



Australian Capital Territory

# Government Procurement Act 2001

A2001-28

Republication No 27

Effective: 1 July 2018 – 14 January 2019

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## About this republication

### The republished law

This is a republication of the *Government Procurement Act 2001* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 July 2018. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 July 2018.

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](http://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, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### 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 the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$150 for an individual and \$750 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Government Procurement Act 2001

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Australian Capital Territory

# Government Procurement Act 2001

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An Act about procurement by the Territory and territory entities, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Government Procurement Act 2001*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*Territory entity*—see section 3.' means that the expression 'Territory entity' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 2A Meaning of *procurement*

In this Act:

*procurement*—

- (a) means the process of acquiring goods, services, works or property by purchase, lease, rental or exchange; and
- (b) includes the process of disposing of goods, works or property including by sale.



### 3 Meaning of *Territory entity*

(1) In this Act:

*Territory entity*—

(a) means—

(i) an administrative unit; or

(ii) a Territory entity under the *Auditor-General Act 1996*; or

(iii) the Office of the Legislative Assembly; or

(iv) an officer of the Assembly; and

(b) for an unincorporated Territory entity—includes a member of the entity acting on behalf of the Territory.

(2) However, *territory entity* does not include—

(a) The University of Canberra; or

(b) a Territory-owned corporation; or

(c) another entity established under the *Corporations Act*; or

(d) an entity declared under the regulations not to be a territory entity.

### 3A Application of Act to land sales etc

This Act does not apply to the grant of a licence or lease of land, or the sale of a lease of land, under the *Planning and Development Act 2007*.

### 3B Responsible chief executive officer to ensure Act complied with

The responsible chief executive officer for a territory entity must ensure that the entity complies with this Act.

#### 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.

#### 4A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## **Part 2                      Government procurement board**

### **Division 2.1              Establishment and functions**

#### **5                      Government Procurement Board**

There is an Australian Capital Territory Government Procurement Board.

#### **6                      Functions of board**

The functions of the board are—

- (a) to review, and give advice to territory entities on, procurement issues; and
- (b) to review, and give advice on—
  - (i) procurement proposals and activities referred to the board by a Minister or responsible chief executive officer; or
  - (ii) procurement proposals for procurement matters declared by the Minister; and
- (c) to review procurement proposals of territory entities in accordance with the regulations; and
- (d) to consider, advise on and, if appropriate, endorse procurement practices and methods for use by territory entities; and
- (e) to provide advice to the Minister on any issue relevant to the procurement activities of territory entities or the operation of this Act; and
- (f) to exercise any other function given to the board under this Act or any other Territory law.

*Note*      A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

## 8 Ministerial directions to board

- (1) The Minister may give written directions to the board about the exercise of its functions.
- (2) However, the Minister must not give written directions to the board about the exercise of its functions in relation to—
  - (a) the Office of the Legislative Assembly; or
  - (b) an officer of the Assembly.
- (3) Before giving a direction, the Minister must—
  - (a) tell the board of the intent of the proposed direction; and
  - (b) give the board a reasonable opportunity to comment on the proposed direction; and
  - (c) consider any comments made by the board.
- (4) The Minister must present a copy of a direction given under this section to the Legislative Assembly within 6 sitting days after it is given.
- (5) The board must comply with a direction given to it under this section.
- (6) For the *Competition and Consumer Act 2010* (Cwlth), this Act authorises—
  - (a) the giving of a direction under this section; and
  - (b) the doing of, or the failure to do, anything by the board to comply with a direction under this section.

## 9 Reports to Minister and Speaker

- (1) The board must give—
  - (a) the Minister the reports the Minister requires; and
  - (b) the Speaker the reports the Speaker requires in relation to—
    - (i) the Office of the Legislative Assembly; and

- (ii) an officer of the Assembly.
- (2) However, the Minister may not ask the board for a report in relation to—
  - (a) the Office of the Legislative Assembly; or
  - (b) an officer of the Assembly.
- (3) A report under this section must be prepared in the form, and be based on the accounting or other policies or practices, (if any) that the Minister or Speaker requires.
- (4) This section is in addition to any other reports that the board is required to make under this Act or any other law.

## **10 Providing information to Minister**

- (1) The board must give the Minister any information about its operations that the Minister requires.
- (2) However, the Minister may not ask the board for information about its operations in relation to—
  - (a) the Office of the Legislative Assembly; or
  - (b) an officer of the Assembly.

## **Division 2.2 Members of board**

### **11 Constitution of board**

The board consists of the following 9 part-time members:

- (a) the chairperson;
- (b) the deputy chairperson;
- (c) 3 public employee members;
- (d) 4 non-public employee members.

## 12 Appointment of members

- (1) The members are to be appointed by the Minister.

*Note 1* For the making of appointments (including acting appointments), see [Legislation Act](#), pt 19.3.

*Note 2* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see [Legislation Act](#), div 19.3.3).

- (2) A person appointed as chairperson, deputy chairperson, or as a public employee member, must be a public employee.

*Note* **Public employee** is defined in the [Legislation Act](#), dict, pt 1.

- (3) A person appointed as a non-public employee member must not be a public employee.

- (4) The instrument appointing, or evidencing the appointment of, a member must state whether the member is appointed as chairperson, deputy chairperson, a public employee member or a non-public employee member.

## 13 Term of appointment of members

A member must be appointed for a term of not longer than 5 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act 2001](#), s 208 and dict, pt 1, def of *appoint*).

## 14 Honesty, care and diligence of members

In exercising the functions of member, a member must exercise the degree of honesty, care and diligence required to be exercised by a director of a company in relation to the affairs of the company.

## 15 Abuse of position

- (1) A person commits an offence if—
- (a) the person uses information gained because of being a member of the board; and

- (b) the person does so with the intention of dishonestly obtaining a benefit for the person or someone else.

Maximum penalty: imprisonment for 5 years.

- (2) A person commits an offence if—
  - (a) the person has stopped being a member of the board; and
  - (b) the person uses information that the person obtained because of being a member; and
  - (c) the person does so with the intention of dishonestly obtaining a benefit for the person or someone else.

Maximum penalty: imprisonment for 5 years.

- (3) In this section:  
*dishonestly*—a person acts dishonestly if—
  - (a) the person's conduct is dishonest according to the standards of ordinary people; and
  - (b) the person knows that the conduct is dishonest according to those standards.

## **16 Ending of appointment of members**

- (1) The Minister must end the appointment of the chairperson, deputy chairperson, or a public employee member, if the person stops being a public employee.
- (2) The Minister must end the appointment of a non-public employee member if the member becomes a public employee.
- (3) The Minister may end the appointment of any member—
  - (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the member—
    - (i) becomes bankrupt or personally insolvent; or

- (ii) is absent, other than on leave approved by the Minister, from 3 consecutive meetings of the board; or
- (iii) contravenes section 14 (Honesty, care and diligence of members) or 20 (Disclosure of interests by members) without reasonable excuse; or
- (iv) commits an offence against section 15 (Improper use of information) or an indictable offence.

*Note* The appointment of a member also ends if the member resigns (see [Legislation Act 2001](#), s 210).

## **17 Conditions of appointment generally**

A member holds the position on the conditions not provided by this Act or any other Territory law that are decided by the Minister.

## **Division 2.3 Proceedings of board**

### **18 Time and place of meetings**

- (1) Meetings of the board are to be held at the times and places it decides.
- (2) The chairperson—
  - (a) may at any time call a meeting of the board; and
  - (b) must call a meeting if asked by the Minister or at least 3 members.
- (3) The chairperson must give the other members reasonable notice of the time and place of a meeting called by the chairperson.

### **19 Procedure governing proceedings of board**

- (1) The chairperson presides at all meetings at which the chairperson is present.
- (2) If the chairperson is absent, the deputy chairperson presides.



