Obligations*. While other key guidance documents such as FMG No.8 remain separate, Finance has incorporated links in FMG No.8 to the Guide’s materials on managing and reporting contract confidential information.

**2.37** Finance further advised that with the release of the Guide, ‘changes in behaviour and reporting’ will take time to be reflected in agencies’ procurement practices, and planned to review the uptake of the whole-of-government guidance in consultation with agencies. Such a review is timely and will provide Finance with agencies’ views on the useability of the Guide, and the opportunity to identify whether it has contributed to improving the understanding of agency staff on the appropriate use and reporting of confidentiality provisions in contracts.

## Parliamentary and ANAO access clauses

**2.38** The Guide outlines various Australian Government procurement policies and obligations for agencies to consider and implement when undertaking procurements. These policies and obligations not only help to ensure that agency procurement is consistent with the broader policies of the Australian Government, but also support accountability and transparency in government procurement. Specifically, the Guide outlines the inclusion of contract clauses that provide:

- disclosure of contract-related information to the Parliament or Parliamentary committees; and

- access by the ANAO to a contractor's premises.<sup>43</sup>

**2.39** The purpose of including these clauses is to make the contracting parties aware that there is no absolute guarantee of confidentiality of information between the parties, regardless of the use of confidentiality provisions.

**2.40** Table 2.7 shows that over 90 per cent of the contracts examined contained appropriately worded Parliamentary disclosure clauses. Further, 80 per cent were found to also include ANAO access clauses.<sup>44</sup> A factor which contributed to this result is that the majority of audited agencies' contract templates contained appropriately worded Parliamentary disclosure and ANAO access clauses.

---

<sup>43</sup> Department of Finance and Deregulation, *Buying for the Australian Government*, 'Procurement Connected Policies: Principles' [Internet]. May 2011, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/policy-framework/procurement-policies/principles.html>>; Department of Finance and Deregulation, 'Confidentiality Throughout the Procurement Cycle: Practice', op.cit.

<sup>44</sup> The ANAO assessed contracts as containing appropriately worded clauses where they contained clauses that were similar to the model clauses provided in Finance's guidance.



**Table 2.7****Parliamentary and ANAO access clauses**

Agency	No. of contracts examined	Percentage of contracts containing disclosure to Parliament (%)	Percentage of contracts dealing with ANAO access (%)
AEC	25	96	100
CrimTrac	8	88	75
DHS	45	96	96
SEWPaC	54	89	59*
<b>Total</b>	<b>132</b>	<b>92</b>	<b>80</b>

\*Note: All fifteen of SEWPaC's water entitlements contracts did not contain an ANAO access clause and did not use the agency's standard contract templates.

Source: ANAO analysis.

**2.41** While there can be legitimate reasons for using non-standard contract template terms and conditions<sup>45</sup>, agencies should have in place procedures and guidance to ensure that appropriate disclosure and access clauses are included in contracts in these cases.

## Conclusion

**2.42** Since the Order was introduced, the reported use of confidentiality provisions in contracts has declined from 24 per cent of contracts in 2001–02, to six per cent of contracts in 2011.

**2.43** The ANAO examined a sample of 132 contracts, managed by four agencies, which were reported to contain confidentiality provisions. Of the 132 contracts examined, 51 contracts (39 per cent of all contracts examined) correctly included specific confidentiality provisions that satisfied the criteria in the Confidentiality Test. The remaining 81 contracts (61 per cent) were incorrectly listed as containing confidentiality provisions for the following reasons:

---

<sup>45</sup> Agencies are required to provide details in their Annual Reports regarding contracts over \$100 000 which do not provide for the Auditor-General to have access to the contractor's premises and the reason why the standard access clause was not included. See Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies: 'Australian National Audit Office Access Clauses'*, 28 June 2012, available from <<http://www.dpmc.gov.au/guidelines/index.cfm>> [accessed 30 June 2012].

- 39 contracts included specific confidentiality provisions which did not meet the Confidentiality Test.
- 23 contracts contained only general confidentiality provisions. Such contracts should not be classified as containing confidentiality provisions (contract contents and/or outputs) for the purpose of the Senate Order.
- 19 contracts contained no specific confidentiality provisions.

**2.44** The results showed that the misclassification of pricing information as confidential information continues to be a common finding in the ANAO's contract sample reviews. A large proportion of contracts reported to contain confidential costing/pricing information (78 per cent) were found not to contain commercially sensitive pricing information when assessed against the Confidentiality Test.

**2.45** To improve the use and understanding of confidentiality provisions, and to enable agencies to better align a contract's confidentiality information with information reported in Senate Order listings, agencies could benefit from:

- reviewing approaches to capturing and recording contract confidentiality information in systems or registers from which Senate Order listings are prepared; and
- strengthening relevant guidance materials, staff awareness activities and quality assurance processes to:
  - ensure agency staff have a more comprehensive understanding of information that may or may not meet the requirements of the Confidentiality Test and can appropriately identify such information, in particular, confidential pricing information; and
  - improve the accuracy of the confidentiality types and reasons reported in Senate Order listings.

**2.46** More broadly, Finance's proposed review of the Guide will help identify whether it has contributed to improving the understanding of agency staff on the appropriate use and reporting of confidentiality provisions in contracts, and will provide the department with agencies' views on the useability of the whole-of-government guidance.

## 3. Compliance with the Senate Order Requirements

*This chapter examines compliance with the Senate Order requirements to publish an agency listing and table a Minister’s letter for 2011. The audited agencies’ Senate Order reporting procedures were also examined.*

### Background

**3.1** The Senate Order requires each FMA Act agency to publish, biannually, a contract list on the Internet and for relevant Ministers to table a letter of advice stating that the agencies they administer have published a listing. Ministers’ letters should also advise where no reportable contracts have been entered into by an agency and a statement to that effect is to be included on the agency’s website.

**3.2** Finance has developed guidance material to assist agencies in completing their contract listings. Figure 3.1 shows the template for Senate Order contract listings, as presented in FMG No.8.

**Figure 3.1**

#### Template for contract listing

Contract details					Confidentiality information			
Contractor	Subject matter	Amount of consideration	Start Date	Anticipated end date	Provisions requiring confidentiality Y/N	Reason(s) [optional]	Other requirements of confidentiality Y/N	Reason(s)

Source: Department of Finance and Deregulation, FMG No.8, op. cit.

**3.3** At 31 December 2011, there were 108 FMA Act agencies.<sup>46</sup> For the purposes of the audit analysis, 98 agencies were included. Of the 10 agencies excluded from the analysis, four are exempt from the Senate Order.<sup>47</sup> The remaining six agencies were created during the second half of 2011<sup>48</sup> and did not publish Senate Order listings on their websites, nor were they included in Ministers' letters.<sup>49</sup> These anomalies in reporting by new agencies were brought to the attention of the relevant portfolio department.

**3.4** For the 98 agencies included in the audit analysis, the ANAO assessed whether:

- Internet contract listings were published by the due date and met the listing requirements; and
- Ministers' letters of advice were tabled by the due date and included statements of compliance.

**3.5** The ANAO also examined the four audited agencies' procedures for complying with the Order, with a focus on agency guidance materials; methods used to capture and collate Senate Order information; and quality assurance of listings.

## Agencies' Internet contract listings

### Timeliness of Internet listings

**3.6** Eighty-nine of the 98 agencies (91 per cent) published a contract listing on the Internet by the due date of 29 February 2012. This represents an increase

---

<sup>46</sup> Excludes the Interim Independent Hospital Pricing Authority, which was replaced by the Independent Hospital Pricing Authority.

<sup>47</sup> The Australian Security Intelligence Organisation and the Australian Secret Intelligence Service are exempt from the Senate Order for reasons of national security. The three parliamentary departments are also exempt as they are not Departments of State administered by Ministers. Nevertheless, the Department of the Senate publishes an Internet listing 'in the interest of transparency' and its results have been included in the audit analysis.

<sup>48</sup> Includes the Australian Institute of Criminology and the Australian Law Reform Commission (both formerly *Commonwealth Authorities and Companies Act 1997* bodies) and the following new agencies: Independent Hospital Pricing Authority; National Health Performance Authority; Australian Skills Quality Authority; and Tertiary Education Quality and Standards Agency.

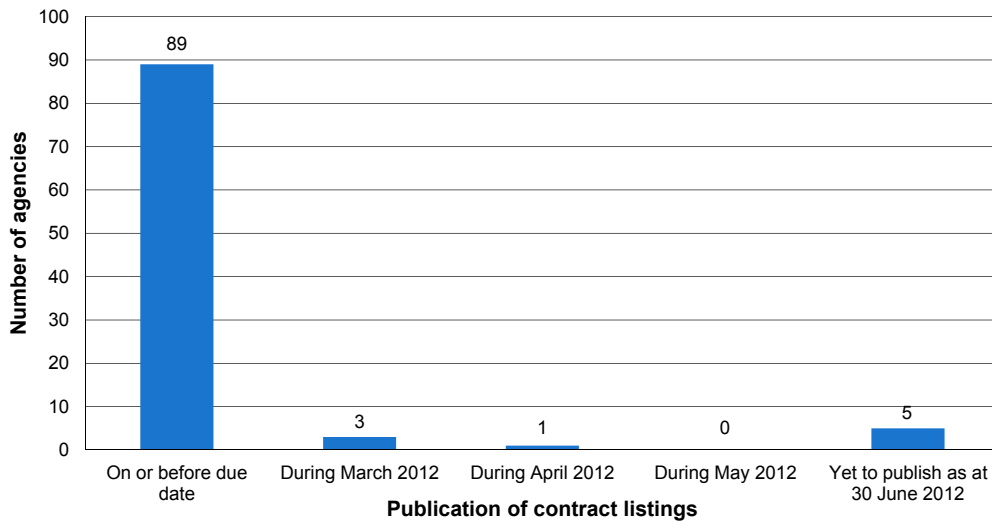
<sup>49</sup> The Australian Law Reform Commission was included in the Attorney-General's letter as having no contracts valued at over \$100 000 during 2011; however, there was no corresponding statement on their website.

from 2010, when 81 of the 100 agencies (81 per cent) published Internet listings by the due date.

