

2015

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

GOVERNMENT PROCUREMENT (NOTIFIABLE INVOICES) AMENDMENT BILL 2015

EXPLANATORY STATEMENT

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Explanatory Statement

Government Procurement (Notifiable Invoices) Amendment Bill 2015

INTRODUCTION

The *Government Procurement (Notifiable Invoices) Amendment Bill 2015* (the Bill) seeks to amend the *Government Procurement Act 2001* and the *Government Procurement Regulation 2007* to improve transparency and accountability in government spending. The Government undertakes to achieve this with minimal administrative encumbrance and cost.

This explanatory statement has been prepared in order to assist those reading the Bill and to help inform debate of the Bill in the Legislative Assembly. This explanatory statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the Courts.

OVERVIEW OF THE AMENDMENTS

The Bill aligns with the Open Government policy commitment. In summary, the Bill requires certain information of invoices of \$25,000 or more paid by the Territory to be published on an electronic register and for this information to remain accessible to the public for at least 2 years. The invoices will be known as notifiable invoices and the electronic register will be referred to as the notifiable invoices register.

The Bill requires that the information fundamental to understanding the nature of an invoice and how it is dealt with by Government be identified on the register. The information about a notifiable invoice which is to be published on the notifiable invoice register includes the name and if one exists, the ABN of the entity invoicing the Territory, a description of what the invoice is for, its value and the dates it is received and paid.

The Bill is consistent with existing provisions in the procurement legislation and in particular, those relating to the publishing of information about a notifiable contract, with the exception of publishing the public text version of the invoice. To disclose a copy of each invoice in its entirety on a public register would raise a potential breach of confidentiality as an invoice can contain confidential information, for example the BSB and bank account details. To remedy this would require examination of each invoice for confidential information, in addition to the process of loading copies of notifiable invoices onto the register. This would impose an administrative cost that would outweigh any benefit to the public from being able to view individual invoices. To this end the Bill requires the Government to publish information about notifiable invoices on the Procurement website to the extent that it is practical and without any breach of confidentiality.

The setting of the threshold for a notifiable invoice at \$25,000 is consistent with the Territory's other established procurement thresholds, including the threshold for a notifiable contract.

No other legislation will be amended by the Bill.

HUMAN RIGHTS IMPLICATIONS

The amendments as a law of the Territory do not engage the *Human Rights Act 2004*.

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CLAUSE NOTES

Government Procurement Act 2001 (the Act)

Amendment 1

Clause 1 Name of Act

This is a technical clause that provides for the title of the Amendment Act as being the *Government Procurement (Notifiable Invoices) Amendment Act 2015*.

Amendment 2

Clause 2 Commencement

This is a clause setting out when commencement of the Amendment Act will occur. This clause states that, with the exception of section 42C(1)(e), the commencement date for the Amendment Act will be 1 July 2015. Section 42C(1)(e) will commence on 1 July 2016 unless the Minister fixes another day by written notice before that date.

Section 42C(1)(e) requires the publication of information, that will not be readily available until a pending invoice automation process is implemented. Commencing Section 42C(1)(e) at a later date will facilitate the effective capturing of information when the automation process is available. Establishing a commencement date of 1 July 2015 for the Amendment Act is consistent with the standard practice of reporting from the start of a financial year.

Amendment 3

Clause 3 Legislation amended

This is a technical clause to identify the legislation amended by the Amendment Act. This clause states that the Amendment Act will have the effect of amending the *Government Procurement Act 2001* and the *Government Procurement Regulation 2007*.

Amendment 4

Clause 4 New Part 3A - Notifiable invoices

The Bill inserts new Part 3A which effectively introduces the new concepts of notifiable invoice and the notifiable invoices register into the *Government Procurement Act 2001*.

Division 3A.1 – Preliminary

• New Section 42A – What is a notifiable invoice?

This clause identifies a notifiable invoice as being an invoice, for a prescribed amount, payable by the Territory for goods, services or works received. The clause clarifies that a notifiable invoice does not include an invoice raised by the Territory or a Territory entity or an invoice that may be prescribed by regulation.

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Division 3A.2 – Notifiable invoices register

- **New Section 42B – Keeping of notifiable invoices register**

This clause provides for an electronic register of notifiable invoices to be kept and empowers the director-general to correct and mistake, error or omission on the register.

- **New Section 42C – Contents of notifiable invoices register**

This clause provides for certain information about a notifiable invoice to be included on the notifiable invoice register. Each notifiable invoice represents an element of Government expenditure and the listing of relevant detail of each notifiable invoice on a public register provides transparency in Government expenditure.

The level of detail kept on the invoice is sufficient to disclose the nature of a notifiable invoice and the Government's timeliness in payment of a notifiable invoice without breaching confidentiality and is achieved without undue cost.

The Bill requires that, for each notifiable invoice, the value of the transaction, a description of what it is for, the name and ABN of the entity invoicing the Territory, the identity of the purchasing Territory entity and the date the invoice is received and paid be included on the notifiable invoices register.

The date the invoice was 'received' and the date the invoice was 'paid' are included on the register, for the purpose of measuring the Government in timeliness of the paying of invoices. As stated above, provision 42C(1)(e) which relates to the date the invoice was raised, is to commence on 1 July 2016 unless the Minister fixes another day by written notice before that date as the date 'received' will not be readily available until invoice automation is implemented.

- **New Section 42D – Public access to material on notifiable invoices register**

This clause sets the period that a notifiable invoice is to remain accessible on the notifiable invoice register as at least 2 years. This duration provides reasonable time for the public to view a notifiable invoice whilst maintaining a manageable volume of invoices on the notifiable register.

- **New Section 42E – Territory entities to provide material for notifiable invoices register**

This clause sets the timeframe in which a Territory entity must publish information about a notifiable invoice, or provide the information to the director-general for entry in the notifiable register, as being 21 days after the end of the month in which the invoice was paid.

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The 21 day period facilitates administrative simplicity as it provides a single reference point per month for identifying notifiable invoices. Also, the 21 day period is consistent with the number of days that apply to publishing a notifiable contract or a notifiable amendment, as per section 31 of the *Government Procurement Act 2001*.

Division 3A.3 – Other matters – notifiable invoices register

- **New Section 42F – Notice of effect of part to parties issuing invoices**

This clause states that a Territory entity is to alert parties subject to raising a notifiable invoice to the new notifiable invoice provisions prior to the provision of any goods, services or works. By forewarning parties to the potential public release of certain transactional details, this provision reinforces the open manner in which the Government seeks to operate.

- **New Section 42G – Effect of other disclosure laws etc**

This clause provides for the provisions of this Bill not to interfere with any requirement relating to the disclosure of information that may be imposed under another law.

- **New Section 42H – No liability with complying with pt 3A**

This clause removes any civil liability that may be imposed on the Territory by an entity issuing a notifiable invoice or by anyone else, for anything done honestly under this part introduced by this Bill.

Amendment 5

Dictionary, new definitions

This clause inserts definitions for notifiable invoice and notifiable invoices register in accordance with new sections 42A and 42B, respectively.

Government Procurement Regulation 2007 (the Regulation)

Part 3 - Miscellaneous

Amendment 6

Clause 6 New Section 12C – Notifiable invoice threshold – Act, s 42A(1)

This amendment sets the prescribed amount for the notifiable invoice threshold at \$25,000. The \$25,000 notifiable invoice threshold is consistent with established procurement thresholds, including other thresholds prescribed by the Regulation.