# CONTRACTING OUT AND ACCOUNTABILITY.

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## Abstract

Contracting out raises important issues of accountability, as recognised by the inquiry being conducted by the Senate Finance and Public Administration References Committee. The claim made by the Industry Commission that contracting out does not reduce government accountability for public services is mistaken. Contracting out involves a trade-off of political accountability for efficiency. Contracting out inevitably involves some reduction in accountability through the removal of direct departmental and ministerial control over the day-to-day actions of contractors and their staff. Indeed, the removal of such control is essential to the rationale for contracting out because the main increases in efficiency come from the greater freedom allowed to contracting providers. Accountability is also likely to be reduced through the reduced availability of citizen redress under such instruments as the Ombudsman and FOI. At the same time, accountability may on occasion be increased through improved departmental and ministerial control following from greater clarification of objectives and specification of standards. Providers may also become more responsive to public needs through the forces of market competition. Potential losses (and gains) in accountability need to be balanced against potential efficiency gains in each case.

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## I. The issue of accountability

Governments are increasingly moving to contract out the provision of public services which have previously been delivered by public service departments. Contracting out (outsourcing) typically implies provision by private sector contractors. However, it may also include in-house provision by public service departments or other public agencies where the right to provide is won through competitive tendering and is governed by contract. At the Commonwealth level, the trend has been given added impetus by the Coalition government elected in 1996 (eg Reith 1996, National Commission of Audit 1996).

The main rationale for contracting out is to improve efficiency in service provision by harnessing the virtues of competition, in particular the superior productivity engendered among competitive providers (Industry Commission (IC) 1996, B3.4; Appendix E). At the same time, there is a legitimate expectation that providers of public services paid for by public funds will be publicly accountable. Contracting out has the potential to reduce the extent of public accountability by transferring the provision of public services to members of the private sector who are generally not subject to the same accountability requirements as public officials. Indeed, reduction in such accountability requirements may be one of the reasons for the greater efficiency of the private sector.

The issue of accountability is therefore an important element in the debate over contracting out and is the subject of an inquiry being conducted by the Senate Finance and Public Administration References Committee. The terms of reference for the Committee's 'Inquiry into Contracting Out of Public Services' open with a preamble 'noting the necessity for public accountability of all government services provided by private contractors' and examine a number of questions concerning accountability, including the jurisdiction of the Ombudsman's Act 1976, the extent of ministerial responsibility for contracted-out services, and access to information held by private contractors (see Appendix). Submissions to the Committee and other recent writings on the subject, notably the Industry Commission's report

on *Competitive Tendering and Contracting by Public Sector Agencies* (IC 1996), reveal a considerable variation of opinion relating to accountability. In particular, there appears to be a fundamental disagreement about whether contracting out does in fact lessen the accountability of governments for the provision of public services. Supporters of contracting out tend to claim that accountability can be maintained and even enhanced, while critics argue that accountability is seriously compromised.

The aim of this paper is to help clarify the terms of this debate. It will be argued that accountability is inevitably reduced under contracting out and that contracting out, at best, involves a trade-off between efficiency and accountability. (At worst, it involves a loss of both accountability and efficiency.) Denials of such a trade-off are fallacious rhetoric. This finding, however, does not provide conclusive argument against the contracting out of any particular service. Just as the possible efficiency gains vary, depending on such factors as the degree of competition and the ease of specifying and monitoring the quantity and quality of services required (IC B3.3), so too the degree of accountability loss and the significance of such loss vary according to a number of factors, such as the degree of associated risk, the ease of monitoring performance and the extent of statutory power involved. Sensible decisions about contracting out require careful assessment of the benefits and costs in each case. They should not be settled *a priori* by ideologically loaded argument.