- (3) If the chairperson and deputy chairperson are absent, the member chosen by the members present presides.
- (4) Business may be carried out at a meeting of the board constituted in accordance with section 19A.
- (5) At a meeting of the board each member has a vote on each question to be decided.
- (6) A question is to be decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a casting vote.
- (7) The board may conduct its proceedings (including its meetings) as it considers appropriate.
- (8) The board may hold meetings, or allow members to take part in meetings, by telephone, closed-circuit communication or another form of communication.
- (9) A member who takes part in a meeting conducted under subsection (8) is taken to be present at the meeting.
- (10) If—
  - (a) all members agree, in writing, to a proposed resolution; and
  - (b) notice of the resolution is given under procedures decided by the board;the resolution is a valid resolution of the board, even though it was not passed at a meeting of the board.
- (11) The board must keep minutes of its meetings.

## **19A Board quorum**

- (1) Business may be carried out at a meeting of the board only if 4 members are present, including 1 non-public employee member.
- (2) However, the review of a prescribed procurement matter may be carried out at a meeting of the board consisting of—

- (a) the chairperson, or the deputy chairperson, and 1 non-public employee member; or
- (b) 2 public employee members and 1 non-public employee member.

*Note* The board's functions include reviewing procurement proposals and activities referred to the board by a minister or responsible chief executive officer, and procurement proposals of territory entities in accordance with the regulations (see s 6 (b) and (c)).

- (3) Subsection (2) does not apply to a prescribed procurement matter if—
  - (a) the chairperson gives a direction that the subsection does not apply to the matter; or
  - (b) a member tells the chairperson that the member objects to the matter being reviewed by the board as constituted under the subsection.
- (4) In this section:

***prescribed procurement matter*** means any of the following that is approved, in writing, by the chairperson for subsection (2):

- (a) a procurement proposal referred to the board by a Minister or responsible chief executive officer;
- (b) a procurement activity referred to the board by a Minister or responsible chief executive officer;
- (c) a procurement proposal referred to the board in accordance with the regulations;
- (d) a procurement proposal for a procurement matter stated in a declaration under section 22B (Minister may declare procurement matters to be reviewed).

*Note* Power to make a statutory instrument includes power to make different provision for different classes (see [Legislation Act](#), s 48).

***procurement proposal*** means a proposal by a territory entity for procurement.

## **20 Disclosure of interests by members**

- (1) This section applies to a member if—
  - (a) the member has a direct or indirect financial interest, or a direct or indirect interest of any other kind, in an issue being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the board.
- (3) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the member must not—
  - (a) be present when the board considers the issue; or
  - (b) take part in a decision of the board on the issue.
- (4) Any other member who also has a direct or indirect financial interest in the issue must not—
  - (a) be present when the board is considering its decision under subsection (3); or
  - (b) take part in making the decision.

## **Division 2.4 Staff**

### **21 Arrangements for staff**

The board may arrange with the head of service to use the services of a public servant.

*Note* The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see [Public Sector Management Act 1994](#), s 18).

## **Division 2.5 Other matters**

### **22 Power to obtain information and documents**

- (1) In relation to the exercise of its functions, the board may, in writing, ask a Territory entity to give stated information or a stated document to the board within a stated time and in a stated way.
- (2) The Territory entity must comply with the request.

## Part 2A Procurement activities

### 22A Procurement principle—value for money

- (1) A territory entity must pursue value for money in undertaking any procurement activity.
- (2) Value for money means the best available procurement outcome.
- (3) In pursuing value for money, the entity must have regard to the following:
  - (a) probity and ethical behaviour;
  - (b) management of risk;
  - (c) open and effective competition;
  - (d) optimising whole of life costs;
  - (e) anything else prescribed by regulation.

### 22B Minister may declare procurement matters to be reviewed

- (1) The Minister may declare the procurement matters for which a procurement proposal must be reviewed by the board.

#### Examples of declarations

- 1 procurement matters with the same risk profile
- 2 procurement matters above a stated value threshold

*Note 1* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

*Note 2* Power to make a statutory instrument includes power to make different provision for different classes (see [Legislation Act](#), s 48).

- (2) A declaration under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

(3) In this section:

*procurement proposal* does not include a procurement proposal by—

- (a) the Office of the Legislative Assembly; and
- (b) an officer of the Assembly.

**22C Procurement proposal or activity may be referred to board**

- (1) The responsible Minister or responsible chief executive officer may refer a procurement proposal or activity to the board for review and advice.
- (2) However, a procurement proposal or activity may only be referred to the board for review and advice—
  - (a) for the Office of the Legislative Assembly—by the Speaker; and
  - (a) for an officer of the Assembly—the officer.

## **Part 3**                      **Notifiable contracts**

### **Division 3.1**              **Preliminary**

#### **23**              **Application—pt 3**

- (1) To remove any doubt, this part applies in relation to a contract entered into by—
- (a) a territory entity with an excluded body; or
  - (b) an excluded body as an agent of a territory entity.

**Example**

A directorate (representing the Territory) enters into a notifiable contract with a Territory owned corporation. The directorate, but not the Territory owned corporation, is required to notify the contract under pt 3 (Notifiable contracts).

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) In this section:

***excluded body*** means a body that is not included as a territory entity under section 3 (2) (Meaning of *territory entity*).

#### **24**              **Definitions for pt 3**

In this part:

***confidential text***, of a notifiable contract, means that part of the contract that a party to the notifiable contract (including the Territory or a Territory entity) is required to keep confidential under—

- (a) a provision of a contract (including the notifiable contract) that requires a party to the notifiable contract to keep any part of the notifiable contract confidential; or
- (b) any other requirement imposed by law that has the effect of requiring a party to the notifiable contract to keep any part of the notifiable contract confidential.

*contract* includes a contract as amended.

*notifiable amendment*, of a notifiable contract—see section 26.

*notifiable contract*—see section 25.

*notifiable contracts register*—see section 27 (1).

*public text*—the *public text* of a notifiable contract is—

- (a) the text (if any) of the contract that is not confidential text; and
- (b) any confidential text of the contract—
  - (i) that ceases to be confidential in accordance with the contract or by the agreement of the parties to the contract; or
  - (ii) the substance of which has become public knowledge.

*responsible Territory entity*, for a contract or proposed contract, means—

- (a) the Territory entity that is, or will be, responsible for the administration of the contract; or
- (b) if a Territory entity administers, or will administer, the contract for another Territory entity—the other Territory entity.

**Example for par (b)**

A Territory owned corporation administers a contract for an unincorporated government body. The body is the responsible Territory entity for the contract.

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**25            What is a *notifiable contract*?**

- (1) For this part, a *notifiable contract* is a written contract for procurement entered into by the Territory or a territory entity.



- (2) However, **notifiable contract** does not include the following:
- (a) a contract with a total consideration, or estimated total consideration, that is less than the prescribed amount;

*Note* **Contract** includes a contract as amended, see s 24.

- (b) an intergovernmental agreement;
- (c) a contract prescribed under the regulations.

**Example—par (a)**

The total consideration for a contract for the purchase of swings by the Territory is \$23 500. The contract is later amended to increase the total consideration to \$27 500. If for example, a regulation prescribes an amount of \$25 000 for par (a), the contract, as later amended, would be a notifiable contract.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) To remove any doubt, none of the following is a **notifiable contract**:
- (a) a contract of employment;
  - (b) a contract for the settlement of a legal liability to an individual.

## 26 Meaning of **notifiable amendment**

For this part, a **notifiable amendment** of a notifiable contract is any amendment that, either alone or counted with another amendment or other amendments that have not been notified in the notifiable contracts register—

- (a) increases the total consideration for the contract by at least the greater of—
  - (i) 10% (or, if another percentage is prescribed by regulation, the other percentage) of the total consideration for the contract as already notified in the notifiable contracts register; and
  - (ii) the prescribed amount; or

- (b) substantially changes the scope or nature of the goods, services, works or property to be procured under the contract.

