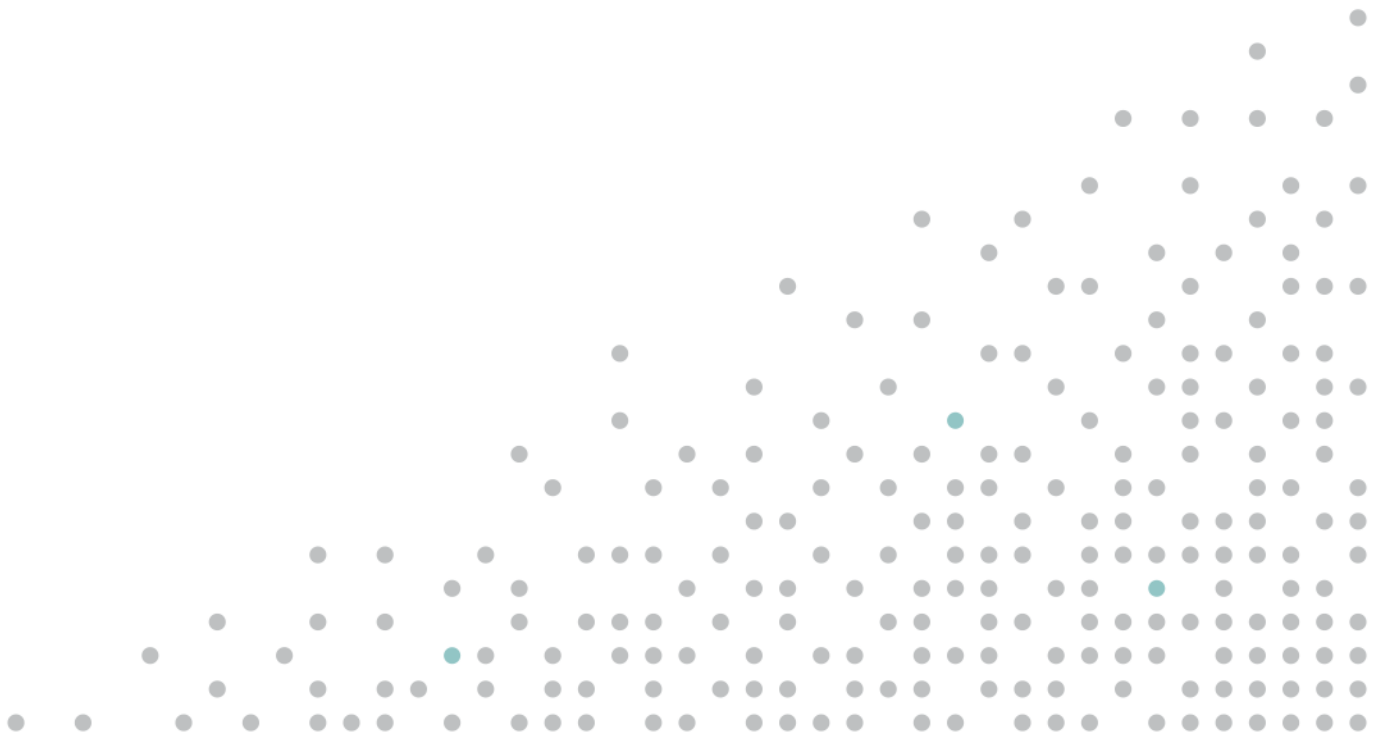




**Australian Government**  
**Department of Finance**



# **Meeting the Senate Order for Entity Contracts**

Resource Management Guide No. 403

FEBRUARY 2017

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ISBN: 978-1-925205-40-4 (Online)

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# Audience

This guide is relevant to:

- officials in non-corporate Commonwealth entities (NCEs); and
- officials in corporate Commonwealth entities (CCEs), excluding trading Public Non-Financial Corporations (PNFCs) as classified by the Australian Bureau of Statistics.

# Key points

This guide:

- assists NCEs and non-PNFC CCEs (entities) in satisfying their Minister's obligation under the Senate Order for Entity Contracts (the Senate Order);
- outlines the use of AusTender by NCEs to satisfy the Senate Order as it relates to procurement contracts; and
- replaces *Resource Management Guide 403: Meeting the Senate Order on Entity Contracts* dated November 2016.