Accountability may be identified as the obligation of subordinates to account to their superiors for the performance of particular duties and to accept control and direction from their superiors in the performance of such duties (Thynne and Goldring 1987, 8). In this sense, it is an aspect of responsibility relationships, where one person is responsible to another for certain functions. In such relationships, accountability covers the obligation to account for performance and to accept oversight and direction. The concept of public accountability recognises the principle that, in a democracy, public officials are seen as the people's representatives or trustees and are accountable to the public for the proper performance of their designated functions (Finn 1993; Uhr 1993). The main avenue of accountability for public

servants is through the hierarchical chain of departmental responsibility to ministers and through ministers to parliament and the public. There are other avenues of accountability which have become increasingly important in recent years, for instance the accountability of public servants to parliamentary committees, to independent agents of accountability such as the Ombudsman, the Auditor-General, and the Administrative Appeals Tribunal, and directly to individual members of public through the Freedom of Information legislation and the right to seek reasons for administrative decisions. Each of these avenues of accountability needs to be considered when assessing the potential effects of contracting out on accountability.

## II. Accountability through the departmental hierarchy and ministerial responsibility

In its report, the Industry Commission claims that contracting out does not reduce accountability and may even improve it (IC 1996, B1), claims repeated by other advocates of contracting out, such as the Department of Finance (SFPARC 1997, 405; 408) and the Western Australian Public Sector Management Office (SFPARC 1997, 52). This section of the paper discusses the argument that accountability is not reduced while the following section discusses the argument that accountability is increased.

The Commission reports general agreement 'across all levels of government and among other inquiry participants that, while responsibility to do certain things can be transferred, accountability cannot...irrespective of whether an agency delivers the service itself or contracts out all or parts of the service, it remains accountable for ensuring that the service is actually delivered' (IC 1996, 86). The argument that accountability is not reduced assumes that the delegation of responsibility to contractors does not affect the extent of accountability. The public agency (eg a government department) letting out the contract for public services remains just as accountable for the provision of these service as it would if the service were provided in-house within the agency or department.

The avenue of accountability at issue here is the hierarchical chain of accountability through the department, the central channel of accountability for public servants. At each point in this chain of accountability, officials are accountable to their immediate superiors for their own performance and for the performance of others below them. Powers and functions may be delegated but senior officials and ultimately the minister remain accountable for all actions made in their name (MAB/MIAC 1993, 13). The argument advanced by the Industry Commission is that the contracting out of services by officials at any point in this chain is essentially similar to the delegation of duties to departmental subordinates. The officials, and by implication those above them in the hierarchy, including the minister, are accountable for actions they have authorised, whether these actions are taken by public servants or independent contractors.

Certainly, in both methods of provision, the department, and ultimately the minister, remain generally accountable for the provision of the service. Contracting out does not entitle governments to wash their hands of concern for the quality of service provided to the public. Public money is being spent for public purposes and government officials need to see that contracts are properly drawn up and properly carried out. If the service is deficient, the department and the minister will be called on to answer to the public. In this respect, they remain responsible and accountable for the delivery of the service.

However, there is an important difference in the degree of control exercised by departments and ministers which, in turn, affects the degree of accountability. Within the hierarchical chain of departmental accountability, superiors exercise a general oversight and a general right of control over their subordinates. Delegation of responsibility down the chain is always limited and conditional and can always be overridden from above. Though most day-to-day actions of rank-and-file public servants are of little or no concern to their more distant superiors, there is always the potential for intervention from above if the action is deemed sufficiently important to warrant intervention. This right of intervention also applies to

ministers in relation to their secretaries and departments as part of the conventions of ministerial responsibility.

Ministerial responsibility does not, as often claimed, oblige ministers to take personal responsibility for every action of their officials or to resign whenever their subordinates make mistakes. But it does require ministers to answer publicly on behalf of their departments and to take personal responsibility for the general oversight of their departments, including the imposition of appropriate remedies when mistakes are brought to light. Ministers can intervene at any point. Department secretaries exercise a similar general oversight over their departments as does every manager down the hierarchical chain over his or her subordinates. In this respect, the accountability of public servants through the hierarchical chain of ministerial responsibility means that public servants can be called to account for any action they take and are subject to any lawful directions their superiors see fit to make.