3.7 Of the remaining nine agencies, three published listings within a month of the due date and one published a listing within two months of the due date. As at 30 June 2012, five<sup>50</sup> agencies were yet to publish a Senate Order listing or indicate that the agency had not entered into any relevant contracts on the Internet. Two of these agencies were also found non-compliant for 2010. For 2011, Figure 3.2 illustrates the timeliness of the publication of the agencies' Internet listings relative to the due date of 29 February 2012.

**Figure 3.2**

### Timeliness of Internet contract listings for 2011



Source: ANAO analysis.

### Comprehensiveness of Internet listings

3.8 As shown in Table 3.1, the 93 agencies that published listings reported 39 223 contracts totalling \$156.5 billion. The number of contracts listed as containing confidentiality provisions was 2391, valued at \$21.9 billion. This is a

<sup>50</sup> The five agencies were the: Australian Commission for Law Enforcement Integrity; Seafarers Safety, Rehabilitation and Compensation Authority; Equal Opportunity for Women in the Workplace Agency; Private Health Insurance Ombudsman; and National Offshore Petroleum Safety and Environmental Management Authority.

30 per cent decline in the number of contracts listed as containing confidentiality provisions and a 27 per cent decline in the value of such contracts from 2010.

**Table 3.1**

**Results from the review of all FMA Act agency Internet listings**

	2010	2011	% change
Total number of contracts reported	39 116	39 223	<1
Value of all reported contracts	\$164.2 billion	\$156.5 billion	-5
Total number of contracts containing confidentiality provisions or another requirement of confidentiality	3397	2391	-30
Total value of contracts containing confidentiality provisions or another requirement of confidentiality	\$30.0 billion	\$21.9 billion	-27

Source: The 93 FMA Act agencies' Senate Order listings published for 2011.

*Overall compliance with the Order*

**3.9** As noted previously, the Senate Order requires agencies to list certain information in their contract listings. Specifically, paragraph (2) of the Order requires that agencies' contract listings indicate:

- a) each contract entered into by the agency which has not been fully performed or which has been entered into during the previous 12 months, and which provides for a consideration to the value of \$100 000 or more;
- b) the contractor, the amount of the consideration and the subject matter of each such contract, the commencement date of the contract, the duration of the contract, the relevant reporting period and the twelve-month period relating to the contract listings;
- c) whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any other requirements of confidentiality, and a statement of the reasons for the confidentiality; and
- d) an estimate of the cost of complying with this order and a statement of the method used to make the estimate.<sup>51</sup>

---

<sup>51</sup> The Senate Order for Departmental and Agency Contracts, refer Appendix 2.

**3.10** Table 3.2 summarises agencies' compliance with each requirement of the Senate Order.

**Table 3.2**

**Summary of FMA Act agencies' compliance with the Senate Order**

	Compliance with 2(a) of the Order	Compliance with 2(b) of the Order	Compliance with 2(c) of the Order	Compliance with 2(d) of the Order
Number of agencies compliant	49	83	91	74
Number of agencies non-compliant	44	10	2	19
Agencies that did not publish a listing (non-compliant)	5	5	5	5
<b>Total agencies</b>	<b>98</b>	<b>98</b>	<b>98</b>	<b>98</b>

Note: Refer to paragraph 3.3 for an explanation of the 98 agencies included in the analysis.

Source: ANAO analysis.

**3.11** Overall, based on reported information, 37 per cent of agencies (36 of the 98) met all the Order's information requirements. The primary reason for the 2011 result was agencies incorrectly including one or more contracts in their listing (paragraph 2(a) of the Senate Order). The majority of agencies complied with the other three requirements (paragraphs 2(b)–2(d) of the Senate Order). The 2011 result was similar to 2010 when 33 per cent of agencies (33 of 100) published a contract listing in line with the Order's requirements.<sup>52</sup>

**Assessment against 2(a) of the Order**

**3.12** To comply with 2(a) of the Order, contracts listed need to:

- meet the contract criteria as set out in FMG No.8<sup>53</sup>;

<sup>52</sup> ANAO Report No.2 2011–12, op.cit., p. 49.

<sup>53</sup> FMG No.8 states that 'For a simple contract to exist, all of the following elements must be present:

- an offer;
- acceptance of an offer;
- consideration (unless the contract is executed as a deed); and
- an intention to create legal relations.'

- have not been fully performed or entered into, during the relevant period; and
- be valued at or over \$100 000.

**3.13** Forty-nine of the 93 agencies that published a Senate Order listing complied with paragraph 2(a) of the Order. However, 44 agencies included 344 contracts valued at \$1.6 billion that did not meet the requirements of paragraph 2(a) of the Order. Of the 344 contracts:

- 256 were agency agreements<sup>54</sup> and did not meet the contract criteria of FMG No.8;
- 55 were listed with either a commencement date in 2012 or were completed prior to 2011; and
- 33 were listed with values under \$100 000.

**3.14** While the number of contracts incorrectly included in agencies' contract listings was relatively low<sup>55</sup>, nearly half of all agencies incorrectly included at least one contract in their listing. To help reduce the number of contracts being incorrectly included in agencies' lists, there would be merit in agencies reviewing their Senate Order information prior to publication on the Internet, with a focus on identifying:

- agency agreements;
- contracts which do not fit the reporting period; and
- contracts below the \$100 000 value threshold.

#### *Assessment against 2(b) of the Order*

**3.15** Under the Senate Order, agencies are required to report a number of details for each contract. Eighty-three of the 93 agencies that published a Senate Order listing included all the contract details as required by the Order. The high level of compliance with this element may be attributed to the

---

<sup>54</sup> FMG No.8 states that agreements between Australian Government departments are not legally enforceable as it is not possible for different parts of the same legal entity to enter into a legally enforceable agreement.

<sup>55</sup> The 344 contracts represent 0.9 per cent of total contracts listed and one per cent of the total value.



widespread use of Finance's Senate Order listing template, which encourages agencies to include the required contract details.

**3.16** In those cases where agencies did not meet the requirements of paragraph 2(b) of the Order, the types of contract details generally omitted were contractors' names and amounts of consideration.

*Assessment against 2(c) of the Order*

**3.17** Ninety-one of the 93 agencies reported whether contracts contained specific confidential information, as well as the reason, in their Senate Order listings.<sup>56</sup> This represents an increase from 2010, when 78 of 100 agencies complied with this requirement. Fifty-eight per cent of contracts containing confidentiality provisions were listed with a first reason of 'other'.<sup>57</sup> When using this reason, agencies are required to provide an explanation of the specific reason. This requirement was met for nearly all the contracts that listed 'other' as the first reason.<sup>58</sup>

*Assessment against 2(d) of the Order*

**3.18** The Order requires agencies to report both the cost of complying with the Order and the method used to calculate the cost of compliance. Seventy-four of the 93 agencies reported both the cost and the method. Nine agencies did not include the cost or the method and the remaining 10 agencies included either a cost or a method but not both.

**3.19** Table 3.3 shows the total estimated cost of compliance, the average and median cost of compliance per agency, and the average cost of complying with the Order per contract.

---

<sup>56</sup> The two agencies that did not meet the reporting requirements relating to confidentiality omitted the reason for confidentiality for one of the contracts on their respective listings.

<sup>57</sup> The next most common reason was costing/profit information (18 per cent of all contracts listed with confidentiality provisions).

<sup>58</sup> Nineteen of the 1393 contracts that listed a first reason as 'other' did not provide an explanation of the specific reason.

**Table 3.3**

**Cost of complying with the Senate Order**

Estimated agencies' cost of compliance (\$)	
Total cost reported	252 566
Average cost per agency	3043
Median cost per agency	1224
Average cost per contract	6

Source: ANAO analysis of estimated cost of compliance as reported by 83 agencies.

**Ministers' letters of advice**

**3.20** Ministers' letters of advice create an official record in Parliament and establish accountability for the completeness, accuracy and timeliness of agencies' contract listings. Ministers' letters are generally tabled at a portfolio level, and contain details of the publication of the contract listings for all agencies in a portfolio.

**3.21** The ANAO reviewed whether the Ministers' letters were tabled in the Senate by the due date, and assessed the letters' statements of compliance with the Order.