# Resources

This guide is available on the Department of Finance website at [www.finance.gov.au](http://www.finance.gov.au).

Other relevant publications include:

- guidance on Confidentiality throughout the Procurement Cycle and Additional Reporting on Confidentiality guidance available at <https://www.finance.gov.au/government/procurement/buying-australian-government>
- the Senate Order on which this guide is based can be found at [www.aph.gov.au](http://www.aph.gov.au).
- additional information on the process for tabling documents in Parliament is provided in the Department of the Prime Minister and Cabinet's *Guidelines for the Presentation of Documents to the Parliament* available here: [www.dpmc.gov.au/](http://www.dpmc.gov.au/).

Should you have any questions or concerns regarding this guide, please email: [procurementagencyadvice@finance.gov.au](mailto:procurementagencyadvice@finance.gov.au).

## Introduction

1. The Senate Order, also known as the *Murray Motion*, requires each minister to table a letter in the Senate for each reporting period, outlining compliance with the Senate Order for each entity in their portfolio.
2. In order to support compliance with the Senate Order, each entity must develop an internet listing twice a year that identifies contracts entered into during the preceding calendar or financial year, valued at or above \$100,000 (GST inclusive), along with details relating to each of those contracts. This listing is to include an assurance by the relevant accountable authority that the listed contracts do not contain any inappropriate confidentiality provisions.
3. Contracts formed through procurements, grants, sales of goods/services by an entity, disposals by an entity, and other financial arrangements are to be included in the internet listing. NCEs should not include procurement contracts in their internet listing; NCEs should instead refer to AusTender Senate Order reports for procurement contract information.

## Amendments to the Senate Order

4. The Senate Standing Committee on Finance and Public Administration (the Committee) has conducted a number of inquiries into the operation of the Senate Order and as a consequence, on occasion amended the Senate Order.
5. In 2014, the Committee supported NCEs referring to AusTender in order to meet the requirements of the Senate Order as it relates to procurement contracts. To assist NCEs in meeting this obligation, from 1 July 2015, procurement reports are generated by the Department of Finance and published on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)).
6. From 1 July 2017, the Senate Order requires that entities include an assurance from their accountable authority that the listed contracts do not contain any inappropriate confidentiality provisions. This assurance should be included in the internet listing on the entity's webpage (as per the template for internet listing on page 22).

## Application to CCEs

7. As a result of the 2014 inquiry, the Committee broadened the application of the Senate Order to include CCEs (excluding trading Public Non-Financial Corporations) from 1 July 2017.

## Part 1 – The Minister’s Letter of Compliance

8. The Senate Order requires ministers to table letters advising that all relevant entities that they administer have placed lists of contracts valued at \$100,000 or more (GST inclusive) on their webpage. A letter template is provided on page 21. Portfolios may wish to tailor the template to reflect their particular circumstances.

### Entities covered by the Minister’s letter of compliance

9. The minister’s letter of Compliance (the letter) should identify all NCEs and CCEs (excluding trading Public Non-Financial Corporations) which are administered by the minister, including entities that have not listed any contracts. It is anticipated that portfolio departments will coordinate the preparation and tabling of their minister’s letter.

### Date for tabling letters

10. Letters must be tabled within two months of the end of the reporting period to which the listing(s) relate. For financial year listings, the letter must be tabled by 31 August, and in the case of calendar year listings, 28 February (29 February in a leap year).
11. If the deadline for tabling falls outside of parliamentary sittings, ministers may table their letters out-of-session. Details on the processes to be followed for out-of-session tabling are provided in the Department of the Prime Minister and Cabinet’s [Guidelines for the Presentation of Government Documents to the Parliament](#).