Contracting out, however, imposes a definite break in this chain of general oversight and accountability. Responsibility for service provision is placed in the hands of people who are not under the day-to-day control of department managers and are not subject to open-ended direction from ministers or their officials. Contractors are accountable to public officials for performance of the terms of the contract but not for the many acts of discretion which are not covered by the contract. Accountability is therefore limited to the terms of the contract.

This difference is also recognised in the law relating to principals and agents:

> the contractor is an independent contractor which is responsible for its own actions in the course of performance of the services. It is a principle under the general law that an employer is variously liable for its employees (over whom it exercises direct control) but a principal is not held responsible for the actions of an independent contractor (over whom it does not exercise direct control) (Attorney-General's Department (SFPARC 1997), 375)

The point is tacitly conceded by the Industry Commission when it comes to spell out the ways in which public officials remain accountable for service provision when it has been contracted out. The Commission refers specifically to functions relating to the arranging and supervision of contracts,

- translating broad program objectives into detailed service specifications;
- choosing a person (in-house or external) to deliver service;
- ensuring that the service required is actually delivered; and
- dealing equitably and responsively with clients and the public (IC 1996, 87).

Though this list sounds complete and gives the impression that no aspect of normal public service accountability has been omitted, no explicit mention is made of the degree of oversight and control that is normal with public service providers. Nor can it be. Employees of a contractor are not as accountable to their public service superiors as public servants are. It may be correct to say that the government remains accountable 'for ensuring that the service required is actually delivered', in the sense that it is the government which is responsible for decisions to contract out and for determining the terms of contract. But such language should not be used to obscure the fact that a degree of day-to-day responsibility and accountability has been surrendered.

The practical effect of this difference depends on the degree of specificity within the contracts. The more detailed the performance standards that contracting companies must meet, including the acceptance of rigorous reporting and monitoring requirements, and the more frequently their contracts may be renewed or renegotiated, the closer they will come to the degree of control and accountability to which departmental officers can be subject. But because it is impossible to specify all possible eventualities in a contract, there will always remain a significant difference between the unconditional, open-ended right of intervention accepted by public servants and the contractually circumscribed conditions accepted by contractors. The contrast might be expressed by saying that public servants are subject to an implicit contract with their superiors which can be specified or altered at any time while the contractor's accountability is limited to the stated terms of a fixed contract.

The difference is most apparent when unforeseen problems arise. If public servants fail to deliver the expected quality of service, members of the public have the right to complain to the public servant's superiors, including the minister. The minister, activating the hierarchical

chain of authority and accountability, has the right to seek immediate answers and impose immediate remedies. Where the service is provided by a contractor, however, the minister may well be powerless. The citizen may seek redress from the company, if the contractor is clearly in breach of the terms of the contract. However, where the contractor has fulfilled the terms of the contract, immediate remedies are not available. Public officials and their ministers may be held accountable for deficiencies in the contract and may be pressured into promising to implement changes in future contracts or even into renegotiating the current contract. However, they will not usually be free to offer the type of immediate redress which is available when acts of departmental staff are involved.

Similar difficulties have arisen in other jurisdictions, notably the United Kingdom and New Zealand, which have tried to insert contractual relationships within the hierarchy of authority, most notably between ministers and public agencies responsible for service delivery (DoF (SFPARC) 1997, 416-8). The contracts in question, between ministers and agencies, occur at a different point in the hierarchy from the normal cases of contracting out which are typically between departments and independent contractors, but the principle is essentially similar. Cases of maladministration have arisen, for instance in relation to prisons in the United Kingdom (Greenaway 1995, 364-6) and public hospitals in New Zealand (Boston, Martin, Pallot and Walsh 1996, 175-6), where members of the public have expected ministers to take responsibility in the normal way, by providing information, offering explanations and imposing remedies. However, ministers have claimed that they are responsible for general policy only and not for the details of day-to-day administration and are therefore powerless to justify or intervene. Whatever the rights and wrongs of such incidents, the point remains that contractual relations limit ministerial intervention and thus limit a traditional right of public accountability.

