

2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Government Procurement Bill 2001

Contents

	Page	
Part 1	Preliminary	
1	Name of Act	2
2	Commencement	2
3	Dictionary	2
4	Notes	2
Part 2	Government procurement board	
Division 2.1	Establishment and functions	
5	Government Procurement Board	3
6	Functions	3
7	Procurement guidelines	4
8	Ministerial directions to board	5
9	Reports to Minister	5
10	Providing information to Minister	5

Contents

	Page
Division 2.2	Members of board
11	Constitution of board 6
12	Appointment of members 6
13	Term of appointment of members 6
14	Honesty, care and diligence of members 7
15	Improper use of information 7
16	Ending of appointment of members 7
17	Conditions of appointment generally 8
Division 2.3	Proceedings of board
18	Time and place of meetings 8
19	Procedure governing proceedings of board 8
20	Disclosure of interests by members 9
Division 2.4	Staff
21	Arrangements for staff 10
Part 3	Miscellaneous
22	Responsible chief executive must ensure Act complied with 11
23	Power to obtain information and documents 11
24	Regulation-making power 11
25	Review of Act 11
Dictionary	13

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Government Procurement Bill 2001

A Bill for

An Act to establish a government procurement board and make provision about the procurement of goods and services by Territory entities, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2000 152B

Part 1 Preliminary

1 Name of Act

This Act is the *Government Procurement Act 2001*.

2 Commencement

5 This Act commences on the day it is notified in the Gazette.

3 Dictionary

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

10 *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 or in other legislation.

15 For example, the signpost definition '*Territory entity*—see the *Auditor-General Act 1996*, section 3 (1).' means that the expression 'Territory entity' is defined in that subsection and the definition applies to this Act.

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 *Interpretation Act 1967*, s 11F and s 11G).

20 4 Notes

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

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

Part 2 **Government procurement board**

Division 2.1 **Establishment and functions**

5 **Government Procurement Board**

5 There is an Australian Capital Territory Government Procurement Board.

6 **Functions**

The functions of the board are—

- 10 (a) to develop, implement and review policies and practices for the procurement of goods, services and works by Territory entities; and
- (b) to establish an accreditation system for the procurement activities of Territory entities; and
- 15 (c) to develop and make guidelines for the procurement of goods, services and works by Territory entities; and
- (d) to monitor the procurement activities, competencies and systems of Territory entities; and
- (e) to give advice to Territory entities on procurement issues; and
- 20 (f) to review procurement proposals of Territory entities in accordance with the procurement guidelines; and
- (g) to assist in the development of training and development courses and activities relevant to the procurement activities of Territory entities; and
- 25 (h) to provide advice to the Minister on any matter relevant to the procurement activities of Territory entities or the operation of this Act; and

- (i) to exercise any other function given to the board under this Act or any other Territory law; and
- (j) to do anything else—
 - (i) incidental, complementary or helpful to the board's other functions; or
 - (ii) likely to improve the effective and efficient exercise of the board's other functions.

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7 Procurement guidelines

- (1) The board may make guidelines, not inconsistent with this Act or the regulations, prescribing matters—
 - (a) required or permitted by this Act to be prescribed by procurement guidelines; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the procurement guidelines may make provision about the procurement of goods, services and works by Territory entities, including, for example—
 - (a) the policies and practices that must, or may be, observed; and
 - (b) the procedures that must, or may be, followed; and
 - (c) the accreditation of people involved, and procedures followed, in procurement activities; and
 - (d) reporting on procurement activities; and
 - (e) procurement proposals that are to be reviewed by the board.
- (3) The procurement guidelines may apply, adopt or incorporate an instrument, or anything in an instrument, as in force at a particular time or from time to time.
- (4) A procurement guideline is a disallowable instrument.

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8 Ministerial directions to board

- (1) The Minister may give written directions to the board about the exercise of its functions.
- (2) Before giving a direction, the Minister must—
 - 5 (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.
- (3) The Minister must present a copy of a direction given under this
10 section to the Legislative Assembly within 6 sitting days after it is given.
- (4) The board must comply with a direction given to it under this section.
- (5) For the *Trade Practices Act 1974* (Cwlth), this Act authorises—
 - 15 (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

- 20 (1) In addition to any other reports that the board is required to make under this Act or any other law, the board must give the Minister the reports the Minister requires.
- (2) 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 requires.