**Example**

The consideration for a contract between the Territory and Acme Pty Ltd for the supply of road runner retention devices is \$240 000.

If, for example, a regulation prescribes an amount of \$25 000 for par (a) (ii), the minimum value for notification of an amendment, or a series of amendments, of the contract is \$25 000 because this amount, under par (a), is greater than 10% of the value of the contract. The contract is amended on 1 January, 1 March and 1 June.

The 1st and 2nd amendments are for \$23 500 each. While neither amendment is separately notifiable, the total of the 2 amendments is \$47 000 and after the 2nd amendment (ie 1 March) each of them becomes a notifiable amendment. When the 2 amendments are notified on the register, the 2 amendments cannot be counted towards any other notifiable amendment. They increase the total consideration for the contract to \$287 000.

The 3rd amendment is for \$27 000. It is not a notifiable amendment because, even though it is more than \$25 000, it is less than 10% of the total consideration for the contract as amended by all previous notifiable amendments, ie \$28 700.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

## Division 3.2 Notifiable contracts register

### 27 Keeping of register

- (1) The director-general must keep a register of notifiable contracts (the *notifiable contracts register*).

*Note* The reference to the director-general is to the director-general of the administrative unit that administers this provision (and not to the director-general of each administrative unit), see [Legislation Act](#), s 163.

- (2) The register must be kept electronically.

**Example of how register may be kept**

The register may be kept in the form of, or as part of, 1 or more computer databases, and may include data compiled electronically from the databases.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) The director-general may correct any mistake, error or omission in the register subject to the requirements (if any) of the regulations.

## **28 Contents of register**

- (1) The notifiable contracts register must include the following for each notifiable contract:
- (a) the parties to the contract;
  - (b) the responsible Territory entity for the contract and any change in the responsible Territory entity for the contract;
  - (c) a brief description of what the contract is for;
  - (d) the date the contract was made;
  - (e) the date the contract ends;
  - (f) the value of the total consideration, or estimated total consideration, for the contract;
  - (g) if a notifiable amendment of the contract is made—
    - (i) the change in—
      - (A) the value of the consideration to which the amendment relates; or
      - (B) the scope or nature of the goods, services, works or property to which the amendment relates; and
    - (ii) the value of the total consideration, or estimated total consideration, for the contract because of the amendment; and
    - (iii) the date the amendment was made;

(h) whether any part of the contract is confidential text;

*Note* **Contract** includes a contract as amended, see s 24.

(i) if any part of the contract is confidential text—a brief indication of what the confidential text relates to;

(j) for a notifiable contract, and any notifiable amendment of the contract, held by the responsible Territory entity in electronic form—an electronic copy of the public text (if any) of the contract;

(k) where anyone can obtain a printed copy of the public text (if any) of the contract as made and of any notifiable amendment of the contract;

(l) anything else prescribed under the regulations.

**Examples for par (i)**

see examples for s 35 (1) (a)

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

(2) The register may include anything else the director-general considers appropriate.

**Example**

Information about and hypertext links to contracts that are not notifiable contracts.

(3) The regulations may make provision in relation to documents that are to be entered in the register.

**Example**

requiring a document to be in portable document format (created in Adobe Acrobat 5.0) or in rich text format

## **29 Public access to material on register**

(1) The director-general must ensure, as far as practicable, that a copy of the material mentioned in section 28 (1) for a notifiable contract is accessible on a web site approved by the director-general—

- (a) at all times; and
  - (b) for at least 2 years after the day the notifiable contract ends.
- (2) Access is to be provided without charge by the Territory.

### **30 Territory entities to provide material for register**

- (1) The responsible Territory entity for a notifiable contract must, within 21 days after the day the contract is made—
- (a) enter the material mentioned in section 28 (1) for the contract in the register; or
  - (b) give the material to the director-general for entry in the register.
- (2) The entity must also, within 21 days after the day a change in the material mentioned in section 28 (1) happens—
- (a) update the material for the contract in the register; or
  - (b) give the updated material to the director-general for entry in the register.

*Note* **Contract** includes a contract as amended, see s 24.

- (3) However, subsection (2) only applies to a change mentioned in section 28 (1) (g) if the change is about a notifiable amendment.

## **Division 3.3 Availability of notifiable contracts**

### **31 Public text of contracts to be made available**

- (1) The responsible Territory entity for a notifiable contract must make the public text of the contract as made, and of any notifiable amendment of the contract, available to the public within—
- (a) for the contract—21 days after the day the contract becomes a notifiable contract; or
  - (b) for the amendment—21 days after the day the amendment becomes a notifiable amendment.

- (2) The public text must be made available—
- (a) if section 28 (1) (j) (Contents of register) applies to the public text—from the notifiable contracts register in accordance with section 29 (Public access to material on register); and
  - (b) by allowing anyone to buy a printed copy of the public text, at a place mentioned in section 28 (1) (k) in relation to the contract, on payment of the reasonable costs of reproducing it.

**Example**

A notifiable contract for public works consists of computer-written text in a form that can be included on the register and a hand-drawn plan. The public text of the contract that is computer-written must be made available both in hardcopy and electronically from the notifiable contracts register. The public text of the hand-drawn plan must be made available in hardcopy.

If the responsible Territory entity has an electronically scanned copy of the plan, the public text of the scanned copy must also be made available from the register.

*Note 1* A responsible Territory entity is not required to create an electronic copy of a document that is not in electronic form, see s 33.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision when it appears (see [Legislation Act](#), s 126 and s 132).

- (3) The requirement to make the public text of a notifiable contract (including any notifiable amendment of the contract) available ends 2 years after the day the contract ends, but the Territory entity may continue to make the public text available for any period after the contract ends.

*Note* **Contract** includes a contract as amended, see s 24.

**32 Making information and contracts available apart from pt 3**

- (1) This part does not prevent responsible Territory entities from making available information about, or the text of, government contracts

otherwise than as required by this part if an agency is required under law to do so or can otherwise properly do so.

**Examples**

- 1 publishing information about a contract in a newspaper advertisement in addition to complying with s 28 (1) (Contents of register)
- 2 giving a person an electronic copy of a notifiable contract, without charge, on a floppy disk, CD or DVD

*Note 1* The [Freedom of Information Act 2016](#) and the [Territory Records Act 2002](#) provide for how government information and Territory records may be accessed.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) In this section:

***government contract*** means a notifiable contract and any other contract to which the Territory or a Territory entity is a party.

### **33 Entities not required to create electronic copies**

If a responsible Territory entity does not have a notifiable contract in electronic form, this part does not require the entity to create an electronic copy of the contract.

## **Division 3.4 Confidential text**

### **34 Notice of effect of div 3.4 to contracting parties**

- (1) This section applies in relation to a proposed notifiable contract if—
- (a) a party to the contract, including the Territory or a Territory entity, proposes that any part of the contract be confidential text; or
  - (b) any part of the contract will be confidential text because of a requirement imposed under law that requires a party to the contract to keep the part confidential.

- (2) The responsible Territory entity for the contract must ensure that this division is drawn to the attention of all the proposed parties to the contract (other than the Territory or a Territory entity).

### **35 Grounds for confidentiality of information**

- (1) The responsible Territory entity for a contract to which section 34 applies must not propose that any part of the text of the contract be confidential text, or agree to any part of the contract being confidential text, unless satisfied that—
- (a) the disclosure of the text would—
    - (i) be an unreasonable disclosure of personal information about a person; or
    - (ii) disclose a trade secret; or
    - (iii) disclose information (other than a trade secret) having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
    - (iv) be an unreasonable disclosure of information about the business affairs of a person; or
    - (v) disclose information that may put public safety or the security of the Territory at risk; or
    - (vi) disclose information prescribed by regulation for this section; or
  - (b) a requirement imposed under law requires a party to the contract to keep the text confidential.