A considerable diminution of public accountability is involved because ministerial responsibility is one of the most effective means of enforcing compliance from public service providers on behalf of the public. The chain of ministerial responsibility through departments

to Parliament may not be the most effective channel for gaining information about the actions of government and needs to be supplemented by other information-seeking institutions, such as parliamentary committees, the Ombudsman and Freedom of Information legislation. But once information has been obtained, ministerial responsibility remains the most effective means of enforcing immediate remedies when deficiencies in the provision of public services are brought to light (Mulgan 1997). The public tend to take it for granted that ministers will have the right to intervene at any point and to impose an immediate solution. Failure to act on the part of ministers threatens the reputation of the government and its electoral prosects. As is illustrated by the United Kingdom and New Zealand cases, when such a right of ministerial intervention is limited by the imposition of contractual relationships, members of the public may consider, with some justice, that their rights of public accountability have been seriously compromised. They are accustomed to holding elected politicians to account for prison disturbances or breakdowns in hospital services and they want to see heads roll for blatant maladministration. When the politicians absolve themselves and responsibility falls directly on non-elected public managers who see no reason to resign or even apologise, the public's rights of redress has been blurred and blunted.

The claim of the Industry Commission and others that contracting out does not limit the accountability of public agencies for service provision is therefore mistaken. Because contracting out confines the duty of contractors to the performance of the terms of contracts and confines the right of supervising principals to enforcing the terms of contacts, it rules out the possibility of day-to-day supervision and intervention which is part of the normal practice within bureaucracies and indeed within any organisation of employees serving a common employer. Similarly, 'ministerial responsibility' is also restricted because ministers no longer have the right to intervene in day-to-day administration of their departments. They may remain 'ultimately' responsible (Attorney-General's Department (SFPARC 1997), 383) but this should not hide the fact that their level of responsibility and accountability has been reduced.

Indeed, some of the advantages of contracting out surely derive from the reduction in accountability. One of the reasons for the comparative inefficiency of service provision by public servants compared with contractors is that public servants are subject to additional pressures of accountability which help to make them more risk-averse than their private sector counterparts (IC 1996, 221; 294) . Public servants know that any efficiency gains they make will normally be insufficient to outweigh the adverse consequences of getting their department and their minister into political trouble. Mistakes are remembered while successes are forgotten (IC 1996, 222). Hence, public servants place more emphasis on avoiding mistakes than on improving productivity. Contractors, however, who are free from the demands of public service accountability and the ever-present threat of departmental and ministerial intervention, can perform much more efficiently. It is partly for this reason that corporatisation or some similar form of commercialisation is required if government agencies are to bid for in-house provision of services in competition with private providers (IC 1996, 296-307). Commercialisation and corporatisation help to secure conditions of competitive neutrality between public and private tenderers by placing the public provider at a similarly arms-length distance from ministerial responsibility and accountability.

In its terms of reference which refers to ministerial responsibility for contracted out services, the Senate Committee notes (see Appendix)

> that in other parliamentary systems it has been argued that, with regard to corporatised or contracted out government services, ministerial responsibility extends only to policy issues and does not encompass questions of day-to-day management and operation.

The analogy between corporatisation and contracting out is apt. Both are parts of a general drive to commercialise government activities by moving them closer to the private sector and to the private sector's concern for efficiency and profitability and by distancing them from political control and the politicians' interest in other, non-commercial goals (Wanna, O'Faircheallaigh and Weller 1992, 70-72). However, to say that ministers are responsible only for 'policy' in relation to contracting out in just the same way as for corporatised services may

be somewhat misleading. Much depends on the relative specificity of contracts compared with the statutory charters of corporations. Contracting out typically involves a less hands-off approach than corporatisation, if only because the provider is given a temporary contract whereas a corporation is established more or less permanently. Terms of contracts may also be much more detailed than a corporation's charter and may include more specific monitoring requirements. In these respects, private sector contractors, though privately owned, may be more subject to political control than publicly owned corporations. However, the difference between corporatisation and contracting out is one of degree only. Both involve a break in direct ministerial control in order to increase efficiency.