25 10 Providing information to Minister

The board must give the Minister any information about its operations that the Minister requires.

Division 2.2 Members of board

11 Constitution of board

The board consists of the following 7 part-time members:

- (a) the chairperson;
- 5 (b) 3 public employee members;
- (c) 3 non-public employee members.

12 Appointment of members

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

10 *Note 1* A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Interpretation Act 1967*, s 28 (3) (c) and dict, def of *appoint*).

Note 2 A power to appoint a person to a position includes power to appoint a person to act in the position (see *Interpretation Act 1967*, s 28 (4)-(6)).

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

Note **Public employee** is defined in the *Interpretation Act 1967*, dict.

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

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

13 Term of appointment of members

- (1) A member is to be appointed for a term of not longer than 3 years.
- 25 (2) The instrument appointing, or evidencing the appointment of, a member must state the term for which the member is appointed.

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.

5 **15 Improper use of information**

A person who is, or has been, a member of the board must not make improper use of any information acquired in the course of the person's duties to obtain directly or indirectly any financial or other advantage for the person or anyone else.

10 Maximum penalty: 200 penalty units, imprisonment for 5 years or both.

16 Ending of appointment of members

(1) The Minister must end the appointment of the chairperson, or a public employee member, if the person ceases to be 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

20 (b) if the member—

(i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment or remuneration for their benefit; or

25 (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 *Interpretation Act 1967*, s 28 (8) and (9)).

5 **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

- 10 (1) Meetings of the board are to be held at the times and places it decides.
- (2) However, the board must meet at least at once every month.
- (3) The chairperson—
- (a) may at any time call a meeting of the board; and
- 15 (b) must call a meeting if asked by the Minister or at least 3 members.
- (4) 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

- 20 (1) The chairperson presides at all meetings at which the chairperson is present.
- (2) If the chairperson is absent, the member chosen by the members present presides.
- (3) Business may be carried out at a meeting of the board only if
- 25 4 members are present including 1 non-public employee member.
- (4) At a meeting of the board each member has a vote on each question to be decided.

- (5) 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.
- 5 (6) The board may conduct its proceedings (including its meetings) as it considers appropriate.
- (7) The board may hold meetings, or allow members to take part in meetings, by telephone, closed-circuit communication or another form of communication.
- 10 (8) A member who takes part in a meeting conducted under subsection (7) is taken to be present at the meeting.
- (9) 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;
- 15 the resolution is a valid resolution of the board, even though it was not passed at a meeting of the board.
- (10) The board must keep minutes of its meetings.

20 Disclosure of interests by members

- (1) This section applies to a member if—
- 20 (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.
- 25 (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
- 30 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—
- 5 (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

- 10 (1) The board may arrange with the chief executive to use public servants in the administrative unit under the chief executive's control.
- (2) The *Public Sector Management Act 1994* applies to the management by the board of public servants the subject of an arrangement under
- 15 subsection (1).

Part 3 Miscellaneous

22 **Responsible chief executive must ensure Act complied with**

5 The responsible chief executive of a Territory entity must ensure that the entity complies with this Act.

23 **Power to obtain information and documents**

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

24 **Regulation-making power**

- (1) The Executive may make regulations for this Act.
- (2) The regulations may make provision for or in relation to any matter about which provision may be made by the procurement guidelines.
- 15 (3) The regulations may provide that—
- (a) prescribed things are, or are not, to be regarded as goods, services or works for this Act; and
- (b) prescribed activities are, or are not, to be regarded as procurement or procurement activities for this Act.
- 20 (4) 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.

25 **Review of Act**

- 25 (1) The Minister must review the operation of this Act as soon as practicable after 5 years after the commencement of this section.

Part 3 Miscellaneous

Section 25

- (2) A report on the outcome of the review must be presented by the Minister to the Legislative Assembly within 6 months after the end of the 5 years.
- (3) This section expires 6 years after it commences.

Dictionary

(see s 3)

board means the Australian Capital Territory Government Procurement Board.

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

member means—

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

10 **procurement guidelines** means the procurement guidelines under this Act.

responsible chief executive—see the *Auditor-General Act 1996*, section 3 (1).

Territory entity—see the *Auditor-General Act 1996*, section 3 (1).

Endnote

Penalty units

The *Interpretation Act 1967*, s 33AA deals with the meaning of offence penalties that are expressed in penalty units.