



Australian Capital Territory

Public Access to Government Contracts Act 2000 No 75

Republication No 3

Effective: 3 December 2002

Republication date: 3 December 2002

Last amendment made by Act 2002 No 41

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Public Access to Government Contracts Act 2000* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 3 December 2002. It also includes any amendment, repeal or expiry affecting the republished law to 3 December 2002.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Public Access to Government Contracts Act 2000

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Public Access to Government Contracts Act 2000

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Australian Capital Territory

Public Access to Government Contracts Act 2000

An Act to make public, as far as possible, the terms of government contracts

Part 1 Preliminary

1 Name of Act

This Act is the *Public Access to Government Contracts Act 2000*.

3 Definitions

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

confidentiality clause means a provision in a government contract that requires a government agency that is a party to the contract to keep confidential particular terms of the contract or of another contract to which a government agency is a party, and includes 2 or more provisions in a government contract that together have that effect, whether or not they appear together in the contract.

Example

Provisions in a government contract that are in the form of clauses M and N in the schedule to this Act together constitute a single ***confidentiality clause***. This applies whether or not the provisions appear together in the contract.

government agency means the Territory or a Territory instrumentality, but does not include a Territory owned corporation.

Note ***Territory instrumentality*** and ***Territory owned corporation*** are defined in the *Legislation Act 2001*, dict, pt 1.

government contract—see section 5.

public text, of a government contract—see section 6.

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

5 Government contracts that Act applies to

- (1) This Act applies to a contract in writing (a *government contract*) that is—
 - (a) a contract to which a government agency is a party; or
 - (b) an amendment of such a contract;made after the commencement of this section.
- (2) However, this Act does not apply to—
 - (a) a contract of employment; or
 - (b) a contract for consideration (whether monetary or otherwise) worth \$50 000 or less; or
 - (c) a contract for the settlement of liability to an individual.

Part 2 Making government contracts public

6 Public text of a contract

- (1) Within 21 days after making a government contract, the government agency must prepare a public text of the contract in accordance with this section.
- (2) The public text must include all the text of the contract that is not confidential together with the following information, if it does not appear in that text:
 - (a) details identifying each party;
 - (b) details, of which the government agency is aware, of the cross-ownership of relevant companies;
 - (c) the duration of the contract;
 - (d) any transfer of assets under the contract;
 - (e) the effect of any maintenance provisions;
 - (f) the full consideration to be given by the government agency;
 - (g) the effect of provisions dealing with renegotiation and renewal rights;
 - (h) risk allocation among the parties at the various stages of the contract;
 - (i) the effect of any penalty provisions;
 - (j) the effect of guarantees, loans or undertakings;
 - (k) any information required by law to be disclosed to the Australian Securities and Investments Commission;
 - (l) any other information needed to understand the contract.

- (3) If a term of the contract that does not appear in the public text of the contract because it is confidential—

- (a) ceases to be confidential in accordance with the contract; or
- (b) otherwise becomes public knowledge;

the government party must prepare a new public text that includes the term within 21 days.

7 Government contracts must be made public

The current public text of the contract must be made available to the public by—

- (a) making paper copies available for purchase; or
- (b) making electronic copies available without charge.

Example

Electronic copies might be made available on a website, or distributed by email.

8 Registration of government contracts with confidentiality clauses

- (1) The auditor-general must maintain a register of contracts containing confidentiality clauses.
- (2) A government agency that agrees to a confidentiality clause must provide the auditor-general with a copy of the contract containing it within 14 days after the contract, or an amendment inserting the clause into the contract, is made.

8A List of government contracts or statement

- (1) Within 14 days after the end of each 6 month period, a government agency must give the auditor-general either—
 - (a) a list of all government contracts containing a confidentiality clause entered into by the agency during the 6 month period; or

(b) a statement that the agency did not enter into a government contract containing a confidentiality clause during the 6 month period.

(2) In this section:

6 month period means the 6 month period ending on 21 December 2002, and each 6 month period after that.

8B Chief executive officers must ensure compliance with Act

(1) The chief executive officer of a government agency must ensure that the agency complies with this Act.

(2) In this section:

chief executive officer, of a government agency, includes—

(a) for an administrative unit—the person employed under the *Public Sector Management Act 1994*, section 28 (Engagement) or section 30 (Temporary performance of duties) to perform the duties of the office of chief executive of the unit; and

Note *Administrative unit* is defined in the *Legislation Act 2001*, dict, pt 1.

(b) for a Territory instrumentality—the person responsible for managing the instrumentality.

8C Application of s 8A and s 8B

(1) Sections 8A and 8B apply to the first 6 month period and each 6 month period after that.

(2) This section expires 1 year after the day the *Public Access to Government Contracts Amendment Act 2002* commences.

(3) In this section:

first 6 month period means the period from 22 June 2002 to 21 December 2002.