Thus, a reduction in ministerial responsibility is inherent in contracting out and is part of its rationale. For ministers and officials there are obvious advantages in reducing responsibility for public services in a period of cost-cutting. Whether the limitations on accountability are justifiable from the public's point of view is another question, turning on a range of issues, including the degree of associated risk and the ease of specifying services and monitoring performance. There are some public services, such as air safety or health inspection, where mistakes are extremely costly and where risk-averse providers are to be preferred. There are others, for instance corporate services, where objectives are complex and the most efficient providers may be in-house employees committed to the values of the organisation. There are still others, for instance cleaning and rubbish collection, where the risks are minimal, specification is relatively straightforward, and profit-driven contractors are superior.

The point of the present argument, however, is not to decide on the merits or otherwise of contracting out. It is simply to establish that contracting out, by restricting ministerial intervention and departmental control, inevitably restricts public accountability through the hierarchical chain of ministerial responsibility. Such a restriction in accountability may be justified in terms of other benefits, but it should not be denied. The attempt of the Industry Commission and others to deny this reduction in accountability has the appearance of

tendentious rhetoric, an attempt to win the argument for contracting out by conceptual sleight of hand. Much to be preferred is the forthright view of a private contractor, TNT, which openly accepts that ministers are not accountable for service delivery and that ministerial accountability is therefore reduced:

> If a Minister is to be held accountable for service delivery, as against the policy and performance parameters for delivery,...then the logical consequence is that the Minister must have a means of intervening in and influencing the day to day decisions and operations of that activity. *Providing an avenue for Ministerial intervention would, however, be contrary to one of the key principles of contracting out, namely that the contracted service provider must be fully and solely accountable for the performance of the contracted activity* (emphasis added) (TNT(SFPARC 1997), 305)

## III Increased accountability

Though the Industry Commission is reluctant to admit reductions in accountability through contracting out, it is less shy about arguing that contracting out may actually increase accountability (IC 1996, 85 ff). It points out that, if department managers are contracting tasks to outside bodies, they cannot rely on continuing supervision and adjustment to achieve successful results but must establish effective controlling mechanisms in advance. Departments are thus required to take special care over defining their objectives and specifying the precise tasks they want performed. They must also stipulate performance criteria and establish effective means of monitoring performance.

These procedures, it is argued, can help to identify the respective responsibilities of purchaser and provider and make it easier to exert effective administrative control (IC 1996, 87-89). Control is also improved through increased transparency of performance criteria and performance monitoring which give managers better management information for assessing the quality of service provision (IC, 1996, 89-91). Improved control thus enhances accountability.

These arguments are familiar from the new public management critique of the public sector. Public service procedures have been criticised for being too concerned with inputs and

due process and not focused enough on the efficient achievement of results. The solution is to clarify objectives and increase managerial autonomy, subject to improved reporting and monitoring, thus improving both efficiency and accountability. Experience with contracting out by some state and local governments suggests that the move to contracts has made them clarify objectives and impose new standards of monitoring on service provision (Western Australian Public Sector Management Office (SFPARC 1997), 52-3; IC 1996, 87-88). In this respect, contracting out has led to improved accountability.

However, similarly beneficial effects can be achieved within departments without contracting, through the internal adoption of new public management techniques, such as strategic management and program budgeting. Indeed, under the influence of the new public management, most public service departments would now claim to have a much clearer idea than a decade ago of what services they are trying to provide in-house and how to measure their own performance. Judged against the benchmark of an up-to-date, strategically managed department, the additional advantages in clarity and monitoring brought by contracting out will be much less than those that occur when contracting out is introduced into an old-fashioned department which has made little progress towards 'managing for results'. It is therefore misleading to compare the effects of contracting out against the performance of the unreformed public service.