### Indicating whether internet listings are non-compliant

12. The minister’s letter should indicate the extent of, and reasons for, non-compliance with the Senate Order, and when full compliance is expected. The statement should also reflect the extent to which non-compliance cannot be accurately stated.
13. Minister’s may use the following explanations to indicate the reasons for non-compliance, as appropriate:
  - The list is not up to date: this reason may be used when the list does not include all relevant contracts and/or associated information (e.g. amount of consideration) for the period to which that letter relates.
  - Not all entities are included: this reason may be used when lists have not been completed for all entities administered by the minister.
  - Contracts all of which are confidential are not included: This reason may be used when complete contract(s) have not been included by virtue of the fact that the entire contract(s) have been excluded from disclosure (as discussed in paragraph 49 of this guide). The letter should also outline the reason(s) why entire contracts have been excluded from disclosure.

## Part 2 – Overview of Internet Listing

14. In order to allow ministers to comply with the Senate Order, entities must twice a year place an internet listing on its website of all contracts entered into during the relevant 12-month reporting period. Each listing is to identify the relevant 12-month reporting period. Further, for each contract in the listing, it must identify:
  - the contractor;
  - the value of the contract;
  - the subject matter of each such contract;
  - the commencement date of the contract;
  - the anticipated end date of the contract;
  - whether each contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any other requirements of confidentiality; and
  - should there be confidentiality provisions, a statement of reasons for the provisions.
15. NCEs should not include procurement contracts in their internet listing, and instead should refer to AusTender Senate Order reports for procurement information.
16. An entity is not required to create an internet listing when, for the reporting period:
  - it has not entered into any 'contracts', as defined in Part 3 of this guide; or
  - for all its contracts, it has claimed exclusion from listing.

In these circumstances, the entity should place a notice on its website indicating that it is an entity for the purposes of the Senate Order but has not developed an internet listing. The notice should also provide the reason(s) for not developing a listing.

17. Entities may use the Template for Internet Listing on page 22 to meet their internet listing requirements. Accountable authorities should consider advising portfolio ministers of any sensitivities in internet listings before publishing them.

### Compliance costs and methodology

18. Entities should include with the internet listing, an estimate of the cost of the resources required to assist their minister to comply with the Senate Order along with an overview of the method used to reach the estimate.

### Regularity of listing updates

19. Entities may decide the approach to updating their listing. If an entity decides to update their listing it is important that, for future reference, they retain a copy of the list in the form that it took at the point when the minister tabled the letter of compliance. Entities should consider including a notation on their website advising of their approach to updating the listing to facilitate transparency and accountability.



## NCEs use of AusTender to satisfy reporting requirements for procurement contracts

20. The Commonwealth Procurement Rules (CPRs), a legislative instrument, currently require NCEs to report procurement contracts awarded valued at or above \$10,000 (GST inclusive) on AusTender.
21. NCEs should use AusTender to satisfy the requirements of the Senate Order with respect to procurement contracts only. The minister's letter and an NCE's internet listing should note that a listing of procurement contracts is available through the Senate Order link located on the AusTender Homepage ([www.tenders.gov.au](http://www.tenders.gov.au)).
22. NCE procurement contract listings will be made available on AusTender no later than two months after the end of the relevant reporting period. The report will be titled 'Entity reports for complying with the Senate Order on procurement contracts and use of confidentiality provisions'.
23. The Department of Finance will ensure that each NCE's procurement contract listing is published on AusTender by the due date. The Department of Finance will compile these lists using contract notices published throughout the year on AusTender by NCEs in accordance with the CPRs.
24. NCEs are responsible for quality assurance of the content of their reports prior to publication on AusTender. NCEs are encouraged to implement mechanisms to correctly upload procurement contract data to AusTender in the first instance to eliminate the need to later verify that data.
25. Due to the reporting obligations set out in the CPRs and guidance being broader than the Senate Order requirements, there may be instances where an NCE's AusTender listing may include contract information additional to that ordinarily required by the Senate Order.