**Timeliness of Ministers' letters**

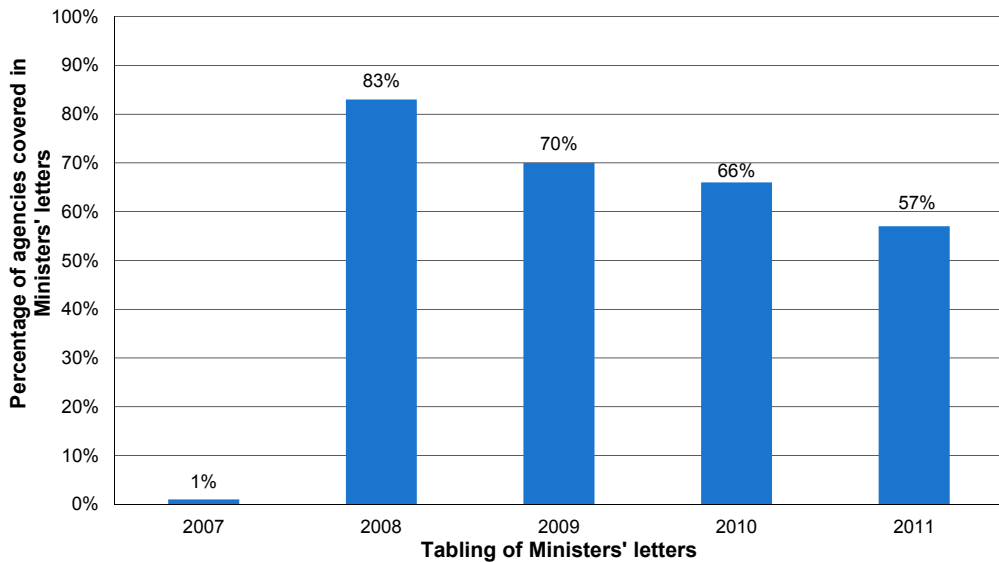
**3.22** In 2011, Ministers' letters for 57 per cent of agencies (55 of 97<sup>59</sup> agencies), were tabled in the Senate by the due date. This represents a decline from 2010 when letters covering 66 per cent of agencies (65 of 99 agencies) were tabled on time, and a continuation of the decline since 2008 in the timeliness of tabling Ministers' letters (Figure 3.3 refers).

---

<sup>59</sup> A Minister's letter is not tabled for the Department of the Senate as it is not administered by a Minister.

**Figure 3.3**

**Tabling of Ministers' letters on or before the due date for 2007 to 2011**



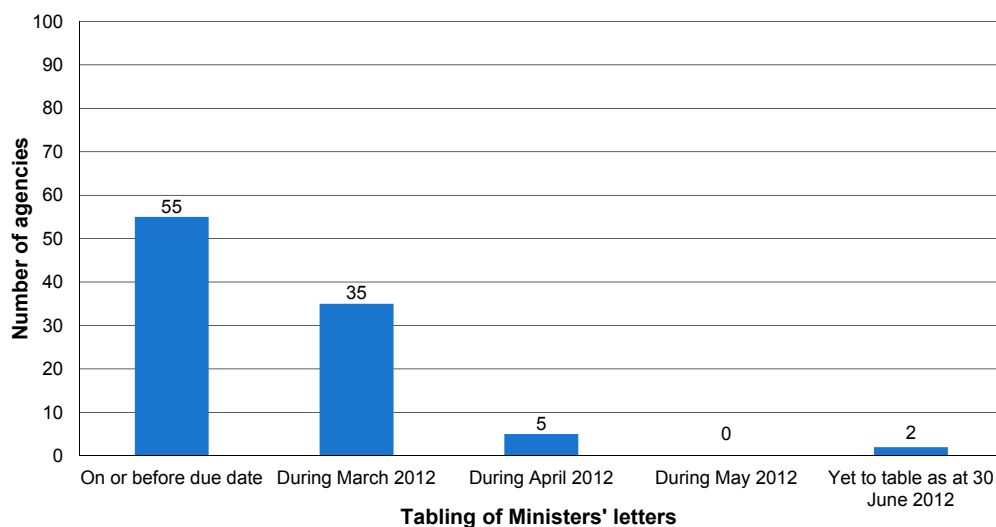
Note 1: In 2007, Ministers' letters representing 59 per cent of agencies (57 of the 96 agencies required to comply) were tabled on Monday 3 March 2007, one business day late.

Source: ANAO analysis.

**3.23** Figure 3.4 illustrates the timeliness of the tabling of Ministers' letters for 2011, relative to the due date of 29 February 2012.

**Figure 3.4**

**Timeliness of Ministers' letters of advice for 2011**



Source: ANAO analysis.

**3.24** Figure 3.4 shows that letters relating to 55 agencies were tabled by the due date. Letters covering a further 33 agencies were tabled within the first week of March, with letters for a further seven agencies tabled between mid-March and the end of April 2012. Overall, letters covering 88 of the 97 agencies (91 per cent) were tabled by the due date, or within the following week. As at 30 June 2012, letters relating to two agencies were yet to be tabled.<sup>60</sup>

**3.25** The process of preparing a Minister's letter is generally coordinated by the Department of State within the portfolio. In addition to compiling and publishing their own listings, departments can be involved with assisting portfolio agencies to comply with the Order, coordinating the portfolio letter and briefing the Minister. Given the decline in the timeliness of tabling Ministers' letters of advice in recent years, it is important that all parties involved in the process ensure that appropriate arrangements are in place to support letters being tabled on time.

---

<sup>60</sup> The two agencies were the Seafarers Safety, Rehabilitation and Compensation Authority and the Equal Opportunity for Women in the Workplace Agency.

## Statement of compliance in Ministers' letters

**3.26** Paragraph (3) of the Senate Order requires that if an agency's listing does not fully comply with the Order, the corresponding Minister's letter 'indicate the extent of, and reasons for, non-compliance, and when full-compliance is expected to be achieved'. For each of the 62 agencies' listings that did not fully comply with all of the Order's requirements, the relevant Minister's letter did not advise that compliance had not been achieved. This result is consistent with 2010 and highlights the importance of Ministers' letters being drafted in line with the Order.

### *Excluded contracts*

**3.27** The Senate Order allows for the details of certain contracts to be excluded from an agency's listing, with notification of such exclusion to be included in the Minister's letter of compliance. FMG No.8 sets out specific categories for agencies to consider when determining whether contracts should be excluded, such as where disclosure of the contract would be contrary to the public interest or statutory secrecy provisions, or in order to safeguard national security.<sup>61</sup>

**3.28** Ministers' letters identified that four agencies (Australian Federal Police, Office of the Commonwealth Director of Public Prosecutions, Department of Defence and Defence Materiel Organisation) excluded contracts from their 2011 listings. The ANAO undertook a high-level review of the agencies' processes to identify and determine contracts to be excluded from Senate Order listings, as well as examining, for a sample of contracts, the basis of the decision not to report the contract.

**3.29** The agencies had appropriate processes in place to identify the contracts to be excluded from their 2011 listings. However, the review identified that a small number of contracts examined may have been incorrectly excluded by one of the four agencies. This highlights the importance of agencies that may need to exclude contracts from reporting requirements outlined in the Senate Order ensuring that their practices appropriately support the consideration of the categories of exclusion set out in the guidance.

---

<sup>61</sup> Department of Finance and Deregulation, FMG No.8, op. cit. The categories of public interest coincide with some of the exempt provisions under the *Freedom of Information Act 1982*.

## Compliance of the audited agencies

3.30 The ANAO also examined the four audited agencies' Senate Order listings and procedures for compliance with the Order. Each of the audited agencies' listings contained contracts that did not meet the requirements in paragraph 2(a) of the Order. This was largely due to the inclusion of agency agreements or contracts outside the reporting period. Also, one agency's listing did not meet paragraph 2(b) of the Order. The results of the ANAO review of the audited agencies' listings are summarised in Table 3.4.

**Table 3.4**

### Summary of audited agencies' compliance with the Senate Order

Agency	Internet listing published by the due date	Compliance with Senate Order paragraph:				Minister's letter tabled by the due date
		2(a)	2(b)	2(c)	2(d)	
AEC	✓	Included 1 contract outside the reporting period and 3 agency agreements	✓	✓	✓	✓
CrimTrac	✓	Included 2 agency agreements	✓	✓	✓	✓
DHS	✓	Included 1 contract outside the reporting period and 7 agency agreements	✓	✓	✓	✓
SEWPaC	✓	Included 2 contracts outside the reporting period, 10 agency agreements and 1 duplicate entry	Contractor name not listed for 807 contracts	✓	✓	Tabled 6 March 2011

Source: ANAO analysis.

3.31 In regard to the 807 SEWPaC water entitlement contracts where the contractor name was omitted, the department advised the ANAO that the

contracts were subject to ‘confidentiality clauses in which the names and details of each purchased entitlement were not able to be published’.<sup>62</sup>

**3.32** The ANAO previously identified this issue in the Senate Order audit for the 2009 reporting period.<sup>63</sup> SEWPaC advised that in response to that audit, the department issued a privacy notice with all post-30 June 2011 tender rounds advising that the name, postal address and ABN of successful applicants would be published on AusTender. SEWPaC noted that the first tender round with these requirements is currently being conducted and it is expected that contracts for the purchase of water entitlements licences under this new arrangement will be executed in May 2013.

**3.33** As part of the detailed analysis of 132 contracts from the four audited agencies, the ANAO assessed the accuracy of information published in agencies’ listings by comparing the start and end dates and contract values specified in the agencies’ listings to the information contained in the contracts. Thirty-seven of the 132 contracts (28 per cent) had discrepancies in one or more of the three categories.<sup>64</sup> The most common discrepancy was the inaccurate recording of contract start dates.