Admittedly, contracting out in any department, however strategically managed, will usually require some increase in prior specification compared with uncontracted, in-house provision. However, the reason for such greater specification, it should be remembered, is to counter the loss of ongoing supervision possible over in-house providers. It is because ministers and department officials cannot intervene beyond the terms of the contract that so much care has to be taken in drawing up such terms. But this reason serves as a reminder that contracting out also implies a loss of accountability through the surrender of day-to-day control. Any gain in accountability due to additional specification has to be balanced against the loss of accountability due to the absence of immediate control.

## IV Accountability and direct citizen redress

So far, discussion of accountability has focused on the accountability provided through the central hierarchical chain of ministerial-departmental control. There are, in addition, other channels of accountability which offer the individual citizen direct redress against administrative decisions and which are affected by the contracting out of government services. Of particular relevance are the various provisions of the Commonwealth's 'administrative law package' which include merit review of decisions by the Administrative Appeals Tribunal (AAT) and other specialist tribunals, judicial review of administrative decisions in the courts, investigation of maladministration by the Ombudsman, and the right to information under Freedom of Information legislation. Review of contractors' decisions by the AAT and in the courts is unlikely to arise unless contracting out is extended to the administration of public entitlements, such as pensions, or legal obligations, such as taxation. The general consensus, at least for the present, is that such services are best retained within the public service, precisely because they involve the exercise of significant statutory powers.

However, extending the jurisdiction of the Commonwealth Ombudsman to cover private sector providers of public services is an immediately relevant issue (and is included in the terms of reference of the Senate inquiry). Indeed, private sector case managers operating under the Employment Services Act 1994 are already subject to the relevant sections of the Ombudsman's Act 1976, as well as of the Freedom of Legislation Act 1982 and the Privacy Act 1988. Similar provisions are envisaged for the newly established Employment Placement Enterprises (EPEs) as well as the Public Employment Placement Enterprises (PEPEs) (DEETYA (SFPARC 1997), 350). For the rest, however, though the Ombudsman regularly receives complaints from the public about the actions of contracting providers (as well as about tendering processes themselves), her jurisdiction does not apply beyond the public sector. In a number of cases, including a well-publicised complaint against Australia Post, the

Ombudsman has been hampered by the terms of contracts in seeking redress against contractors accused of providing inadequate services to members of the public (Ombudsman (SFPARC 1997), 172-4).

The Ombudsman has sought an extension of her jurisdiction similar to that provided under the Queensland Parliamentary Commissioner Act 1974 which covers acts by a private agency 'taken under functions conferred on, or instructions given by, a [public] agency'. However, while all advocates of contracting out agree that contracting out should include adequate provisions for redress by individual citizens, (eg IC 1996, B1.3.3; DoF (SFPARC 1997), 413-5) there is less support for the general extension of the Ombudsman's jurisdiction to cover all contractors. The main reason given for resisting the general extension of the Ombudsman's jurisdiction is the costs imposed on private contractors in terms of staff time taken to deal with investigations. Accountability requirements are expensive and have the potential to undermine the efficiency gains from contracting out. In the words of TNT,

> If the services sought under contracting out arrangements are not amenable to normal commercial contractual disciplines including those pertaining to service performance than they probably should not be contracted out. To overlay contractual arrangements with application of the Ombudsman Act would appear to risk negating or detracting from the benefits of contracting out (TNT (SFPARC 1997), 305)

Alternative, less onerous mechanisms are to be preferred to the Ombudsman, such as service charters which provide a framework for individual complaint against private as well as public providers (DAS (SFPARC 1997), 395). Otherwise, if firms are overburdened, they may be discouraged from tendering (DoF (SFPARC 1997), 415).