## Specific reporting requirements for grants agreements

26. Where grants agreements qualify as 'contracts' (refer to the next section), and have substantially similar confidentiality provisions and other requirements of confidentiality, entities have the discretion to report these arrangements either individually or through generic entries. This situation is likely to arise where multiple contracts were issued to multiple recipients under a single grants program.
27. Where specific arrangements are not adequately covered by the generic entry (e.g. due to a unique confidentiality provision) it is suggested that entities report these arrangements separately.
28. If an entity decides to record generic entries for grants agreements, it is suggested that they include the following information in each of the key sections of the listing:

	Information Field	Suggested Content
1	Contractor	Multiple recipients qualified under the terms of [INSERT TITLE OF PROGRAM/GRANT].
2	Subject matter	[INSERT NUMBER] of substantially identical contracts with qualified recipients of grants agreements under [INSERT TITLE OF PROGRAM/GRANT] that relates to [GENERAL DESCRIPTION OF PROGRAM/GRANT].
3	Amount of consideration	<p>Amounts varying from [VALUE OF LOWEST SINGLE CONTRACT OVER \$100,000 (GST inclusive)] to [HIGHEST VALUE OF A SINGLE CONTRACT].</p> <p>An aggregate of the total amount that will be paid in respect of grants agreements under [INSERT TITLE OF PROGRAM/GRANT] [consisting of an aggregate of all individual agreements with consideration of \$100,000 or more] is [INSERT AGGREGATE FIGURE].</p>
4	Commencement date	Date that the first agreement was entered into.
5	Anticipated end date	Date that it is anticipated that the final agreement will end.
6	Whether contract contains provisions requiring the parties to maintain confidentiality of any of its provisions.	As with individual contracts.
7	Other requirements of confidentiality	As with individual contracts.
8	Reasons for confidentiality	Entities should provide all reasons for confidentiality that relate to the contracts by the generic entry.

## Part 3 – Contracts to be Included in the Internet Listing

29. All contracts formed through procurements, grants, sales of goods/services by an entity, disposals by an entity, and other financial arrangements are to be included in the internet listing. NCE contracts formed through a procurement should only be published on AusTender. For clarity, the term 'contract' includes agreements executed as deeds.

### Contract criteria

30. For a 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 a legal relationship.
31. In addition, there is a range of other matters that a court will consider if relevant, including:
- capacity to contract;
  - no illegal purpose;
  - genuine consent between parties e.g. no unconscionable conduct involved; and
  - certainty of terms.
32. Finally, it will also be necessary to look at whether any required formalities have been complied with e.g. a purchase of land is required to be in writing.
33. Together the elements listed in the three preceding paragraphs are referred to in this guide as the 'Contract Criteria'.

### Types of arrangements that could be 'Contracts'

34. The following arrangements are **likely** to be contracts for the purposes of the Senate Order:
- a purchase of goods;
  - a purchase of services e.g. a consultancy contract;
  - a purchase of land or a building;
  - a lease of premises;
  - the provision of financial assistance (i.e. a grant) with specified terms or conditions;
  - an employment contract that does not involve an Enterprise Agreement; and
  - an agreement between a body that is part of the Commonwealth of Australia, and a body that is a separate legal entity to the Commonwealth of Australia.
35. The following arrangements are **unlikely** to be contracts for the purposes of the Senate Order:

- the provision of financial assistance (i.e. a grant, which is more akin to a gift) without specified terms or conditions;
- an employment arrangement that involves an Enterprise Agreement;
- a statutory appointment;
- an agreement between Australia and another nation state;
- a political agreement between the Australian Government and a state or territory; and
- an agreement between NCEs.

36. Further information on arrangements that are likely to be 'contracts' for the purposes of the Senate Order is provided in Part 7 of this guide.

### Value of 'Contracts' to be included

37. Entities should report contracts where the whole-of-life amount of consideration will be \$100,000 or more (GST inclusive). Consideration refers to the full amount to be paid or received by the entity in return for goods and/or services over the life of the contract.
38. For contracts that do not contain a specified value, entities should initially provide estimates of the expected 'whole of life' value of the contract. Subsequent listings may have notations, including either updated estimated expenditure on, or actual values of, the contract.

### Date of 'Contracts' to be included

39. The listing should include all contracts with a consideration of \$100,000 or more (GST inclusive) that have:
- not been fully performed as at the end of the reporting period; and/or
  - been entered into during the 12 months prior to the end of the reporting period.
40. The below table summarises which contracts are to be included/excluded in the contract listing for a reporting period. Scenarios available in Part 6 further demonstrate how the requirements of the order should apply.