## Audited agencies’ Senate Order procedures

**3.34** Agencies should have in place procedures to assist and support the collation of accurate and complete contract data for the compilation of Senate Order listings. This includes the appropriate identification of contract confidentiality provisions and the accurate recording of this information in an agency’s system/s. These procedures should align with the agency’s procurement management arrangements, which can range from centralised to decentralised models. The ANAO reviewed each audited agency’s:

- procurement related guidance materials;
- methods used to capture and collate Senate Order information; and

---

<sup>62</sup> SEWPaC further commented that the ‘intent of confidentiality in water entitlement contracts...was to ensure there was no detriment to the supplier who chose to sell their water entitlement as it was potentially a matter of community concern in regional areas’.

<sup>63</sup> ANAO Report No.7 2010–11, op. cit., pp. 44–45 [Note: the then Department of the Environment, Water, Heritage and the Arts was responsible for reporting on these contracts in the Senate Order listing].

<sup>64</sup> Discrepancies in the amount of consideration ranged from \$1000 to just under one million dollars. Variances in start and end date information ranged from one week to years.

- quality assurance processes for compiling contract lists.

## **Guidance material and training**

**3.35** A recurring theme across recent ANAO Senate Order audits has been the importance of embedding in agency procurement policies and practices the requirements of the Order.<sup>65</sup> Appropriate documentation which includes references to Finance’s guidance materials and the Confidentiality Test can help increase staff awareness and consequently, improve the accuracy and completeness of contract listings.

**3.36** All four agencies had Chief Executive Instructions (CEIs) or other forms of guidance and procedures on procurement. The extent to which these materials included information regarding the requirements of the Order varied. AEC and DHS guidance materials contained both the requirements of the Order and the Confidentiality Test, while SEWPaC’s procurement materials outlined the requirements of the Order and also contained detailed instructions on how to produce a Senate Order listing and referenced Finance’s guidance materials. CrimTrac’s procedures on procurement did not contain guidance for managing and reporting contract information required by the Senate Order.

**3.37** Agencies also use training to increase staff awareness of the Order and improve the accuracy and completeness of their contract listings. CrimTrac and DHS provided procurement training to relevant staff in business/line areas which referred to confidentiality in contracts. A contract management course offered through DHS specifically outlined the Senate Order requirements including the Confidentiality Test. AEC and SEWPaC did not provide training on the Order, but advised that staff are notified of procurement and contract management training seminars conducted by Finance.

### ***Staff awareness and understanding of contract confidential information and the Senate Order***

**3.38** The appropriate identification and treatment of contract confidential information has a direct impact on the accuracy of the information reported in Senate Order listings. A sound awareness and understanding of the Order by

---

<sup>65</sup> ANAO Report No.2 2011–12, op. cit., p. 55; ANAO Report No.7 2010–11, op. cit., pp. 63–64.



line area staff with responsibility for the contracts reported in an agency's listing contributes to staff:

- accurately identifying and recording confidentiality information in agencies' systems; and
- identifying the need for, and seeking advice from, areas such as their central procurement unit.

**3.39** A common feature across each of the audited agencies is that line area staff who negotiate contracts are largely responsible for decisions regarding confidentiality provisions in contracts. In two of the agencies, line area staff also record these decisions in systems such as an FMIS. The majority of staff with contract management responsibilities in line areas commented that contract management was only a small component of their responsibilities and the need to identify and record contract confidentiality provisions was therefore infrequent. As a consequence, staff often had a limited awareness and understanding of the Confidentiality Test.

**3.40** Staff in the central procurement units of the four agencies demonstrated an awareness and understanding of the requirements of the Senate Order, in particular the obligation to compile and publish an Internet listing.

### **Capturing and collating Senate Order information**

**3.41** Sound practices to collect, record and amend data are integral to maintaining high quality information for agency contract reporting. Across the four audited agencies there were a range of approaches for recording contract confidentiality provisions and the primary sources of data for the 2011 listings varied.<sup>66</sup> The variability in the accuracy of contract information published in agencies' contract listings, including confidential information, highlights that regardless of the system used, each agency could improve its data capture and collation processes.

---

<sup>66</sup> Refer to paragraphs 2.17–2.20.

## Quality assurance of listings

**3.42** The need for greater focus on quality assurance of contract information has been identified in previous ANAO audits on the Senate Order.<sup>67</sup> The findings in this audit again indicate that agencies would benefit from a greater focus on quality assurance of the contract information they include in their Internet listings.

**3.43** Audited agencies had a range of processes aimed at ensuring the completeness and accuracy of Senate Order reporting. Three of the audited agencies reconciled general contract details with information in systems such as the agency's FMIS or AusTender, and also sought verification of the accuracy and completeness of the information from line areas. While this approach assists agencies to prepare listings, there is a risk that staff in line areas do not fully understand the requirements of the Senate Order.

**3.44** The findings from Chapter 2 indicate that there is a need to better communicate the key requirements of the Order, including providing guidance on interpreting confidentiality information for Senate Order (and AusTender) reporting purposes. In this regard, and based on the examination of agencies' Senate Order procedures, there is scope for agencies to:

- improve procurement related materials and better tailor their guidance and training materials to support their procurement management arrangements; and
- implement quality assurance processes that are designed to identify errors such as incorrect contract details, and items that do not meet the contract criteria such as agency agreements, prior to agencies publishing information on the Internet.

**3.45** In particular, it is important for agencies with more decentralised arrangements to incorporate the requirements of the Order (and the Confidentiality Test) in their guidance and training materials, and to include information that is suitable to assist staff infrequently involved in procurement. Further, these agencies should also consider the merits of examining a targeted sample of contracts listed as containing confidentiality

---

<sup>67</sup> ANAO Audit Report No.2 2011–12, op. cit., pp. 56–57.

provisions to increase assurance that listings are accurate and provide a basis for feedback to line areas.

## Conclusion

**3.46** The ANAO assessment of the 98 FMA Act agencies' compliance with the Senate Order found that the majority of contract listings (91 per cent) were published on the Internet by the due date. However, only 57 per cent of the corresponding Ministers' letters were tabled by the due date. This represents a continuation of the decline in the timeliness of tabling Ministers' letters of advice since 2008. This trend highlights the importance of all parties having in place appropriate procedures to ensure that this requirement of the Order is fulfilled by the due date.

**3.47** Thirty-seven per cent of agencies required to publish a listing achieved compliance with all elements of the Senate Order (paragraphs 2(a)–2(d)). This was a result of:

- five agencies not publishing a Senate Order listing;
- 44 agencies including a small number of contracts that were not required by the Order;
- two agencies not meeting all the confidentiality reporting requirements; and
- 19 agencies not including both the cost of compliance with the Order and its method of calculation.

**3.48** A review of the audited agencies' Senate Order listings identified the inclusion of a small number of contracts not required by the Order by all agencies. Further, one agency omitted contract details such as the contractor name, and the Minister's letter was tabled in the week following the due date.

**3.49** The accuracy of agency contract reporting would be supported by: improved communication of key requirements, including through succinct guidance which supports agencies' procurement management arrangements; and more rigorous quality assurance procedures. Agencies' quality assurance processes for listing compilations should be designed to identify errors such as incorrect contract details and instances of non-compliance with Senate Order requirements, prior to agencies publishing information on the Internet.

## 4. The Senate Order and AusTender

---

*This chapter examines the audited agencies' reporting of confidentiality information in Senate Order listings and AusTender. Also examined is the Department of Finance and Deregulation's activities to progress the consolidation of procurement reporting and further improve AusTender functionality.*

### Reporting requirements

**4.1** Agencies must comply with a range of procurement reporting requirements, including the Order, annual reports<sup>68</sup> and AusTender.<sup>69</sup> Each of the requirements has different reporting criteria and some contract information needs to be presented in multiple formats to meet each reporting obligation.

**4.2** Previous ANAO audits have identified that shortcomings in Senate Order contract reporting and inconsistencies between contract information across Senate Order and AusTender were partly the result of the multiple procurement reporting requirements. In response to previous ANAO findings and recommendations, Finance has agreed to review opportunities to consolidate procurement reporting requirements and, since 2005, has proposed that AusTender become the sole procurement reporting requirement for Australian Government agencies.<sup>70</sup>

**4.3** In relation to these issues, and in order to gain further insight into the implications of multiple procurement reporting requirements on the reliability of Senate Order listings, the ANAO:

- examined the consistency of the audited agencies' reporting of confidentiality information in Senate Order listings and AusTender reporting. This included a comparison of the confidentiality information reported for contracts with corresponding Senate Order and AusTender entries with the results of the ANAO's contract review;

---

<sup>68</sup> Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, 'Consultants', op.cit.

<sup>69</sup> Department of Finance and Deregulation, *Buying for the Australian Government*, 'Understanding the Procurement Process: Reporting Requirements' [Internet]. May 2011, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/reporting-requirements/index.html>> [accessed 6 August 2012].

<sup>70</sup> ANAO Audit Report No.7 2010–11, op. cit., pp. 20–22.

- used AusTender reporting<sup>71</sup> to give an indication of the comprehensiveness of the audited agencies' Senate Order listings, particularly in relation to contracts with confidentiality information; and
- examined Finance's progress in formally considering consolidation of procurement reporting requirements, including additional improvements to AusTender functionality.