Because the need for the Ombudsman varies according to factors such as the extent of discretionary power delegated to contractors and the availability of alternative means of redress, a case-by-case approach to extending her jurisdiction, as applied in relation to unemployment case managers, is most appropriate (DoF (SFPARC 1997), 413-5). Again, assessment of the weight to be given to particular factors in particular cases is beyond the scope of this paper. The point is simply that, in relation to the Ombudsman's jurisdiction,

contracting out may require a further reduction in public accountability, similar to the reduction in accountability via the ministerial-departmental hierarchy.

Similar considerations apply to the use and abuse of information, a set of issues covered by the final two terms of reference of the Senate inquiry (see Appendix, (e) and (f)). Contracting companies sometimes collect data on citizens as part of their service provision and need to be held to the same standards of access and privacy applied to government agencies in the handling of personal information. The supervision of contractors, including the scrutinising of tendering processes by parliamentary committees, may require access to confidential commercial information held by private companies. Private companies providing public services with public funds need to be subject to audit by the Auditor-General. It is generally agreed that questions of information collection and access must be carefully considered when contracts are being drawn up (IC 1996, B 1.4). Extension of Freedom of Information (FOI) legislation to private sector companies may be feasible in relation to personal data collected on members of the public for whom services are provided. However, wholesale extension of FOI to all activities of private contractors is inappropriate (Australian Law Reform Commission (SFPARC 1997), 14) because private firms have a right to their own information and much of it is commercially sensitive. Excessive intrusion may deter private firms from tendering (DoF (SFPARC 1997), 419). At the same time, claims of commercial sensitivity, while legitimate within certain limits, are readily abused by companies in order to frustrate attempts at public accountability (Ombudsman (SFPARC 1997), 176). Private companies wishing to provide public services may have to accept a higher degree of public intrusion than is common in normal commercial dealings. If legitimate public expectations about accountability discourage private firms from tendering, the service should not be contracted out in the first place.

Issues of citizen redress and direct accountability, such as extension of the Ombudsman's jurisdiction and Freedom of Information legislation, should be granted their proper place in the initial decision to contract out or not. It is important not to decide in favour of contracting out

solely on efficiency grounds and then to consider what accountability requirements private sector contractors are willing to bear. A more justifiable approach is to determine, at the point of deciding whether or not to contract out, what accountability requirements are appropriate for a particular service to the public. If these requirements are more than contractors in a competitive market can be expected to sustain, then a decision should be made not to contract the service out.

## V Accountability and responsiveness

Quite apart from the issue of citizen redress, contracting out, it is argued, may provide greater accountability to the public through the benefits of increased competition and choice (IC 1996, 97-98). First, in some instances of contracted-out provision, the individual citizen is offered a choice of providers. For example, under the unemployment case-management scheme, clients can choose between alternative case managers. Similarly, the Department of Veterans' Affairs allows veterans to choose between being admitted to a contracted-out hospital and being treated as private patients in a public hospital. The exercise of consumer choice thus induces greater responsiveness to consumer preferences. Secondly and more generally, even when there is only one service provider at any one time, the competitive environment in which contractors operate and their desire to have their contracts renewed encourages them to pay greater attention to the needs and preferences of individual clients than can be expected from monopolistic public service providers.

In relation to the benefits of consumer choice, the capacity to choose between alternative providers, for instance between alternative employment case managers, should certainly encourage providers to be more responsive to the preferences of the public. However, in most cases, the possibility of choice between alternative providers is unlikely to arise because most public services are more efficiently delivered by one provider at a time, as is the case, for instance, with rubbish collection and postal delivery.

With respect to the general incentives for contractors to satisfy the public, the level of client satisfaction, as measured for instance by the number of complaints, will certainly be taken into account when contracts come up for renewal (though other factors, such as cost, will also be relevant). How far such competitive incentives match the effectiveness of direct departmental responsibility in securing responsiveness to public needs is, again, a question to be examined case-by-case. As with the potential benefits from clarifying objectives and standards (above section iii), recent improvements to in-house provision should not be

overlooked. Under the influence of new public management principles, all departments providing services directly to the public place much greater emphasis on client satisfaction than previously (Yeatman 1994).