**Example for par (a) (ii)**

intellectual property including software source codes

**Example for par (a) (iii)**

information on the design and operation of goods



**Examples for par (a) (iv)**

- 1 hourly rates, on-costs and management fees
- 2 individual components of the total contract price

**Examples for par (a) (v)**

- 1 construction plans for a correctional facility or law enforcement facility
- 2 information about design, construction or operation of major infrastructure or public works

**Example for par (b)**

a failure to comply with the requirement would create an action for breach of confidence

*Note 1* The Territory privacy principles apply to a Territory entity.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) However, the responsible Territory entity for the contract must not propose that any part of the text of the contract be confidential text, or agree to any part of the contract being confidential text, if—
  - (a) the substance of the information to which the text relates is public knowledge; or
  - (b) the effect of the proposal or agreement—
    - (i) would be to inappropriately restrict a Territory entity in the management or use of Territory assets; or
    - (ii) would not be in the public interest; or
    - (iii) would be to require the obligation of confidentiality to apply for longer than is reasonably necessary to protect the interest to which it relates.
- (3) The responsible territory entity for the contract may delegate the entity's functions under this section to a public employee.

- (4) In this section:

*personal information*—see the *Information Privacy Act 2014*, section 8.

**36            Model confidentiality clause required for confidential text**

The text of a notifiable contract must not be made confidential text unless—

- (a) a confidentiality clause that incorporates the substance of the model confidentiality clause in schedule 1, as far as is applicable, is included in the contract; and
- (b) the confidentiality clause does not limit disclosure of information to a greater extent than provided in the model confidentiality clause.

**37            Invalidity of non-complying confidentiality clauses**

A confidentiality clause in or applying to a notifiable contract is void if—

- (a) the clause does not comply with section 36; or
- (b) the clause was included in the contract in contravention of section 35 (Grounds for confidentiality of information).

**38            Contracts and information to be given to auditor-general**

- (1) The responsible territory entity for a reportable contract must, if requested by the auditor-general, give the auditor-general the contracts and information the auditor-general requests.
- (2) In this section:

*confidential text* includes text that purports to be confidential text.

*reportable contract* means a notifiable contract that contains confidential text.

**39 Responsible territory entity's reporting obligations for contracts etc**

- (1) The responsible territory entity for a reportable contract must, for each relevant reporting period, give the appropriate Legislative Assembly committee either—
  - (a) a list of the following:
    - (i) the reportable contracts that became notifiable contracts during the relevant period;
    - (ii) the reportable contracts that had confidential text changed during the relevant period; or
  - (b) a statement that no reportable contracts became notifiable or changed during the relevant period.
- (2) The list must contain—
  - (a) the following information for each reportable contract mentioned in subsection (1) (a) (i):
    - (i) the parties to the contract;
    - (ii) a brief description of what the contract is for;
    - (iii) the date the contract was made;
    - (iv) the date the contract ends;
    - (v) the value of the total consideration, or estimated total consideration, for the contract; and
  - (b) for each reportable contract mentioned in subsection (1) (a) (ii)—the thing that the change relates to; and
  - (c) any other information prescribed by regulation.
- (3) The entity may also give the committee any other information the entity considers appropriate.

- (4) The entity must give the list or statement to the committee within 21 days after the day each relevant reporting period ends.
- (5) The entity must, if asked by the committee, give the committee the information the committee requires about the decision to agree to the inclusion of confidential text in the contract.
- (6) In this section:

*appropriate Legislative Assembly committee* means a standing committee of the Legislative Assembly nominated, in writing, by the Speaker.

*confidential text*—see section 38 (2).

*reportable contract*—see section 38 (2).

*reporting period* means a 12-month period ending on 31 March.

- (7) A nomination under subsection (6) is a notifiable instrument.

*Note*      A notifiable instrument must be notified under the [Legislation Act](#).

### **39A      Auditor-general's reporting obligations for contracts etc**

- (1) This section applies if the auditor-general requests a copy of a reportable contract under section 38.
- (2) The auditor-general must report to the appropriate Legislative Assembly committee on whether the auditor-general is satisfied that confidential text in the contract complies with section 35 (1) (a) or (b) (Grounds for confidentiality of information).
- (3) In this section:

*appropriate Legislative Assembly committee*—see section 39 (6).

*confidential text*—see section 38 (2).

## **Division 3.5            Other matters**

### **40            Effect of disclosure of confidential information**

- (1) This section applies if confidential text, or information about confidential text, is disclosed under this part.
- (2) The disclosure does not affect the continuing force of the obligation of confidence.

### **41            Effect of other disclosure laws**

This part does not affect any other law in force in the Territory about the disclosure of documents or information.

*Note 1*    The *Freedom of Information Act 2016* and the *Territory Records Act 2002* provide for how government information and Territory records may be accessed.

*Note 2*    The Territory privacy principles under the *Information Privacy Act 2014* provide for the disclosure of personal information in certain circumstances.

### **42            No liability for complying with pt 3**

- (1) The Territory or a Territory entity is not civilly liable to another party to a reportable contract, or to anyone else, for anything done honestly under this part.
- (2) In this section:  
  
*reportable contract*—see section 38 (2) (Contracts and information to be given to auditor-general).

## Part 3A                            Notifiable invoices

### Division 3A.1                  Preliminary—pt 3A

#### 42A            What is a *notifiable invoice*?—pt 3A

- (1) For this part, a *notifiable invoice* is an invoice for the prescribed amount or more, payable by a responsible Territory entity for goods, services, works or property provided to, or procured by, the Territory or a Territory entity.
- (2) A *notifiable invoice* includes an invoice for reimbursement by the Territory or a Territory entity of the cost for goods, services, works or property provided to, or procured by, a contractor in the course of carrying out the contractor's work for the Territory or a Territory entity.

**Example**

the cost of flights to Canberra, and accommodation in Canberra, for the contractor to inspect works

*Note*        An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) However, a *notifiable invoice* does not include—
  - (a) an invoice for goods, services, works or property provided by the Territory or a Territory entity; or
  - (b) an invoice for the grant of a licence or lease of land, or the sale of a lease of land, by the Territory; or
  - (c) an invoice prescribed by regulation.

## Division 3A.2      Notifiable invoices register

### 42B      Keeping of *notifiable invoices register*

- (1) The director-general must keep a register of notifiable invoices (the *notifiable invoices register*).

*Note*      The reference to the director-general is to the director-general of the administrative unit that administers this provision (and not the director-general of each administrative unit), see the [Legislation Act](#), s 163.

- (2) The register must be kept electronically.

**Example—how register may be kept**

The register may be kept in the form of, or as part of, 1 or more computer databases, and may include data compiled electronically from the databases.

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) The director-general may correct any mistake, error or omission in the register subject to any requirement prescribed by regulation.

### 42C      Contents of notifiable invoices register

- (1) The notifiable invoices register must include the following for each notifiable invoice:
- (a) the name of the entity invoicing the Territory;
  - (b) if the entity invoicing the Territory has an ABN—the ABN;
  - (c) the name of the responsible Territory entity for the invoice;
  - (d) a brief description of what the invoice is for;
  - (e) the date the invoice was received;
  - (f) the date the invoice was paid;
  - (g) the value of the good, service or work charged for under the invoice;

- (h) anything else prescribed by regulation.
- (2) The register may include anything else the director-general considers appropriate.

**42D Public access to material on notifiable invoices register**

- (1) The director-general must ensure, as far as practicable, that a copy of the information mentioned in section 42C (1) for a notifiable invoice is accessible on a website approved by the director-general—
  - (a) at all times; and
  - (b) for at least 2 years.
- (2) Access must be provided without charge by the Territory.

**42E Territory entities to provide material for notifiable invoices register**

The responsible Territory entity for a notifiable invoice must, within 21 days after the end of the month in which the invoice was paid—

- (a) enter the information mentioned in section 42C (1) for the invoice in the register; or
- (b) give the information to the director-general for entry in the register.