## Consistency of the confidential information in Senate Order listings and AusTender reporting

**4.4** Agencies typically extract and collate data from multiple sources to prepare Senate Order listings. The main sources include internal contract registers, FMIS, previous listings and/or AusTender. While there are similarities in contract data stored across these systems, their functionality, design and the type of information captured varies, depending on the purposes for which each system is established.

**4.5** Due to these system variations and the specific requirements of the Order, preparing a Senate Order listing often necessitates a range of data manipulation such as:

- matching information across multiple data-sets;
- filtering information;
- cross-checking across data-sets to identify discrepancies and quality assure data; and
- re-arranging data into the required reporting format.

**4.6** Both the Senate Order and AusTender report similar contract information. In particular, basic contract details such as a contract's value and duration are reported in Senate Order listings and AusTender, and both processes also require contract confidentiality information to be reported.

**4.7** To assess the consistency of the audited agencies' contract reporting, the ANAO compared the information reported in Senate Order listings and

---

<sup>71</sup> Agencies are not required to report on contract confidentiality provisions for Annual Report purposes.

AusTender for 102 of the contracts sampled.<sup>72</sup> Table 4.1 shows that 75 per cent (77 of the 102 contracts) of the sample contracts had a corresponding entry in AusTender.

**Table 4.1**

**Consistency of Senate Order listings and AusTender entries (for sampled contracts)**

	AEC	CrimTrac	DHS	SEWPaC	Total No.	Total (%)
Contracts with a corresponding AusTender entry	20	6	44	7	77	75.5
Contracts with no corresponding AusTender entry	5	2	1	17	25	24.5
<b>Total</b>	<b>25</b>	<b>8</b>	<b>45</b>	<b>24</b>	<b>102</b>	<b>100</b>

Note 1: Contracts identified as corresponding had sufficiently similar details to determine that they were referring to the same contract. Corresponding Senate Order and AusTender contract entries were identified on the basis of contracts having the same vendor name and at least one of: subject matter, commencement date or total contract value in the Senate Order and AusTender listings.

Note 2: AusTender reports for the analysis were from March 2012.

Source: ANAO analysis of Senate Order and AusTender reporting.

**4.8** Of the four agencies included in the sample, SEWPaC had the lowest proportion of contracts with a corresponding AusTender entry. SEWPaC had 17 contracts with no corresponding AusTender entry, with 15 of these being for the purchase of water entitlement licences. As previously mentioned, SEWPaC advised that prior to 30 June 2011, contracts relating to the purchase of water entitlement licences were not published on AusTender as they were subject to confidentiality clauses in which the names and details of each purchased entitlement were not to be made public; and, as a result, an entry on AusTender was not appropriate.<sup>73</sup>

<sup>72</sup> Only contracts for the procurement of goods or services are to be reported in AusTender and arrangements not to be reported include grants. Thirty contracts from the sample were either grants or were not for the procurement of goods and services and were excluded from the comparison.

<sup>73</sup> The results of the ANAO's contract review of a sample of water entitlements contracts found that all 15 contracts did not contain specific confidentiality provisions and did not meet the Confidentiality Test.

4.9 The ANAO also analysed the information reported for the confidentiality provision type(s) and reason(s) across each corresponding entry to determine the degree to which confidentiality information was reported consistently. In this regard, AusTender contains the same reporting requirements as the Order. Table 4.2 provides a comparison of the reported confidentiality type(s) and reason(s) for the 77 contracts with corresponding Senate Order and AusTender entries.

**Table 4.2**

**Comparison of reported confidentiality provision type(s) and reason(s) reported across Senate Order listings and AusTender entries**

	AEC	CrimTrac	DHS	SEWPaC	Total	
					No.	(%)
<b>Confidentiality provision type(s)</b>						
Information reported for both provision types matched	4	0	28	2	34	44.1
Information reported for one provision type matched	12	1	16	4	33	42.9
Information reported for both provision types did not match	4	5	0	1	10	13.0
<b>Total</b>	<b>20</b>	<b>6</b>	<b>44</b>	<b>7</b>	<b>77</b>	<b>100</b>
<b>Confidentiality reason(s)</b>						
The reason provided matched	5	0	30	3	38	49.3
The reason provided did not match	1	1	0	0	2	2.6
AusTender did not report a reason*	14	5	14	4	37	48.1
<b>Total</b>	<b>20</b>	<b>6</b>	<b>44</b>	<b>7</b>	<b>77</b>	<b>100</b>

\*Note: Thirty-seven of the 77 entries recorded in AusTender did not contain a reason(s) for confidentiality as they were reported as not containing confidentiality provisions (for either 'contract contents' or 'contract outputs'). A comparison for these 37 entries was not undertaken.

Source: ANAO analysis of Senate Order and AusTender reporting.

4.10 Table 4.2 shows, of the 77 contracts with a corresponding Senate Order and AusTender listing:

- the reported information for both types of confidentiality provisions matched in over 40 per cent of cases, while a similar percentage had at least one matching provision type; and

- approximately 50 per cent (38 of the 77 contracts) included reasons to describe the confidential information which matched.

**4.11** The analysis, however, also suggests that there remain significant inconsistencies in the confidentiality information reported for corresponding entries in Senate Order listings and AusTender. Approximately one-quarter of the contracts reviewed from the audited agencies' Senate Order lists did not have a corresponding entry in AusTender, and of the 77 contracts with corresponding entries:

- the reported confidentiality for both provision types did not match in 10 cases; and
- the reported confidentiality reason did not match, or a reason was not reported in the AusTender entry, for 39 contracts.

### **Comparison of reported confidentiality information with the ANAO's contract analysis**

**4.12** To assist in identifying the level of accuracy in the confidentiality information reported across the two systems, the 77 contracts with corresponding Senate Order and AusTender entries were further compared with the results of the ANAO's contract analysis.

**4.13** The comparison showed that for the 77 contracts with corresponding Senate Order and AusTender entries, the reporting of confidentiality information was inaccurate in both the Senate Order listings and AusTender for over half of the contracts. Specifically, the confidentiality provision type(s) reported in the Senate Order listings did not align with the ANAO's confidentiality assessment results for approximately 70 per cent of the contracts, while the confidential information reported in AusTender did not match for approximately 60 per cent of the entries.

**4.14** The results of the comparison support previous ANAO findings that both the Senate Order listings and AusTender have overstated the number of contracts that contain specific confidentiality provisions. Further, the variability in agencies' reporting of confidential information in Senate Order listings and AusTender indicates that sound agency-level data input and review remain essential to accurately record the confidentiality information in Australian Government contracts. The appropriate identification and consistent reporting of confidentiality provisions across Senate Order listings and AusTender will help ensure that confidentiality information relating to



Australian Government procurement activities is more accurately presented to Parliament and the public.

## Comprehensiveness of agencies' Senate Order listings

**4.15** The main principle underpinning the Order is supported by agencies publishing Internet contract listings that are complete. One activity that agencies can undertake to check the completeness of Senate Order listings is to compare the information in the listing with their AusTender entries. This process can help agencies identify contracts that may not have otherwise been identified through their listing compilation processes.

**4.16** In compiling and quality assuring the data in their listings, agencies used contract information from a number of systems, including AusTender. In particular, DHS used AusTender as the primary information source for the 2011 listing. The ANAO's analysis of agencies' AusTender reporting found 13 contract entries reported with confidentiality information that were not included in three of the audited agencies' respective 2011 Senate Order listings.<sup>74</sup>

**4.17** The ANAO received advice that one of the 13 contracts identified had become the responsibility of another agency due to machinery of government changes (MOG changes) in late 2011. MOG changes can occur regularly, with significant MOG changes usually occurring immediately following an election. Both the Senate Order and FMG No.8 do not indicate the agency, or agencies responsible for reporting contracts which are managed by more than one agency within a Senate Order reporting timeframe. Through updating and clarifying the existing guidance, Finance could assist agencies to determine who is responsible for reporting a contract where the administrative arrangements change during a reporting period.

---

<sup>74</sup> Multiple reports were extracted, filtered and combined from AusTender to accord with the Senate Order contract reporting criteria and the 2011 reporting period. Further, to closely align with the principle of the Order, the scope of the ANAO's examination did not include identifying contracts over \$100 000 that were reported in AusTender as not containing specific confidentiality provisions.

## **Appropriateness of the use and reporting of confidentiality provisions for the AusTender contract entries**

**4.18** The ANAO also assessed the appropriateness of the use of confidentiality provisions for 11<sup>75</sup> of the contracts found in AusTender that were not in agencies' Senate Order lists. The analysis showed that five of the contracts were correctly reported in AusTender as containing confidentiality provisions. Therefore, while all 11 of the contracts should have been included in the respective agencies' listings, five should also have been reported in the 2011 listings as containing confidentiality provisions. This indicates the agencies could make better use of AusTender information as a source for compiling and cross-checking Senate Order lists.

**4.19** However, as only five of the contracts reported in AusTender as containing confidentiality provisions passed the Confidentiality Test, the ANAO's contract review reinforced that there also remains scope for improvement in the reporting of confidentiality information in AusTender. More specifically, of the five contracts that passed the Test, the correct confidentiality provision type(s) and reason(s) were reported in AusTender for only one of the contracts.