Even where market competition makes providers more responsive to the public, accountability is not necessarily increased. Indeed, it is a misuse of the concept of accountability to apply it to the responsiveness of providers to consumers generated by a competitive market. Accountability is essentially connected with authority relations and concerns the rights of owners or principals to instruct their agents and to call them to account. Public accountability concerns the accountability of public officials to members of the public seen as their ultimate employers. When public servants accept an obligation to provide services to members of the public and to answer to them they accept a relationship of accountability with the public. This relationship entitles members of the public not only to complain directly to public officials but also, as citizens, to activate any of the formal channels of public accountability, for instance by writing to their member of parliament or a minister, by lodging a complaint with the Ombudsman, or requesting for information under FOI.

However, when providers of services aim to satisfy the public merely in order to increase their companies' profit and where members of the public are limited to accepting the service or choosing an alternative provider, the relationship is one of market exchange rather than public accountability. In such cases, the providers are accountable to their own employers and shareholders, but not to the public who are treated simply as consumers. This is not necessarily an argument against contracting out. Consumer choice in a competitive market is often a more efficient method of meeting the needs of individual citizens. As demonstrated by the success of policies of corporatisation and privatisation, the incentives and disciplines of market competition are often more effective than the more cumbersome mechanisms of bureaucratic and political control. In such cases, however, it should be admitted that public accountability has been reduced in order to secure the benefits of market competition.

Thus, accountability is not to be confused with the broader concept of responsiveness. Accountability is rather to be seen as one means of making providers responsive to their customers, a means which involves the rights of ownership and control, in contrast to alternative means, such as market competition for consumers. Where contracting out replaces citizen's rights of political control and public redress with the benefits of market sensitivity to consumer choice, accountability has been traded off for alternative means of responsiveness to the public.

## VI. Conclusion

The claim that contracting out does not reduce government accountability for public services is mistaken. Contracting out inevitably involves some reduction in accountability through the removal of direct departmental and ministerial control over the day-to-day actions of contractors and their staff. Accountability is also likely to be reduced through the reduced availability of citizen redress under such instruments as the Ombudsman and FOI. At the same time, accountability may on occasion be increased through improved departmental and ministerial control following from greater clarification of objectives and specification of standards. Providers may also become more responsive to public needs through the forces of market competition. Potential losses (and gains) in accountability need to be balanced against potential efficiency gains in each case.

## APPENDIX

## SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE

### Inquiry into Contracting Out of Government Services

### Terms of Reference

The Finance and Public Administration References Committee, noting the necessity for public accountability of all government services provided by private contractors, will examine:

(a) How best to ensure that the rights, interests and responsibilities of consumers, contracted service providers and government agencies can be defined and protected; particularly

(i) whether contracting out arrangements should be governed by written contracts between the government agency and the service provider in all cases;

(ii) whether contracts should contain standard clauses dealing with matters such as responsibility for record keeping; complaints and dispute resolution procedures; allocation of responsibility between the contracting agency and the contractor in the event of financial or other loss on the part of the consumer; and

(iii) definition of standards of service.

(b) The adequacy of tendering procedures adopted by government agencies in contracting out services.

(c) Whether the jurisdiction of the *Ombudsman's Act 1976* should be extended to ensure that it covers all contracted out government services.

(d) Ministerial responsibility to Parliament for contracted services, noting that in other parliamentary systems it has been argued that, with regard to corporatised or contracted out government services, Ministerial responsibility extends only to policy issues and does not encompass questions of day-to-day management and operation.

(e) Whether government, to meet its responsibilities for policy making, should have access to all files, information etc generated by private-sector contractors in meeting their contractual obligations.

(f) Whether and to what extent claims of commercial-in-confidence should be accepted as limiting the right of Parliament to examine contractual arrangements between government agencies and service providers.

Source: Senate Finance and Public Administration References Committee, 1996

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