**Division 3A.3 Other matters—notifiable invoices**

**42F Notice of effect of part to parties issuing invoices**

The responsible Territory entity for the payment of a proposed notifiable invoice must ensure that this part is drawn to the attention of parties intending to provide a good, service or work for which an invoice is to be raised.

**42G Effect of other disclosure laws etc**

This part does not—



- (a) affect any other law in force in the Territory about the disclosure of documents or information; or
- (b) prevent responsible Territory entities from making available information about, or the text of, a notifiable invoice otherwise than as required by this part if any agency is required under law to do so or can otherwise properly do so.

*Note 1* The *Freedom of Information Act 2016* and the *Territory Records Act 2002* provide for how government information and Territory records may be accessed.

*Note 2* The Territory privacy principles under the *Information Privacy Act 2014* provide for the disclosure of personal information in certain circumstances.

#### **42H            No liability for complying with pt 3A**

The Territory or a Territory entity is not civilly liable to an entity issuing a notifiable invoice, or to anyone else, for anything done honestly under this part.

## Part 4 Interest on commercial accounts

### 43 Application—pt 4

This part applies to a contract entered into by the Territory or a territory entity for procurement, other than a contract—

- (a) with a consideration of at least \$10 000 (or, if another amount is prescribed by regulation, the other amount); and
- (b) that states that this part does not apply to it.

### 44 Definitions for pt 4

In this part:

**commercial account** means an account given to the Territory or a Territory entity for the payment of money in relation to goods, services or works provided to the Territory or a Territory entity under a contract.

#### Examples of payments

a deposit, part payment, instalment payment or a bond or other refundable money

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**payment date**, for a commercial account, means—

- (a) the day worked out in accordance with the contract as the day when the account is payable; or
- (b) in any other case—the day on which the account is received by the Territory or the Territory entity.

**relevant date**, for the payment of a commercial account, means the 25th day of the calendar month after the calendar month in which the payment date for payment of the account happens.

*Note* **Calendar month**—see the [Legislation Act](#), dictionary, pt 1.

**45 Interest on unpaid accounts**

- (1) This section applies if—
  - (a) the Territory or a territory entity does not pay a commercial account in full by the relevant date for the account; and
  - (b) the person to whom the account is payable requests, in writing, that the Territory, or the territory entity, pay interest on the amount of the account that remains unpaid from time to time after the payment date.
- (2) The Territory or the Territory entity is liable to pay the creditor a further amount by way of interest on the amount of the account that remains unpaid from time to time.
- (3) Interest is payable at the rate worked out in accordance with the rules under the *Court Procedures Act 2004* applying to the Supreme Court as if the unpaid amount were a judgment of the Supreme Court.
- (4) If payment of the account is made by mail, the payment is taken to be made when it is posted.

**46 Exclusion of inconsistent contractual terms**

A term in a contract is void if—

- (a) for a contract with a total consideration worth less than the prescribed amount for section 43—the term excludes the application of this part to the contract; or
- (b) the term provides for the payment of interest on an unpaid commercial account that has been rendered under the contract.

**47 Availability of funds to pay interest**

- (1) Interest payable under this part is payable whether or not there is an appropriation available for the purpose.
- (2) If a commercial account is payable out of a trust banking account under the *Financial Management Act 1996*, section 51 (Directorate

**Part 4** Interest on commercial accounts

Section 47

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trust banking accounts), any interest payable under this part for the account is also payable out of the account.

## Part 5 Miscellaneous

### 51 Approved forms

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

### 52 Regulation-making power

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) The regulations may—
  - (a) make provision in relation to procurement by territory entities; and
  - (b) provide that prescribed things are, or are not, goods, services, works or property for this Act; and
  - (c) provide that prescribed activities are, or are not, for this Act—
    - (i) procurement; or
    - (ii) procurement activities.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Schedule 1 Model confidentiality clause

(see s 36)

### **M Confidentiality obligations of Territory**

- (1) In this contract, *confidential information* means [*list of the kinds of information to be kept confidential*].
- (2) In giving effect to the principles of open and accountable government, the Territory may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential.
- (3) Except as provided in this contract, the Territory must not disclose the confidential information to anyone without the prior written consent [*insert the name of the party or the party's representative*] (which consent will not be unreasonably withheld) except if the confidential information—
  - (a) is required or authorised to be disclosed under law; or
  - (b) is reasonably necessary for the enforcement of the criminal law; or
  - (c) is disclosed to the Territory's solicitors, auditors, insurers or advisers; 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 [*insert the name of the party or the party's representative*]; or
  - (f) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
  - (g) is disclosed to the ombudsman or for a purpose in relation to the protection of the public revenue.

- (4) The *Government Procurement Act 2001*, part 3 (Notifiable contracts) applies to this contract.
- (5) The following grounds mentioned in that Act, section 35 (1) apply to this clause: [*list relevant grounds*].

## Dictionary

(see s 2)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the [Legislation Act](#), dict, pt 1, defines the following terms:

- administrative unit
- auditor-general
- bankrupt or personally insolvent
- body
- Corporations Act
- director-general (see s 163)
- head of service
- Office of the Legislative Assembly
- officer of the Assembly
- public employee
- public servant
- Territory owned corporation
- the Territory.

***board*** means the Australian Capital Territory Government Procurement Board established under section 5.

***chairperson*** means the chairperson of the board.

***commercial account***, for part 4 (Interest on commercial accounts)—see section 44.

***confidential text***, of a notifiable contract, for part 3 (Notifiable contracts)—see section 24.

***contract***, for part 3 (Notifiable contracts)—see section 24.

***deputy chairperson*** means the deputy chairperson of the board.

***directorate***—see the [Financial Management Act 1996](#), dictionary.



**member** means—

- (a) the chairperson; or
- (b) the deputy chairperson; or
- (c) a public employee member; or
- (d) a non-public employee member.

**notifiable amendment**, of a notifiable contract, for part 3 (Notifiable contracts)—see section 26.

**notifiable contract**, for part 3 (Notifiable contracts)—see section 25.

**notifiable contracts register**, for part 3 (Notifiable contracts)—see section 27 (1).

**notifiable invoice**, for part 3A (Notifiable invoices)—see section 42A.

**notifiable invoices register**, for part 3A (Notifiable invoices)—see section 42B.

**payment date**, for a commercial account, for part 4 (Interest on commercial accounts)—see section 44.

**procurement**—see section 2A.

**public text**, of a notifiable contract, for part 3 (Notifiable contracts)—see section 24.

**relevant date**, for the payment of a commercial account, for part 4 (Interest on commercial accounts)—see section 44.

**responsible chief executive officer** means—

- (a) for a directorate—the responsible director-general of the directorate under the *Financial Management Act 1996*; or
- (b) for a territory authority—the chief executive officer of the authority under the *Financial Management Act 1996*; or

- (c) for a joint venture or trust in which the Territory or a territory entity has a controlling interest—the responsible director-general of the directorate or territory entity that is responsible for matters most closely related to that interest; or
- (d) for the Office of the Legislative Assembly—the clerk of the Legislative Assembly; or
- (e) for an officer of the Assembly—the officer.

***responsible Territory entity***, for a contract or proposed contract, for part 3 (Notifiable contracts)—see section 24.