The contract:	commenced during the reporting period	commenced before the reporting period started
ended during the reporting period	Report	Do not report
will end after the reporting period finishes	Report	Report

## Contract commencement date

41. In most instances contracts will identify a commencement date. Where the commencement date is not specified, entities should list the date the contract was signed.

## Contract end date

42. The end date of a contract will be that set out in the contract. If there is no end date set out in the contract, then it will generally be the latter of the following events – final payment to the supplier or provision of the final goods and/or services under the contract.

## Relevant reporting period

43. Entities should clearly identify the calendar or financial year to which the listing relates. For instance, a listing that relates to the period from 1 January 2017 – 31 December 2017 should state ‘Senate Order for entity contracts listing relating to the period 1 January 2017 – 31 December 2017’.

## Categories of exclusion

44. Although the Senate Order allows for certain contractual arrangements to be excluded from disclosure on the listing, with notification of such exclusion to be included through the minister's letter of compliance, it is expected that this would happen only on rare occasions. Categories of exclusion include but are not limited to:
- Disclosure of the existence of the contract would be contrary to the public interest.
    - Entities should use the Department of the Prime Minister and Cabinet guidelines on the scope of public interest immunity in [Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters](#) as a guide to determine whether information regarding the existence of individual contracts should be protected as confidential and withheld from the Senate.
  - Disclosure of the existence of the contract would be contrary to statutory secrecy provisions.
    - A statutory secrecy provision is a provision set out through legislation, which requires that a certain category (or categories) of information be kept confidential.
  - Disclosure of the existence of the contract would be contrary to the *Privacy Act 1988* (Privacy Act).

## Part 4 – Identification and Treatment of Confidential Contract Information

45. The key driver behind the Senate Order is to provide transparency of entities' use of confidentiality provisions, which in turn will encourage the appropriate classification of contract-related information. Transparency is achieved through the requirement that entities identify any confidentiality provisions that are contained within the contracts listed.
46. The sensitivity of some information may diminish over time. Accordingly, during the running of the contract, entities should review the classification of information that has previously been accepted and identified as confidential.

### Confidential contract information to be identified

47. The Senate Order identifies three types of confidentiality provision:
  - Contract: provisions that make specific information contained in the contract confidential (referred to in the Order as 'provisions requiring the parties to maintain confidentiality of any of its provisions');
  - Outputs: provisions that make specific information obtained or generated in carrying out the contract confidential. This information cannot be specifically identified when the contract is entered into (referred to in the Senate Order as 'other requirements of confidentiality'); and
  - General: provisions readily found in Commonwealth contracts that protect Commonwealth material, personal information and trade secrets amongst other things.
48. In their internet listings, entities are to identify which contracts contain "contracts" and "outputs" confidentiality provisions and provide a statement of the reason(s) for the inclusion of these provisions. Contracts with "general" confidentiality provisions do not need to be identified so long as the internet listing explains the nature of general confidentiality provisions and why they are not ordinarily identified.
49. Where the existence of the contract is considered confidential, it may not be appropriate to reference the contract in the listing. In these circumstances, the reasons for confidentiality should be reflected through the minister's letter.
50. Ordinarily, the confidentiality of specific information will be agreed and formalised in the entity's agreement with a supplier for the supply of goods and services. If a subsequent agreement for confidentiality is reached after the signing of the original contract, upon the signed acceptance of the parties, the agreement will become part of the contractual arrangement and will therefore need to be referenced through the internet listing.

### Standard categories of confidential information

51. Entities are encouraged to use the below categories of confidential information in their Internet listing. Further information on each category follows.
  - Disclosure would reveal trade secrets which are judged to have the potential to cause detriment to the contractor;

- Disclosure would reveal the contractor's internal costing information or information about its profit margin;
  - Disclosure would be contrary to the public interest;
  - Disclosure would be contrary to statutory secrecy provisions;
  - Disclosure would be contrary to the Privacy Act; and
  - Other.
52. The majority of the reasons can apply equally to the provisions that protect information in the contract or information generated through performance of the contract. The exception is internal costing/profit information, which generally only applies to Contract confidentiality provisions.
53. Entities may reference guidance available on the Finance website titled Confidentiality throughout the Procurement Cycle and Additional Reporting on Confidentiality, to determine whether the information can be appropriately classified as confidential.