## **Consolidation of procurement reporting and AusTender**

**4.20** Previous ANAO audits have considered that identified shortcomings in both Senate Order and AusTender contract reporting partly reflected multiple procurement reporting requirements. Overlaps and inefficiencies extend from these obligations, and agencies are unable to focus attention on accurately fulfilling any single reporting requirement. Finance's recent discussion paper on the Commonwealth Financial Accountability Review recognises the implications of agencies complying with reporting requirements that overlap, observing that:

At present, there is no whole-of-system consideration of the impact of proposed reporting requirements, or the continued relevance of existing

---

<sup>75</sup> Two of the contracts were not reviewed as no documents were provided for one while the other is now the responsibility of another agency due to machinery of government changes in late 2011.

reporting requirements [and that]...it may be timely to examine a number of legacy reporting processes.<sup>76</sup>

**4.21** The inconsistencies in the contract information reported across the agencies' 2011 Senate Order listings and AusTender further highlight the merits of considering the consolidation of procurement reporting obligations. As previously mentioned, ANAO Audit Report No.7 2010–11 recommended that to assist agencies to provide more accurate, timely and complete procurement reporting, Finance review opportunities to consolidate procurement reporting requirements, in conjunction with the department's continuing focus on improving AusTender functionality.

### **Progress in the consolidation of procurement reporting**

**4.22** Finance has previously indicated its support for the consolidation of procurement reporting, and has expressed a preference for AusTender to become the sole Australian Government agency reporting requirement.<sup>77</sup> As part of this audit, advice was sought from Finance to identify the progress that had been made in this area.

**4.23** The main area of progress has been the amendment of annual reporting requirements for consultancy contracts. From the 2011–12 annual reporting period onwards, agencies will no longer be required to provide a detailed list of consultancy contracts in their annual reports.<sup>78</sup> Instead, this information will only be included at an aggregate level, for example total number and expenditure of new consultancies for the period, with a note referring readers to AusTender for further information on individual consultancies. By omitting the requirement for agencies to report consultancy contracts (valued at \$10 000 or more), this amendment removes part of the overlap and duplication for procurement reporting across the three reporting mechanisms—annual reports, Senate Order lists, and AusTender.

---

<sup>76</sup> Department of Finance and Deregulation, *Is Less More? Towards Better Commonwealth Performance: Discussion Paper*, op. cit.

<sup>77</sup> For previous advice by Finance in response to the ANAO's recommendation, refer to Audit Report No.2 2011–12, pp. 63–66.

<sup>78</sup> Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies, 'Consultants'*, op.cit.

## Improvements to AusTender functionality

**4.24** Improving the functionality of AusTender and better integrating it with agencies' internal IT systems can assist agencies to more easily maintain complete and accurate reporting of AusTender contract data. Finance continues to enhance AusTender functionality and recently conducted a pilot to trial a technical solution that would enable the linking of contract amendments to original contract notices for agencies that batch upload amendments from their internal systems. The technical solution has been implemented in AusTender and is available for uptake by 26 agencies. Further, Finance is leading a project to compile a business case for redeveloping the Government's software template (SAP Federal Government Template) to accommodate agencies using internal SAP-based systems to batch upload variations.

**4.25** Improvements to AusTender's functionality may assist agencies to more accurately report contract information. However, as part of Finance's procurement consolidation activities it will be important for the department to consider impacts to the transparency of confidential information in Australian Government contracts. The scope of the Senate Order, unlike AusTender, includes non-procurement related contracts such as grant and revenue contracts. While grants funding must be reported on agency websites (as required by the Commonwealth Grant Guidelines), agencies are not obligated to indicate whether these contracts contain confidentiality provisions, and the reason for confidentiality, in the web-based grants reports. Accordingly, if AusTender were to become the sole reference point for confidentiality provisions in Government contracts, attention would need to be given to ensure the current level of transparency for confidentiality information in contract arrangements relating to grants is maintained.

## Conclusion

**4.26** To help record and report consistent and reliable contract confidential information, it is essential for agencies to accurately identify contract confidentiality provisions and have in place robust data input controls and quality assurance processes which complement their procurement management arrangements. A comparison of the audited agencies' AusTender reporting and 2011 Senate Order listings for 102 of the sampled contracts showed the accuracy of contract information in both systems could be improved.

**4.27** The ANAO's analysis found significant inconsistencies in the contract information reported in the two systems. This included that less than half of the contracts with corresponding entries were reported with:

- matching confidentiality information for both confidentiality provision types (34 of the 77 contracts); and
- matching reasons for confidentiality (38 of the 77 contracts).

**4.28** The ANAO's analysis also found that for over half of the 77 contracts, the reporting of confidentiality information was not appropriate in both the Senate Order and AusTender listings, when compared with the ANAO's contract review results.

**4.29** The results of the ANAO's examination of AusTender data indicated that agencies' Senate Order listings may not include all contracts required to be reported by the Order. Thirteen contracts that had been reported in AusTender as containing confidentiality provisions had not been included in three of the audited agencies' respective 2011 listings. An assessment of the confidential information in these contracts also showed that five of the contracts appropriately contained confidentiality provisions when assessed against the Confidentiality Test.

**4.30** Previous ANAO reports have highlighted that identified shortcomings in both Senate Order and AusTender contract reporting partly reflected multiple procurement reporting requirements. Recently, Finance has made progress to consolidate procurement reporting requirements by removing the requirement for agencies to provide a detailed list of the consultancy contracts entered into each year in their annual reports.

**4.31** Progress to consolidate procurement reporting requirements will allow agencies to focus their attention on fulfilling a single reporting requirement. However, there are differences in the scope of contract arrangements reported through the Senate Order and on AusTender. For example, Senate Order lists include non-procurement related contracts such as those for the provision of grants. Therefore, any consolidation of reporting arrangements should take into account these differences and not diminish the existing focus on transparency in reporting of confidential information in Australian Government contracting.

---



Ian McPhee  
Auditor-General

Canberra ACT  
20 September 2012

# Appendices





# Appendix 1: Agencies' responses to the proposed report



**Electoral Commissioner**



Our Ref: 12/567

Dr Tom Ioannou  
Acting Group Executive Director  
Performance Audit Services Group  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Dr Ioannou

**Re ANAO Performance Audit: Confidentiality in Government Contracts – Senate Order for Departmental and Agency Contracts (Calendar Year 2011 Compliance)**

I am writing in response to your letter of 13 August 2012, to provide comments on the findings of the Senate Order for Departmental and Agency Contracts (Calendar Year 2011 Compliance) performance audit.

The AEC response to the proposed audit report as requested is set out below.

**1. Formal response to the proposed report:**

The Australian Electoral Commission (AEC) acknowledges the findings of the ANAO audit.

The AEC is currently reviewing its procurement and contract management procedures and guidance material. This review will include careful consideration of the ANAO's conclusions and suggestions in regards to improving the use and reporting of confidentiality provisions and strengthening quality assurance processes.

The AEC notes that it would be greatly assisted in improving its contracting reporting if procurement reporting requirements were able to be consolidated further as discussed in the report. The AEC looks forward to further progress in this area.

**2. Summary response for inclusion in the report summary and brochure:**

The AEC acknowledges the findings of the audit, and will carefully consider the ANAO's conclusions and suggestions in the context of its current procurement and contract management review.

West Block Offices  
Queen Victoria Terrace  
Parkes ACT 2600

PO Box 6172  
Kingston ACT 2604

Tel 02 6271 4780  
Fax 02 6271 4554

[www.aec.gov.au](http://www.aec.gov.au)  
ABN 21 133 285 851

**3. Additional AEC commentary:**

The AEC acknowledges the ANAO finding that pricing information was the most common type of contract information misclassified and incorrectly reported as confidential.

The AEC notes that, occasionally, successful Tenderers will require individual pricing to be treated as confidential information under contractual arrangements.

The AEC is grateful to the ANAO for the opportunity to discuss these concerns and welcomes the opportunity to discuss this policy further with the ANAO, including any feedback from the Department of Finance and Deregulation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ed Killesteyn', with a long horizontal flourish extending to the right.

Ed Killesteyn  
11 September 2012



Office of the CEO

Responsive · Innovative · Accountable

File Ref: 12/803

Dr Tom Ioannou  
 Acting Group Executive Director  
 Performance and Audit Services  
 Australian National Audit Office  
 19 National Circuit  
 BARTON ACT 2601

Dear Dr Ioannou,

*Confidentiality in Government Contracts: Senate Order for Departmental and Agency Contracts  
 (Calendar Year 2011 Compliance) – the CrimTrac Agency Section 19 Response*

Thank you for your letter of 13 August 2012 regarding the ANAO's proposed report on the 2011 Compliance audit of the Senate Order for Departmental and Agency Contracts, and for the opportunity to provide a response.

CrimTrac acknowledges the findings set out in the proposed audit report.

Although the ANAO has not made any specific recommendations in this year's audit, CrimTrac notes that there were issues identified regarding over-reporting of Confidentiality Clauses and mal-alignment of reporting on AusTender.

CrimTrac has introduced stronger governance measures aligning the capturing and reporting of confidentiality provisions. CrimTrac will continue to undertake ongoing improvements including providing specific training, refining quality assurance processes to improve data capture and establishing processes to ensure reporting is undertaken in a timely manner.

CrimTrac appreciates the opportunity to participate in this cross-agency audit and values the suggestions that have come out of the results. CrimTrac is committed to implementing measures to further improve its performance in this area.