***Territory entity***—see section 3.

## 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 are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Government Procurement Act 2001 A2001-28**

notified 24 May 2001 ([Gaz 2001 No 21](#))  
commenced 24 May 2001 (s 2)

as amended by

#### **[Statute Law Amendment Act 2002 A2002-30 pt 3.33](#)**

notified LR 16 September 2002  
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))  
pt 3.33 commenced 17 September 2002

#### **[Government Procurement Amendment Act 2003 A2003-22](#)**

notified LR 19 May 2003  
s 1, s 2 commenced 19 May 2003 (LA s 75 (1))  
remainder commenced 1 July 2003 (s 2 and [CN2003-4](#))

#### **[Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.17](#)**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
sch 1 pt 1.17 commenced 13 April 2004 (s 2 and see [Annual Reports \(Government Agencies\) Act 2004 A2004-8, s 2 and CN2004-5](#))

#### **[Court Procedures \(Consequential Amendments\) Act 2004 A2004-60 sch 1 pt 1.27](#)**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.27 commenced 10 January 2005 (s 2 and see [Court Procedures Act 2004 A2004-59, s 2 and CN2004-29](#))

#### **[Government Procurement Amendment Act 2005 A2005-1](#)**

notified LR 22 February 2005  
s 1, s 2 commenced 22 February 2005 (LA s 75 (1))  
remainder commenced 23 February 2005 (s 2)

#### **[Government Procurement Amendment Act 2007 A2007-11](#)**

notified LR 13 June 2007  
s 1, s 2 commenced 13 June 2007 (LA s 75 (1))  
remainder commenced 1 October 2007 (s 2 and [CN2007-14](#))

**Statute Law Amendment Act 2008 A2008-28 sch 1 pt 1.3**

notified LR 12 August 2008  
s 1, s 2 commenced 12 August 2008 (LA s 75 (1))  
sch 1 pt 1.3 commenced 26 August 2008 (s 2)

**Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.34**

notified LR 26 November 2009  
s 1, s 2 commenced 26 November 2009 (LA s 75 (1))  
sch 3 pt 3.34 commenced 17 December 2009 (s 2)

**Fair Trading (Australian Consumer Law) Amendment Act 2010  
A2010-54 sch 3 pt 3.10**

notified LR 16 December 2010  
s 1, s 2 commenced 16 December 2010 (LA s 75 (1))  
sch 3 pt 3.10 commenced 1 January 2011 (s 2 (1))

**Administrative (One ACT Public Service Miscellaneous Amendments)  
Act 2011 A2011-22 sch 1 pt 1.73**

notified LR 30 June 2011  
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))  
sch 1 pt 1.73 commenced 1 July 2011 (s 2 (1))

**Government Procurement Amendment Act 2012 A2012-11**

notified LR 4 April 2012  
s 1, s 2 commenced 4 April 2012 (LA s 75 (1))  
remainder commenced 5 April 2012 (s 2)

**Legislative Assembly (Office of the Legislative Assembly) Act 2012  
A2012-26 sch 1 pt 1.4**

notified LR 24 May 2012  
s 1, s 2 commenced 24 May 2012 (LA s 75 (1))  
sch 1 pt 1.4 commenced 1 July 2012 (s 2)

**Officers of the Assembly Legislation Amendment Act 2013 A2013-41  
sch 1 pt 1.3**

notified LR 7 November 2013  
s 1, s 2 commenced 7 November 2013 (LA s 75 (1))  
sch 1 pt 1.3 commenced 1 July 2014 (s 2)

## Endnotes

3 Legislation history

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**Statute Law Amendment Act 2014 (No 2) A2014-44 sch 3 pt 3.5**

notified LR 5 November 2014

s 1, s 2 commenced 5 November 2014 (LA s 75 (1))

sch 3 pt 3.5 commenced 19 November 2014 (s 2)

**Justice and Community Safety Legislation Amendment Act 2014 (No 2) A2014-49 sch 1 pt 1.7**

notified LR 10 November 2014

s 1, s 2 commenced 10 November 2014 (LA s 75 (1))

sch 1 pt 1.7 commenced 17 November 2014 (s 2)

**Government Procurement (Transparency in Spending) Amendment Act 2015 A2015-14 pt 2**

notified LR 20 May 2015

s 1, s 2 commenced 20 May 2015 (LA s 75 (1))

s 4, so far as it inserts s 42C (1) (e), commenced 1 July 2017 (s 2 (2) (b) and [CN2016-12](#))

pt 2 remainder commenced 1 July 2015 (s 2 (1))

**Annual Reports (Government Agencies) Amendment Act 2015 A2015-16 sch 1 pt 1.14**

notified LR 27 May 2015

s 1, s 2 commenced 27 May 2015 (LA s 75 (1))

sch 1 pt 1.14 commenced 3 June 2015 (s 2)

**Public Sector Management Amendment Act 2016 A2016-52 sch 1 pt 1.32**

notified LR 25 August 2016

s 1, s 2 commenced 25 August 2016 (LA s 75 (1))

sch 1 pt 1.32 commenced 1 September 2016 (s 2)

**Freedom of Information Act 2016 A2016-55 sch 4 pt 4.12 (as am by A2017-14 s 19)**

notified LR 26 August 2016

s 1, s 2 commenced 26 August 2016 (LA s 75 (1))

sch 4 pt 4.12 commenced 1 January 2018 (s 2 as am by [A2017-14](#) s 19)

**Justice and Community Safety Legislation Amendment Act 2017  
(No 2) A2017-14 s 19**

notified LR 17 May 2017

s 1, s 2 commenced 17 May 2017 (LA s 75 (1))

s 19 commenced 24 May 2017 (s 2 (1))

*Note* This Act only amends the Freedom of Information Act 2016  
[A2016-55](#).

**Government Procurement (Financial Integrity) Amendment Act 2017  
A2017-40**

notified LR 13 November 2017

s 1, s 2 commenced 13 November 2017 (LA s 75 (1))

remainder commenced 1 July 2018 (s 2)

## Endnotes

4 Amendment history

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### 4 Amendment history

#### Long title

long title sub [A2003-22](#) amdt 1.1; [A2007-11](#) s 4

#### Dictionary

s 2 om R1 (LA s 89 (4))  
ins [A2003-22](#) s 4

#### Meaning of *procurement*

s 2A ins [A2007-11](#) s 5

#### Meaning of *Territory entity*

s 3 am [A2002-30](#) amdt 3.387  
sub [A2003-22](#) s 4  
am [A2007-11](#) s 6; [A2012-26](#) amdt 1.22; [A2013-41](#) amdt 1.17

#### Application of Act to land sales etc

s 3A ins [A2007-11](#) s 7  
sub [A2009-49](#) amdt 3.76

#### Responsible chief executive officer to ensure Act complied with

s 3B ins [A2007-11](#) s 8

#### Offences against Act—application of Criminal Code etc

s 4A ins [A2003-22](#) amdt 1.2

#### Functions of board

s 6 am [A2002-30](#) amdt 3.388  
sub [A2003-22](#) amdt 1.3; [A2007-11](#) s 9

#### Procurement guidelines

s 7 am [A2002-30](#) amdts 3.389-3.391; [A2003-22](#) amdt 1.4,  
amdt 1.5  
om [A2007-11](#) s 10

#### Ministerial directions to board

s 8 am [A2010-54](#) amdt 3.31; [A2012-26](#) amdt 1.23; ss renum  
R17 LA; [A2013-41](#) amdt 1.18

#### Reports to Minister and Speaker

s 9 sub [A2012-23](#) amdt 1.24  
am [A2013-41](#) amdt 1.19, amdt 1.20

#### Providing information to Minister

s 10 am [A2012-23](#) amdt 1.25; [A2013-41](#) amdt 1.21

#### Constitution of board

s 11 sub [A2007-11](#) s 11  
am [A2008-28](#) amdt 1.4, amdt 1.5



**Appointment of members**

s 12 am [A2002-30](#) amdt 3.392; [A2003-22](#) amdt 1.6; [A2007-11](#) s 12, s 13

**Term of appointment of members**

s 13 sub [A2002-30](#) amdt 3.393

**Abuse of position**

s 15 sub [A2003-22](#) amdt 1.7

**Ending of appointment of members**

s 16 am [A2007-11](#) s 14; [A2009-49](#) amdt 3.77

**Time and place of meetings**

s 18 am [A2007-11](#) s 15; ss renum R9 LA

**Procedure governing proceedings of board**

s 19 am [A2003-22](#) s 5; [A2007-11](#) s 16; ss renum R9 LA

**Board quorum**

s 19A hdg sub [A2007-11](#) s 17  
s 19A ins [A2003-22](#) s 6  
am [A2007-11](#) s 18