Disclosure would reveal trade secrets, which are judged to have the potential to cause detriment to the contractor

54. In determining whether something is a trade secret, consideration needs to be given to whether the information in question consists of a process or device that has been developed for use by an entity for the purposes of its continuing business operations.
55. Intellectual property may be considered a sub-category of 'trade secrets', referring to the specific process, development or innovation that is the subject of the trade secret. Similarly, proprietary information of the contractor may be a trade secret when it includes information about how specific intellectual property is to be utilised to provide a particular technical or business solution.
56. Examples of trade secrets that may be contained or referred to in contracts, include industrial processes, formulae, product mixes, customer lists, engineering and design drawings and diagrams, and accounting techniques.

Disclosure would reveal the contractor's internal costing information or information about its profit margin

57. Entities should note that although a specific element may be assessed as not meeting the confidentiality criteria, the complete methodology may nevertheless warrant protection if it provides sufficient information to make a reasonable estimate of the prospective supplier's profit margin.

Disclosure would be contrary to the public interest

58. Entities should use the Department of the Prime Minister and Cabinet guidelines on the scope of public interest immunity in Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters as a guide to determine whether information from contracts should be protected as confidential and withheld from the Senate.

## Disclosure would be contrary to statutory secrecy provisions

59. A statutory secrecy provision is a provision set out through legislation, which requires that a certain category or categories of information be kept confidential. Again, the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters* may be used as a guide to determine whether information from contracts should be protected as confidential and withheld from the Senate.

## Disclosure would be contrary to the *Privacy Act*

60. The Privacy Act is designed to provide legislative protection of personal information. Entities should have regard to the Australian Privacy Principles in the Privacy Act when considering how to deal with personal information. The Privacy Act also allows personal information to be protected as confidential information.
61. It is anticipated that there would be minimal contracts completely excluded on the basis of Privacy Act concerns as under the current accountability framework, contracts and tender documentation should include provisions alerting prospective providers to the public accountability requirements of the Australian Government.

## Other

62. Other reasons for confidentiality that are not covered by the previous categories may be included through this category. If entities choose to utilise this category they should provide an explanation of the specific reason. Examples include:
- an entity has given an undertaking to another party that the information will not be disclosed;
  - disclosure would reveal artistic, literary or cultural secrets e.g. a photo shoot, an historical manuscript or secret Aboriginal culture; and
  - disclosure would have a substantial adverse effect on financial or property interests of the Commonwealth, as discussed through *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters*.

## Part 5 – Audit of Requirements Under the Policy

63. The Auditor-General will conduct a further audit of compliance with the Senate Order, due to the Senate no later than 30 September 2018. The ANAO has completed a number of audits of NCE compliance with the Senate Order. The associated audit reports are at [www.anao.gov.au](http://www.anao.gov.au).

## Coverage of the ANAO audits

64. The audits cover a number of key aspects of the policy, in particular, the Auditor-General will:
- examine a number of contracts identified as containing clauses that keep confidential the provisions of the contract and confidentiality clauses of a general nature and indicate whether any inappropriate use of such provisions was detected in that examination; and



- examine 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.
65. Entities are to retain two years of internet listings, preferably on their website, to facilitate the ANAO's audit of compliance with the Senate Order.

## Part 6 – Scenarios to Assist in Determining Contracts to be Listed

### Scenario 1 – Contract entered into on 1 January 2014 and fully performed as at 31 December 2014

66. This contract will only be included in the:
- 2013-14 financial year listing because it was entered into during the previous 12 months and also had not been fully performed as at the end of the reporting period; and
  - 2014 calendar year listing (reporting period 1 January 2014 – 31 December 2014) because it was entered into during the previous 12 months.

### Scenario 2 – Contract entered into on 1 January 2014 and fully performed as at 30 June 2014

67. This contract will only be included in the:
- 2013-14 financial year listing because it was entered into during the previous 12 months; and
  - 2014 calendar year listing because it was entered into during the previous 12 months.