9 Assembly to be informed of confidentiality clauses

- (1) For the 6 months after the commencement of this Act, and for each 6 month period after that, the auditor-general must give the appropriate Legislative Assembly committee a list of the contracts inserted in the register mentioned in section 8 in the 6 month period.
- (2) The auditor-general must give the committee the list of contracts for each 6 month period as soon as reasonably possible after the end of the period.
- (3) A government agency must, when asked by the committee, give the committee the information the committee requires about a decision to agree to a confidentiality clause.
- (4) In this section:

appropriate Legislative Assembly committee means—

- (a) the public accounts committee of the Legislative Assembly; or
- (b) another Legislative Assembly committee nominated by the Speaker for the purpose, from time to time.

10 No liability for complying with pt 2

- (1) This section applies to a government agency that is a party to a government contract.
- (2) The agency is not liable to another party to the contract or anyone else for anything done in good faith to comply with this part.

Part 3 **Confidentiality clauses in a government contract**

11 **Notice of Act to other parties**

If a confidentiality clause is proposed during the negotiation of a government contract, the government agency must ensure that the effect of this Act is drawn to the attention of the other party.

12 **Confidentiality clause in a government contract**

If a government contract is to make certain information confidential, it must do so using provisions that—

- (a) follow the effect of the model confidentiality clause in the schedule as far as required; and
- (b) do not constrain disclosure to a greater extent than provided in the model clause.

13 **Grounds for confidentiality of information**

- (1) A government agency may agree to make information confidential under a government contract only if it has satisfied itself, in accordance with this section—
 - (a) that the release of the information would result in—
 - (i) the unreasonable disclosure of personal information; or
 - (ii) the disclosure of a trade secret; or
 - (iii) the unreasonable disclosure of information with commercial value; or
 - (iv) the unreasonable disclosure of information about the business affairs of a person; or

- (b) that it is required by, or gives effect to, an obligation of confidentiality that arises from another source.
- (2) However, a government agency must not agree to make information confidential if—
- (a) it would inappropriately restrict a government agency in the management or use of Territory assets; or
 - (b) it would not be in the public interest to do so; or
 - (c) the information is already public knowledge; or
 - (d) the information has been obtained by the government agency from another source; or
 - (e) the agreement would require the confidentiality to apply for longer than is necessary to protect the interest concerned.

14 Invalidity of non-complying confidentiality clauses

A confidentiality clause has no effect if—

- (a) it does not comply with section 12 (Confidentiality clause in a government contract); or
- (b) the agreement by the government agency to the clause was not in accordance with section 13 (Grounds for confidentiality of information).

Part 4 Miscellaneous

15 Effect of disclosure of confidential information

If information required to be kept confidential by a confidentiality clause is disclosed under this Act, that disclosure does not affect the continuing force of the confidentiality clause under the contract.

16 Effect of other disclosure laws

This Act does not change the effect of any other Territory law that deals with an obligation either to disclose or not to disclose information.

17 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Schedule Model confidentiality clause

(see s 12)

M. Definition of *confidential information*

In this agreement, *confidential information* means [list of the kinds of information to be kept confidential].

N. Confidentiality obligations of the Territory

N.1 In giving effect to the principles of open and accountable government, the Territory may disclose information unless it has otherwise agreed, or is otherwise bound, to treat the information as confidential.

N.2 Except as provided in this agreement, the Territory must not disclose the confidential information to any person without the prior consent of X (which consent will not be unreasonably withheld) except where the confidential information—

- (a) is required or authorised to be disclosed by law; or
- (b) is disclosed to the Territory's solicitors, auditors, insurers, or advisers or to the Territory ombudsman; or
- (c) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
- (d) is generally available to the public; or
- (e) is in the possession of the Territory without restriction in relation to disclosure before the date of receipt from X; or
- (f) is reasonably necessary for the enforcement of the criminal law or for the protection of public revenue.

N.3 The *Public Access to Government Contracts Act 2000* applies to this contract.

Schedule Model confidentiality clause
Part 4 Miscellaneous

Clause N.

N.4 The following grounds mentioned in the *Public Access to Government Contracts Act 2000*, section 13 (1) apply to clause M and this clause: [list of relevant grounds in section 13 (1)].

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Public Access to Government Contracts Act 2000 No 75

notified 21 December 2000 (Gaz 2000 No S69)
commenced 21 December 2000 (s 2)

as amended by

Legislation (Consequential Amendments) Act 2001 No 44 pt 307

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 307 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

Public Access to Government Contracts Amendment Act 2002 No 41

notified LR 2 December 2002
s 1, s 2 commenced 2 December 2002 (LA s 75)
remainder commenced 3 December 2002 (s 2)

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.3344

Definitions

s 3 def **government agency** am 2002 No 41 amdt 1.1
def **Territory owned corporation** om 2002 No 41 amdt 1.2

List of government contracts or statement

s 8A ins 2002 No 41 s 4

Chief executive officers must ensure compliance with Act

s 8B ins 2002 No 41 s 4

Application of s 8A and s 8B

s 8C ins 2002 No 41 s 4
exp 3 December 2003 (s 8C (2))

Regulation-making power

s 17 am 2001 No 44 amdt 1.3345

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	not amended	24 May 2001
2	Act 2001 No 44	12 September 2002

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