**Arrangements for staff**

s 21 am [A2011-22](#) amdt 1.223, amdt 1.230  
sub [A2016-52](#) amdt 1.95

**Other matters**

div 2.5 hdg ins [A2003-22](#) amdt 1.8

**Power to obtain information and documents**

s 22 sub [A2003-22](#) amdt 1.8

**Procurement activities**

pt 2A hdg ins [A2007-11](#) s 19

**Procurement principle—value for money**

s 22A ins [A2007-11](#) s 19

**Minister may declare procurement matters to be reviewed**

s 22B ins [A2007-11](#) s 19  
am [A2012-23](#) amdt 1.26; [A2013-41](#) amdt 1.22

**Procurement proposal or activity may be referred to board**

s 22C ins [A2007-11](#) s 19  
am [A2012-23](#) amdt 1.27; [A2013-41](#) amdt 1.23

**Notifiable contracts**

pt 3 hdg sub [A2003-22](#) s 7

**Preliminary**

div 3.1 hdg ins [A2003-22](#) s 7

## Endnotes

### 4 Amendment history

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#### **Application—pt 3**

s 23 sub [A2003-22](#) s 7; [A2007-11](#) s 20  
am [A2011-22](#) amdt 1.224

#### **Definitions for pt 3**

s 24 sub [A2003-22](#) s 7  
def **confidential text** ins [A2003-22](#) s 7  
def **contract** ins [A2003-22](#) s 7  
def **notifiable amendment** ins [A2003-22](#) s 7  
def **notifiable contract** ins [A2003-22](#) s 7  
def **notifiable contracts register** ins [A2003-22](#) s 7  
def **public text** ins [A2003-22](#) s 7  
def **responsible Territory entity** ins [A2003-22](#) s 7

#### **What is a notifiable contract**

s 25 sub [A2002-30](#) amdt 3.394; [A2003-22](#) s 7  
am [A2007-11](#) ss 21-23  
am [A2012-11](#) s 4, s 5

#### **Meaning of notifiable amendment?**

s 26 ins [A2003-22](#) s 7  
sub [A2007-11](#) s 24  
am [A2012-11](#) s 6, s 7

#### **Notifiable contracts register**

div 3.2 hdg ins [A2003-22](#) s 7

#### **Keeping of register**

s 27 ins [A2003-22](#) s 7  
am [A2011-22](#) amdt 1.230

#### **Contents of register**

s 28 ins [A2003-22](#) s 7  
am [A2007-11](#) s 25; [A2011-22](#) amdt 1.230

#### **Public access to material on register**

s 29 ins [A2003-22](#) s 7  
am [A2007-11](#) s 26; [A2011-22](#) amdt 1.230; [A2012-11](#) s 8

#### **Territory entities to provide material for register**

s 30 ins [A2003-22](#) s 7  
am [A2011-22](#) amdt 1.230

#### **Availability of notifiable contracts**

div 3.3 hdg ins [A2003-22](#) s 7

#### **Public text of contracts to be made available**

s 31 ins [A2003-22](#) s 7  
am [A2012-11](#) s 9

**Making information and contracts available apart from pt 3**

s 32 ins [A2003-22](#) s 7  
am [A2016-55](#) amdt 4.14

**Entities not required to create electronic copies**

s 33 ins [A2003-22](#) s 7

**Confidential text**

div 3.4 hdg ins [A2003-22](#) s 7

**Notice of effect of div 3.4 to contracting parties**

s 34 ins [A2003-22](#) s 7

**Grounds for confidentiality of information**

s 35 ins [A2003-22](#) s 7  
am [A2005-1](#) s 4, s 5; [A2007-11](#) s 27; [A2014-49](#) amdt 1.14,  
amdt 1.15; [A2016-52](#) amdt 1.96

**Model confidentiality clause required for confidential text**

s 36 ins [A2003-22](#) s 7

**Invalidity of non-complying confidentiality clauses**

s 37 ins [A2003-22](#) s 7

**Contracts and information to be given to auditor-general**

s 38 ins [A2003-22](#) s 7  
sub [A2007-11](#) s 28  
am [A2012-11](#) s 10

**Responsible territory entity's reporting obligations for contracts etc**

s 39 sub [A2007-11](#) s 29  
am [A2012-11](#) s 11

**Auditor-general's reporting obligations for contracts etc**

s 39A ins [A2003-22](#) s 7  
sub [A2007-11](#) s 29  
am [A2012-11](#) s 12

**Other matters**

div 3.5 hdg ins [A2003-22](#) s 7

**Effect of disclosure of confidential information**

s 40 ins [A2003-22](#) s 7

**Effect of other disclosure laws**

s 41 ins [A2003-22](#) s 7  
am [A2014-49](#) amdt 1.16; [A2016-55](#) amdt 4.14

**No liability for complying with pt 3**

s 42 ins [A2003-22](#) s 7  
am [A2007-11](#) s 30; [A2012-11](#) s 13

## Endnotes

4 Amendment history

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### **Notifiable invoices**

pt 3A hdg ins [A2015-14](#) s 4

### **Preliminary—pt 3A**

div 3A.1 hdg ins [A2015-14](#) s 4

### **What is a *notifiable invoice*?—pt 3A**

s 42A ins [A2015-14](#) s 4  
sub [A2017-40](#) s 4

### **Notifiable invoices register**

div 3A.2 hdg ins [A2015-14](#) s 4

### **Keeping of *notifiable invoices register***

s 42B ins [A2015-14](#) s 4

### **Contents of notifiable invoices register**

s 42C ins [A2015-14](#) s 4

### **Public access to material on notifiable invoices register**

s 42D ins [A2015-14](#) s 4

### **Territory entities to provide material for notifiable invoices register**

s 42E ins [A2015-14](#) s 4

### **Other matters—*notifiable invoices***

div 3A.3 hdg ins [A2015-14](#) s 4

### **Notice of effect of part to parties issuing invoices**

s 42F ins [A2015-14](#) s 4

### **Effect of other disclosure laws etc**

s 42G ins [A2015-14](#) s 4  
am [A2016-55](#) amdt 4.14

### **No liability for complying with pt 3A**

s 42H ins [A2015-14](#) s 4

### **Interest on commercial accounts**

pt 4 hdg ins [A2003-22](#) s 7

### **Application—pt 4**

s 43 ins [A2003-22](#) s 7  
sub [A2007-11](#) s 31

### **Definitions for pt 4**

s 44 ins [A2003-22](#) s 7  
def **commercial account** ins [A2003-22](#) s 7  
def **payment date** ins [A2003-22](#) s 7  
def **relevant date** ins [A2003-22](#) s 7  
am [A2014-44](#) amdt 3.25, amdt 3.26

**Interest on unpaid accounts**

s 45 ins [A2003-22](#) s 7  
am [A2004-60](#) amdt 1.152; [A2007-11](#) s 32

**Exclusion of inconsistent contractual terms**

s 46 ins [A2003-22](#) s 7

**Availability of funds to pay interest**

s 47 ins [A2003-22](#) s 7  
am [A2011-22](#) amdt 1.225

**Reporting of excluded contracts**

s 48 ins [A2003-22](#) s 7  
am [A2004-9](#) amdt 1.25; [A2007-11](#) s 33  
om [A2015-16](#) amdt 1.18

**Miscellaneous**

pt 5 hdg ins [A2003-22](#) s 7

**Discounts for prompt payments**

s 49 ins [A2003-22](#) s 7  
om [A2007-11](#) s 34

**Responsible chief executive to ensure Act complied with**

s 50 ins [A2003-22](#) s 7  
om [A2007-11](#) s 35

**Approved forms**

s 51 ins [A2003-22](#) s 7  
am [A2014-44](#) amdt 3.27

**Regulation-making power**

s 52 ins [A2003-22](#) s 7  
am [A2007-11](#) s 36

**Review of Act**

s 53 ins [A2003-22](#) s 7  
exp 31 December 2006 (s 53 (3))