Yours sincerely



Doug Smith APM  
 Chief Executive Officer

5 September 2012

ABN 17 153 904 699

GPO Box 1573 CANBERRA ACT 2601  
 496 Northbourne Avenue DICKSON ACT 2602  
 Phone 02 6268 7700 | Fax 02 6268 7788 | web www.crimtrac.gov.au

SENSITIVE:AUDIT



Australian Government

Department of Finance and Deregulation

Our Ref: RMS12/06913

Dr Tom Ioannou  
Acting Group Executive Director  
Performance Audit Services Group  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Dr Ioannou

**CONFIDENTIALITY IN GOVERNMENT CONTRACTS: SENATE ORDER  
FOR DEPARTMENTAL AND AGENCY CONTRACTS (CALENDAR YEAR 2011  
COMPLIANCE)**

Thank you for your letter of 13 August 2012, inviting the Department of Finance and Deregulation (Finance) to comment on the proposed audit report *Confidentiality in Government Contracts: Senate Order for Departmental and Agency Contracts (Calendar Year 2011 Compliance)*. As requested, please find Finance's response, summary and detailed comments below.

**Summary Comments**

Finance welcomes the findings of the ANAO audit and notes the continued decline in the inappropriate use of confidentiality clauses in agency contracts. The audit highlights the improvements agencies have made in reducing the reporting of confidentiality clauses from 26 per cent in 2002, to six per cent in 2012.

The audit highlights, among other things, the challenge faced by agencies in complying with competing reporting requirements. As shown in the audit findings, this is resulting in agencies over-reporting procurement contracts in the Senate Order and is reducing the overall transparency of procurement activities.

In Finance's view, the Senate Order has achieved its goal to improve the transparency of procurement contracts and the use of confidentiality provisions. As part of the Commonwealth Procurement Rules (CPRs), agencies are required to report all procurement contracts valued above \$10,000 on AusTender within 42 days of entering the contract and to indicate if there are confidentiality provisions and the reason for those provisions. Instances of non-compliance with the reporting requirement are now included in agencies' annual certificates of compliance.

SENSITIVE:AUDIT

John Gorton Building, King Edward Terrace, Parkes ACT 2600 • Telephone 02 6215 3445 • Facsimile 02 6273 1925  
Internet [www.finance.gov.au](http://www.finance.gov.au)

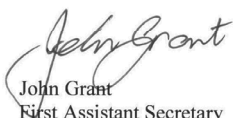
**SENSITIVE:AUDIT****Detailed Comments**

The audit notes that an ongoing area of misclassification or over-classification is in contract cost and pricing information. This information should be confidential only where it may lead to commercial disadvantage to the supplier. However, the total value of the contract must be reported. Finance has developed guidance on classifying confidential information, including information on pricing. In supporting this material, Finance is releasing to agencies a standard process map and templates for procurement. While the process map and templates target the high number of procurements valued under \$80,000 undertaken by agencies, agencies are encouraged to consider these as a basis for developing material to support higher value and complex procurements. Finance will also continue to improve the clarity of the existing procurement contract confidentiality guidance.

As recommended previously by the ANAO, Finance continues to investigate opportunities to rationalise the reporting of procurement contracts to AusTender. Finance sees benefit in removing the reporting of procurement contracts under the Senate Order while retaining its focus on improving the transparency of non-procurement contract reporting. AusTender offers advantages in improving agency procurement transparency particularly as reporting is at a lower threshold (\$10,000) and is updated in near real time. This provides a more timely and accurate view of procurement and captures arrangements that would otherwise not be included as part of an agency's Senate Order. In terms of contracts for grants, the Senate could consider rolling the reporting of confidentiality into the existing Minchin Order.

These actions will retain the aims of the Senate Order to improve transparency of confidentiality provisions in Government contracts while making effective use of AusTender as the authoritative source of procurement information for the Government. As part of the consolidation of procurement contract reporting, Finance will continue to raise awareness of the appropriate use of confidentiality clauses to agencies and of the importance in accurate and timely contract reporting on AusTender.

Yours sincerely



John Grant  
First Assistant Secretary  
Procurement Division  
Financial Management Group  
10 September 2012

**SENSITIVE:AUDIT**

2



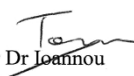
10 SEP 2012  
9.30

**Australian Government**  
**Department of Human Services**

**Kathryn Campbell CSC**  
**Secretary**

Ref: EC12/441

Dr Tom Ioannou <sup>18/10/12</sup>  
Acting Group Executive Director  
Performance Audit Services Group  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

  
Dear Dr Ioannou

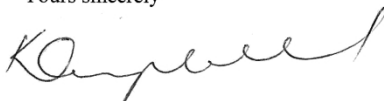
I am writing to you in response to the proposed audit report on *Confidentiality in Government Contracts: Senate Order for Departmental and Agency Contracts (Calendar Year 2011 Compliance)*.

The Department of Human Services agrees with the findings outlined in the report, and has implemented changes that address these findings.

I do not have any further comments on the report for the attention of the Auditor General. I take this opportunity to thank you for the professional conduct of your audit team including the collaborative approach adopted to resolve issues raised during the course of the audit.

If you would like any further clarification on these comments please contact Phil Lindenmayer, National Manager Procurement and Contract Management Branch, on (02) 6155 0961.

Yours sincerely



Kathryn Campbell

5 September 2012



Australian Government

Department of Sustainability, Environment, Water, Population and Communities

Secretary

Ref: B12/1520

Dr Tom Ioannou  
Australian National Audit Office  
GPO Box 707  
Canberra ACT 2601

Dear Dr Ioannou

I refer to your correspondence of 13 August 2012 seeking written comments from my department in response to the ANAO Confidentiality in Government Contracts – Senate Order for Departmental and Agency Contracts (Calendar Year 2011 Compliance) audit.

Thank you for the professionalism displayed by your team and for developing a strong and collegiate working relationship with my staff during the course of the audit. We have accepted your observations and have implemented a range of improvements and quality assurance processes to ensure the issues you have raised are being addressed.

Please find my formal response to the audit attached.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Grimes".

for Paul Grimes

10 September 2011

**Summary Statement of ANAO Confidentiality in Government Contracts – Senate Order for Departmental and Agency Contracts (Calendar Year 2011 Compliance):**

The Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) acknowledges the observations of the ANAO and accepts the identification of areas for improvement.

SEWPaC has implemented a range of improvements since the release of the report. These initiatives include but are not limited to;

- guidance materials in the establishment of government contracts and inclusion of confidentiality tests;
- procedures and processes for the compiling, quality assurance checks and reporting of Senate Order contracts;
- education and information availability on the use of confidentiality in government contracts and;
- redrafting of specific contract templates to ensure compliance.

The department has implemented changes in the area of reporting of water entitlement contracts which were subject to a Request for Tender process post June 2011 and will fully reported in subsequent reporting activities.

**Full agency response to the proposed report**

The Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) is committed to the effective use and administration of confidentiality conditions in government contracts.

SEWPaC acknowledge and accepts the ANAO observations that a number of reportable contracts were not utilising the confidentiality conditions correctly in relation to Senate Order reporting.

The Department has implemented corrective mechanisms to improve future reporting and use of confidentiality in government contracts and inclusion of ANAO access clauses. These mechanisms include:

- additional legal clarification and advice when creating and executing contracts that contain or may contain conditions of confidentiality,
- updating of existing documentation and additional guidance material in establishing government contracts;
- improved reporting and additional quality measures related to the creation and release of purchase orders which will result in greater oversight of reportable contracts that contains a condition of confidentiality.
- increased staff education and availability of information on the use of confidentiality in government contracts; and
- re-drafting of specific contract templates identified during the course of the audit to ensure compliance with confidentiality and ANAO access requirements.



It is noted that a number of contracts reviewed in the audit were in relation to water entitlements and grant programs. Particular focus has been placed on ensuring future contracts in these areas are compliant with the requirements.

## Appendix 2: The Senate Order for Departmental and Agency contracts

- (1) There be laid on the table, by each minister in the Senate, in respect of each agency administered by that minister, or by a minister in the House of Representatives represented by that minister, by not later than 2 calendar months after the last day of the financial and calendar year, a letter of advice that a list of contracts in accordance with paragraph (2) has been placed on the Internet, with access to the list through the department's or agency's home page.
- (2) The list of contracts referred to in paragraph (1) indicate:
  - (a) each contract entered into by the agency which has not been fully performed or which has been entered into during the previous 12 months, and which provides for a consideration to the value of \$100 000 or more;
  - (b) the contractor, the amount of the consideration and the subject matter of each such contract, the commencement date of the contract, the duration of the contract, the relevant reporting period and the twelve-month period relating to the contract listings;
  - (c) whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any other requirements of confidentiality, and a statement of the reasons for the confidentiality; and
  - (d) an estimate of the cost of complying with this order and a statement of the method used to make the estimate.
- (3) If a list under paragraph (1) does not fully comply with the requirements of paragraph (2), the letter under paragraph (1) indicate the extent of, and reasons for, non-compliance, and when full compliance is expected to be achieved. Examples of non-compliance may include:
  - (a) the list is not up to date;
  - (b) not all relevant agencies are included; and
  - (c) contracts all of which are confidential are not included.
- (4) Where no contracts have been entered into by a department or agency, the letter under paragraph (1) is to advise accordingly.