### Scenario 3 – Contract entered into on 1 January 2014 and fully performed as at 30 June 2015

68. This contract will only be included in the:
- 2013-14 financial year listing because it was entered into during the previous 12 months and also had not been fully performed as at the end of the reporting period; and
  - 2014 calendar year listing because it was entered into during the previous 12 months.

### Scenario 4 – Contract entered into on 1 January 2014 and fully performed as at 1 July 2015

69. This contract will only be included in the:
- 2013-14 financial year listing because it was entered into during the previous 12 months and also had not been fully performed as at the end of the reporting period;

- 2014 calendar year listing because it was entered into during the previous 12 months and had not been fully performed as that the end of the reporting period; and
- 2014-15 financial year listing because it had not been fully performed as at the end of the reporting period

## Part 7 – ‘Contracts’ for the Purposes of the Internet Listing

### Arrangements under which goods and services have been procured

70. These arrangements would generally be procurement contracts or deeds. E.g. an arrangement to obtain consultancy services, which is generally a services contract, would be included under this heading. For NCEs, these arrangements should only appear in AusTender reports.

### Dealings with interests in land

71. A procurement contract will exist where an entity has purchased an interest in land, and this arrangement complies with the Contract Criteria and the requisite formalities e.g. in writing. This would also be the case with a lease arrangement. For NCEs, these arrangements should only appear in AusTender reports.

### Agreements between Australian Government bodies that are separate legal entities

72. An agreement between a body that is part of the Commonwealth of Australia, and an Australian Government body that is a separate legal entity to the Commonwealth of Australia, would be a reportable contract if the agreement met the Contract Criteria, or was documented in a deed. An example of such an arrangement may be whereby the Department of Defence enters into a contract with the Commonwealth Scientific and Industrial Research Organisation.
73. Due to the requirement for both NCEs and non-PNFC CCEs to comply with the Senate Order, there may be instances where the same contract is reported in two Senate Order listings.

### Agreements between NCEs

74. An agreement between NCEs that are all part of the Commonwealth of Australia will not be legally enforceable because it is not possible for different parts of the same legal entity to enter into a legally enforceable agreement. Such an agreement is often called a Memorandum of Understanding (but this term is also used for other arrangements that *are* legally enforceable). These agreements should not be reported.

## Inter-governmental agreements

75. It is also possible for the Commonwealth to enter into an agreement, which is designed to achieve political objectives, with an Australian state or a nation state. These are generally not legally enforceable, unless expressly stated to be so. Such an agreement is often called a Memorandum of Understanding. Where two nation states are parties, the arrangement is likely to be enforceable under international law rather than domestic contract law. These agreements should not be reported.

## Grants

76. A grant agreement sets out the relationship between the parties to the agreement, and specifies the details of the grant. A grant agreement may or may not require recipients to act in accordance with specified terms and conditions. For example, a grant that is more akin to a gift, may not contain conditions.
77. The agreement is likely to be a contract only if it is enforceable under law and meets the Contract Criteria. Arrangements that include both contractual elements and gift elements do exist. If in doubt, entities should report these agreements.

## Employment contracts

78. Some entities' employees are employed under a common law employment contract which contains the relevant terms and conditions of employment. For Australian Public Service employees, such contracts are usually entered into pursuant to section 22 of the *Public Service Act 1999* (PSA Contract). A PSA Contract that meets the Contract Criteria should be reported.
79. The employment arrangements put in place by entities are likely to be underpinned by an award e.g. the Australian Public Service Award 1998 but be governed by an Enterprise Agreement. Contracts involving an Enterprise Agreement have effect under the *Fair Work Act 2009*; they are not PSA Contracts. An employment arrangement governed by an Enterprise Agreement should not be reported.

## Heads of agreement / letter of intent

80. These labels are often used for a document that outlines the principles which will govern the negotiation of a proposed contract. In this case, the principles usually do not contain sufficient certainty for the principles themselves to be a contract and so should not be reported. However, the document could be made legally binding by being executed as a deed in which case, it should be reported.