**Transitional provisions**

pt 6 hdg ins [A2003-22](#) s 7  
exp 1 July 2004 (s 59)

**Government Contractual Debts (Interest) Act**

s 54 ins [A2003-22](#) s 7  
exp 1 July 2004 (s 59)

**Public Access to Government Contracts Act—general**

s 55 ins [A2003-22](#) s 7  
exp 1 July 2004 (s 59)

## Endnotes

### 4 Amendment history

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#### **Public Access to Government Contracts Act—reportable contracts**

s 56 ins [A2003-22](#) s 7  
exp 1 July 2004 (s 59)

#### **First report by auditor-general under this Act**

s 57 ins [A2003-22](#) s 7  
exp 1 July 2004 (s 59)

#### **Transitional regulations**

s 58 ins [A2003-22](#) s 7  
exp 1 July 2004 (s 59)

#### **Expiry of pt 6**

s 59 ins [A2003-22](#) s 7  
exp 1 July 2004 (s 59)

#### **Transitional provisions**

pt 10 hdg ins [A2007-11](#) s 37  
om R12 LA

#### **Procurement guideline**

s 100 ins [A2007-11](#) s 37  
exp 1 October 2007 (s 100 (5) (LA s 88 declaration applies))

#### **Notifiable contracts**

s 101 ins [A2007-11](#) s 37  
exp 1 October 2008 (s 101 (4) (LA s 88 declaration applies))

#### **Model confidentiality clause**

sch 1 ins [A2003-22](#) s 8

#### **Dictionary**

dict am [A2002-30](#) amdt 3.395  
sub [A2003-22](#) s 9  
am [A2009-49](#) amdt 3.78; [A2011-22](#) amdt 1.226; [A2012-26](#)  
amdt 1.28; [A2013-41](#) amdt 1.24; [A2016-52](#) amdt 1.97  
def **board** sub [A2003-22](#) s 9; [A2007-11](#) s 38  
def **chairperson** sub [A2003-22](#) s 9; [A2007-11](#) s 38  
def **commercial account** ins [A2003-22](#) s 9  
def **confidential text** ins [A2003-22](#) s 9  
def **contract** ins [A2003-22](#) s 9  
def **department** ins [A2007-11](#) s 39  
om [A2011-22](#) amdt 1.227  
def **deputy chairperson** ins [A2007-11](#) s 39  
def **director** ins [A2011-22](#) amdt 1.228  
def **member** sub [A2003-22](#) s 9; [A2007-11](#) s 40  
def **notifiable amendment** ins [A2003-22](#) s 9  
def **notifiable contract** ins [A2003-22](#) s 9  
def **notifiable contracts register** ins [A2003-22](#) s 9  
def **notifiable invoice** ins [A2015-14](#) s 5

- def **notifiable invoices register** ins [A2015-14](#) s 5
- def **payment date** ins [A2003-22](#) s 9
- def **procurement** ins [A2007-11](#) s 41
- def **procurement guidelines** sub [A2003-22](#) s 9  
om [A2007-11](#) s 42
- def **public text** ins [A2003-22](#) s 9
- def **relevant date** ins [A2003-22](#) s 9
- def **responsible chief executive** sub [A2002-30](#) amdt 3.396  
om [A2003-22](#) s 9
- def **responsible chief executive officer** ins [A2007-11](#) s 43  
sub [A2011-22](#) amdt 1.229  
am [A2012-26](#) amdt 1.29; [A2013-41](#) amdt 1.25
- def **responsible Territory entity** ins [A2003-22](#) s 9
- def **Territory entity** sub [A2003-22](#) s 9

## Endnotes

### 5 Earlier republications

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#### 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. Electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 12 Sept 2001	24 May 2001– 16 Sept 2002	not amended	new Act
R2 10 Oct 2002	17 Sept 2002– 30 June 2003	<a href="#">A2002-30</a>	amendments by <a href="#">A2002-30</a>
R3* 1 July 2003	1 July 2003– 12 Apr 2004	<a href="#">A2003-22</a>	amendments by <a href="#">A2003-22</a>
R4 13 Apr 2004	13 Apr 2004– 1 July 2004	<a href="#">A2004-9</a>	amendments by <a href="#">A2004-9</a>
R5 2 July 2004	2 July 2004– 9 Jan 2005	<a href="#">A2004-9</a>	commenced expiry
R6 10 Jan 2005	10 Jan 2005– 22 Feb 2005	<a href="#">A2004-60</a>	amendments by <a href="#">A2004-60</a>
R7 23 Feb 2005	23 Feb 2005– 31 Dec 2006	<a href="#">A2005-1</a>	amendments by <a href="#">A2005-1</a>
R8 1 Jan 2007	1 Jan 2007– 30 Sept 2007	<a href="#">A2005-1</a>	commenced expiry
R9 1 Oct 2007	1 Oct 2007– 1 Oct 2007	<a href="#">A2007-11</a>	amendments by <a href="#">A2007-11</a>
R10 2 Oct 2007	2 Oct 2007– 25 Aug 2008	<a href="#">A2007-11</a>	commenced expiry
R11 26 Aug 2008	26 Aug 2008– 1 Oct 2008	<a href="#">A2008-28</a>	amendments by <a href="#">A2008-28</a>
R12 2 Oct 2008	2 Oct 2008– 16 Dec 2009	<a href="#">A2008-28</a>	commenced expiry



<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R13 17 Dec 2009	17 Dec 2009– 31 Dec 2010	<a href="#">A2009-49</a>	amendments by <a href="#">A2009-49</a>
R14 1 Jan 2011	1 Jan 2011– 30 June 2011	<a href="#">A2010-54</a>	amendments by <a href="#">A2010-54</a>
R15 1 July 2011	1 July 2011– 4 Apr 2012	<a href="#">A2011-22</a>	amendments by <a href="#">A2011-22</a>
R16 5 Apr 2012	5 Apr 2012– 30 June 2012	<a href="#">A2012-11</a>	amendments by <a href="#">A2012-11</a>
R17 1 July 2012	1 July 2012– 30 June 2014	<a href="#">A2012-26</a>	amendments by <a href="#">A2012-26</a>
R18 1 July 2014	1 July 2014– 16 Nov 2014	<a href="#">A2013-41</a>	amendments by <a href="#">A2013-41</a>
R19 17 Nov 2014	17 Nov 2014– 18 Nov 2014	<a href="#">A2014-49</a>	amendments by <a href="#">A2014-49</a>
R20 19 Nov 2014	19 Nov 2014– 2 June 2015	<a href="#">A2014-49</a>	amendments by <a href="#">A2014-44</a>
R21 3 June 2015	3 June 2015– 30 June 2015	<a href="#">A2015-16</a>	amendments by <a href="#">A2015-16</a>
R22 1 July 2015	1 July 2015– 30 June 2016	<a href="#">A2015-16</a>	amendments by <a href="#">A2015-14</a>
R23 1 July 2016	1 July 2016– 31 Aug 2016	<a href="#">A2015-16</a>	updated commencement by <a href="#">CN2016-12</a>
R24 1 Sept 2016	1 Sept 2016– 30 June 2017	<a href="#">A2016-52</a>	amendments by <a href="#">A2016-52</a>
R25 1 July 2017	1 July 2017– 31 Dec 2017	<a href="#">A2016-52</a>	amendments by <a href="#">A2015-14</a>
R26 1 Jan 2018	1 Jan 2018– 30 June 2018	<a href="#">A2017-14</a>	amendments by <a href="#">A2016-55</a> as amended by <a href="#">A2017-14</a>

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