- (5) In respect of contracts identified as containing provisions of the kind referred to in paragraph (2)(c), the Auditor-General be requested to provide to the Senate, by not later than 30 September each year, a report indicating that the Auditor-General has examined a number of such contracts selected by the Auditor-General, and indicating whether any inappropriate use of such provisions was detected in that examination.
- (6) In respect of letters including matter under paragraph (3), the Auditor-General be requested to indicate in a report under paragraph (5) that the Auditor-General has examined a number of contracts, selected by the Auditor-General, which have not been included in a list, and to indicate whether the contracts should be listed.
- (7) The Finance and Public Administration References Committee consider and report on the first and second year of operation of this order.
- (8) This order has effect on and after 1 July 2001.<sup>79</sup>
- (9) In this order:

“**agency**” means an agency within the meaning of the *Financial Management and Accountability Act 1997*; and

“**previous 12 months**” means the period of 12 months ending on either 31 December or 30 June in any year, as the case may be.

---

<sup>79</sup> (20 June 2001 J.4358, amended 27 September 2001 J.4994, 18 June 2003 J.1881, 26 June 2003 J.2011, 4 December 2003 J.2851).

## Appendix 3: The Confidentiality Test

### **Criterion 1: The information to be protected must be specifically identified.**

A request for inclusion of a provision in a contract that states that all information is confidential does not pass this test. Individual items of information, for example pricing, must be separately considered. However, where an agency contract may be used for future cooperative procurements agencies generally should not include provisions that would prevent other Commonwealth agencies from accessing the terms and conditions, including pricing of the contract.

### **Criterion 2: The information must be commercially 'sensitive'.**

The information should not generally be known or ascertainable. The specific information must be commercially 'sensitive' and it must not already be in the public domain. A request by a potential supplier to maintain the confidentiality of commercial information would need to show that there is an objective basis for the request and demonstrate that the information is sensitive.

### **Criterion 3: Disclosure would cause unreasonable detriment to the owner of the information or another party.**

A potential supplier seeking to maintain confidentiality would normally need to identify a real risk of damage to commercial interests flowing from disclosure which would cause unreasonable detriment. For example, disclosure of internet price lists would not harm the owner, but disclosure of pricing information that reveals a potential supplier's profit margins may be detrimental.

### **Criterion 4: The information was provided under an understanding that it would remain confidential.**

This requires consideration of the circumstances in which the information was provided and a determination of whether there was a mutual, express or implied understanding that confidentiality would be maintained. The terms included in request documentation and in draft contracts will impact on this. For example, a request for tender and draft contract which included specific confidentiality provisions would support an assertion by a potential supplier that the agency has agreed to accept information on the understanding that it would remain confidential.

Source: Department of Finance and Deregulation, *Buying for the Australian Government*, 'Confidentiality throughout the Procurement Cycle: Practice'.

## Appendix 4: Recommendations from previous ANAO audit reports on the Senate Order (Calendar Year 2004 to Calendar Year 2010 compliance)

Audit Report	Recommendation(s)
Audit Report No.2 2011–12 (Calendar Year 2010 Compliance)	The report did not contain any recommendations.
Audit Report No.07 2010–11 (Calendar Year 2009 Compliance)	<p><b>Recommendation No.1 Paragraph 3.29</b> To assist agencies to provide more accurate, timely and complete procurement reporting, the ANAO recommends that the Department of Finance and Deregulation review opportunities to consolidate procurement reporting requirements, in conjunction with the department’s continuing focus on improving AusTender functionality.</p> <p><b>Recommendation No.2 Paragraph 4.40</b> The ANAO recommends that agencies assess whether their contract preparation processes support adequate consideration of the appropriate use of confidentiality provisions in contracts.</p>
Audit Report No.06 2009–10 (Calendar Year 2008 Compliance)	<p><b>Recommendation No.1 Paragraph 2.22</b> To assist agencies to meet the requirements of the next and any subsequent Senate Orders, the ANAO recommends that they:</p> <ul style="list-style-type: none"> <li>• embed in their relevant policies and practices, the guidance and instructions in Financial Management Guidance 3, including the details of the four criteria test for confidentiality; and</li> <li>• provide suitable training and guidance to staff on these policies and procedures.</li> </ul>
Audit Report No.05 2008–09 (Calendar Year 2007 Compliance)	<p><b>Recommendation No.1 Paragraph 2.25</b> The ANAO recommends agencies implement review measures to assess the appropriateness of decisions to include confidentiality provisions in contracts and provide suitable feedback to staff involved in procurement.</p>

Audit Report	Recommendation(s)
<p>Audit Report No.07 2007–08 (Calendar Year 2006 Compliance)</p>	<p><b>Recommendation No.1 Paragraph 4.23</b></p> <p>The ANAO recommends that agencies improve the accuracy and completeness of their Internet listings by:</p> <ul style="list-style-type: none"> <li>• implementing controls to assist in confirming that Internet listings are complete and accurate. This could include, for example, reconciling the Internet listing details to AusTender and other relevant sources of information such as Financial Management Information System records; and</li> <li>• developing quality assurance processes to improve the accuracy of the Internet listing.</li> </ul>
<p>Audit Report No.05 2006–07 (Calendar Year 2005 Compliance)</p>	<p><b>Recommendation No.1 Paragraph 2.35</b></p> <p>The ANAO recommends that agencies improve the accuracy and completeness of their contract listings by:</p> <ul style="list-style-type: none"> <li>• implementing controls to assist in confirming that contract listings are complete and accurate. This could include, for example, reconciling the contract listing details to other relevant sources of information, such as FMIS records or to AusTender; and</li> <li>• developing quality assurance processes to improve the accuracy of the contract listing.</li> </ul> <p><b>Recommendation No.2 Paragraph 3.38</b></p> <p>The ANAO recommends that agencies provide guidance to those staff responsible for negotiating contracts and completing the Senate Order contract listing, to improve the level of understanding of the Senate Order, particularly relating to the use of confidentiality provisions.</p>
<p>Audit Report No. 11 2005-06 (Calendar Year 2004 Compliance)</p>	<p><b>Recommendation No.1 Paragraph 2.35</b></p> <p>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 include in their FMIS.</p> <p><b>Recommendation No.2 Paragraph 3.20</b></p> <p>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.</p> <p><b>Recommendation No.3 Paragraph 3.58</b></p> <p>The ANAO recommends that agencies ensure adequate documentation of the reasons for agreeing to identify specified information in contracts as being confidential.</p>

Source: ANAO Audit Reports.

# Index

---

## A

Agency agreements, 56, 62, 66  
Agency guidance material, 64  
AusTender, 28, 40, 45, 68, 70, 71, 76, 77  
Australian Electoral Commission, 30, 37, 39, 40, 49, 62

## C

Central procurement unit, 40, 65  
Confidentiality provision types, 35, 77  
Confidentiality Test, 28, 30, 34, 37, 41, 43, 47, 49  
Consolidation of procurement reporting, 30, 68, 74, 77  
Consultancy contracts, 75, 77  
Contract template, 38, 39, 48  
Cost of compliance, 58, 67  
Costing/pricing information, 42, 46, 50  
CrimTrac, 31, 37, 40, 49, 62

## D

Department of Finance and Deregulation, 28, 30, 46, 76, 91  
Department of Human Services, 31, 37, 39, 40, 49, 62

Department of Sustainability, Environment, Water, Population and Communities, 31, 37, 40, 49, 62, 70

## E

Excluded contracts, 61

## F

Financial Management Information System, 40, 65

## G

General confidentiality provisions, 37  
Guidance  
*Buying for the Australian Government*, 28, 30, 34, 41, 47  
*Financial Management Guidance No.8*, 28, 30, 47, 55, 56

## Q

Quality assurance, 66

## S

Senate Order listing template, 51, 57

## Series Titles

---

### **ANAO Audit Report No.1 2012–13**

*Administration of the Renewable Energy Demonstration Program*

Department of Resources, Energy and Tourism

### **ANAO Audit Report No.2 2012–13**

*Administration of the Regional Backbone Blackspots Program*

Department of Broadband, Communications and the Digital Economy

### **ANAO Audit Report No.3 2012–13**

*The Design and Conduct of the First Application Round for the Regional Development*

*Australia Fund*

Department of Regional Australia, Local Government, Arts and Sport



# Current Better Practice Guides

---

The following Better Practice Guides are available on the ANAO website.

Public Sector Environmental Management	Apr 2012
Developing and Managing Contracts – Getting the right outcome, achieving value for money	Feb 2012
Public Sector Audit Committees	Aug 2011
Human Resource Information Systems Risks and Controls	Mar 2011
Fraud Control in Australian Government Entities	Mar 2011
Strategic and Operational Management of Assets by Public Sector Entities – Delivering agreed outcomes through an efficient and optimal asset base	Sep 2010
Implementing Better Practice Grants Administration	Jun 2010
Planning and Approving Projects – an Executive Perspective	Jun 2010
Innovation in the Public Sector – Enabling Better Performance, Driving New Directions	Jun 2009
SAP ECC 6.0 – Security and Control	Dec 2009
Preparation of Financial Statements by Public Sector Entities	Jun 2009
Business Continuity Management – Building resilience in public sector entities	Jun 2009
Developing and Managing Internal Budgets	Jun 2008
Agency Management of Parliamentary Workflow	May 2008
Public Sector Internal Audit – An Investment in Assurance and Business Improvement	Sep 2007
Fairness and Transparency in Purchasing Decisions – Probity in Australian Government Procurement	Aug 2007
Administering Regulation	Mar 2007