## Statutory appointments

81. Arrangements which constitute a statutory appointment generally take effect under the relevant statute and are generally not contracts and so should not be reported.

## Part 8 – Template for meeting Internet Listing Requirements

82. The Template for Internet Listing provides two separate columns to detail 'reasons for confidentiality' – one relating to provisions that make information contained in the contract confidential (if applicable) and the other covering provisions to protect information obtained or generated in carrying out the contract (if applicable).
83. The reporting template includes an overarching statement that the listing does not identify contracts that contain standard confidentiality provisions of a general nature. Entities may need to redraft this statement to reflect their individual arrangements.

## Template for Minister's letter of compliance

Senator [Insert name]  
President of the Senate  
Parliament House  
CANBERRA ACT 2600

Dear Senator [Insert Name]

Pursuant to the Senate Order for Entity contracts, of 20 June 2001 (amended 14 May 2015), I wish to advise that all entities within the X portfolio have placed a list of contracts to the value of \$100,000 or more (GST inclusive), which have not been fully performed or which have been entered into in the 12 months prior to [insert end date of reporting period], on their Internet websites. The locations of the lists are as follows:

Entity 1 - <http://www.entity1.gov.au>;

Entity 2 - <http://www.entity2.gov.au>; and

Entity 3 - <http://www.entity3.gov.au>.

Procurement contracts conducted by non-corporate Commonwealth entities' (NCEs) are not included in this contract listing. All NCE procurement contracts can be found through the Senate Order button on AusTender at [www.tenders.gov.au](http://www.tenders.gov.au). The report is titled 'Senate Order on Confidentiality in Procurement Contracts by Entity'.

Entity 1 did not enter into any contracts that satisfy the criteria set out in paragraph 2(a) of the Order. [Delete if unnecessary]

Entity 2's listing does not fully comply with requirements of paragraph (2) of the Order as X contracts, all of which are confidential, were not included. [Delete if unnecessary]

The X portfolio's listing is not complete as entity 3's listing was not completed due to technical issues. [Delete if unnecessary]

Entity 2's listing does not fully comply with requirements of paragraph (2) of the Order as the amount of consideration was not included for 10 contracts. [Delete if unnecessary]

Full compliance is expected to be achieved from the [Insert listing and year] [Insert reason]. [Delete if unnecessary]

The contact officer for the lists of contracts is Mr/Ms [Insert name], who may be contacted on [Insert phone number].

Yours sincerely

[SIGNATURE BLOCK OF MINISTER OR DELEGATE]

## Template for internet listing – two ‘reasons for confidentiality’ columns

[Insert period covered by the listing e.g. 2014-2015] SENATE ORDER FOR ENTITY CONTRACTS LISTING RELATING TO THE PERIOD [Insert start date of period] – [Insert finish date of period] Pursuant to the Senate Order for entity contracts the following table sets out contracts entered into by [Enter entity name] which provide for a consideration to the value of \$100,000 or more (GST inclusive) and which:

- a. have not been fully performed as at [Insert final date of the reporting period], or
- b. which have been entered into during the 12 months prior to [Insert date of final day of the reporting period].

Most of the contracts listed contain confidentiality provisions of a general nature that are designed to protect the confidential information of the parties that may be obtained or generated in carrying out the contract.

The reasons for including such clauses include:

- a. ordinary commercial prudence that requires protection of trade secrets, proprietary information and the like; and/or
- b. protection of other Commonwealth material and personal information.

[An entity may need to redraft this statement to reflect their individual arrangements]

The accountable authority of [Insert agency’s name] has assured that the listed contracts do not contain any inappropriate confidentiality provisions.

**Procurement contracts are available through the Senate Order Report located on the AusTender Homepage ([www.tenders.gov.au](http://www.tenders.gov.au)). [Delete if unnecessary]**

### Contract Details

Contractor	Subject matter	Amount of consideration	Start date	Anticipated end date	Whether contract contains provisions requiring the parties to maintain confidentiality of any of its provisions (Y/N)	Reason (s)	Whether contract contains other requirements of confidentiality (Y/N)	Reason (s)

Estimated cost of complying with this Order:

Basis of method used to estimate the cost: