

2000
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Moore)

**Government Contracts Confidentiality
Bill 2000**

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**Government Contracts Confidentiality
Bill 2000**

A BILL

FOR

An Act to restrict the cases in which terms of a government contract may be kept confidential, and for other purposes

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

1 Name of Act

This Act is the *Government Contracts Confidentiality Act 2000*.

5 2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

Government Contracts Confidentiality No . 2000

Note 1 The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

5 *Note 2* A single day or time may be fixed, or different days or times may be fixed for different provisions (see *Interpretation Act 1967*, s 10C (1)).

Note 3 If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

3 Definitions

10 In this Act, the following definitions apply:

confidentiality clause—see section 5.

government agency means the Territory or a Territory instrumentality.

4 Notes

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

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

5 Confidentiality clauses that Act applies to

This Act applies to a provision (a *confidentiality clause*) that—

(a) is contained in—

(a) a contract to which a government agency is a party; or

20 (b) an amendment of such a contract;

that is made after the commencement of this section; and

(b) requires the government agency to keep confidential particular terms of the contract or of another contract to which a government agency is a party.

25 **6 Confidentiality clause must comply with Act**

A confidentiality clause has no effect if—

(a) the decision of the government agency to agree to the clause was not properly made under section 8 (Grounds for agreeing to confidentiality clause); or

30 (b) the clause does not comply with section 9 (Confidentiality clause must refer to this Act).

7 Notice of Act to other parties

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

8 Grounds for agreeing to confidentiality clause

(1) A government agency may agree to a confidentiality clause only if it has satisfied itself, in accordance with this section, that the clause is necessary.

(2) A confidentiality clause is necessary only if—

- (a) it protects the value of trade secrets, intellectual property or other information with commercial value; or
- (b) it protects information on the financial position, or other sensitive business interests, of a party to the contract; or
- (c) it is required by, or gives effect to, an obligation of confidentiality that arises from another source.

(3) However, a confidentiality clause is not necessary if—

- (a) it would inappropriately restrict a government agency in the management or use of Territory assets; or
- (b) the information protected has been obtained by the government agency from another source; or
- (c) the information protected is already public knowledge; or
- (d) it would have the effect of concealing the full consideration given by the government agency under the contract; or
- (e) the confidentiality is sought by either party for an improper reason or in bad faith; or
- (f) it would require the confidentiality to apply for longer than is necessary to protect the interest concerned.

9 Confidentiality clause must refer to this Act

A confidentiality clause must include—

- (a) a statement to the effect that this Act was complied with by the government agency in agreeing to the clause; and
- (b) a statement of the grounds mentioned in subsection 8 (2) that apply to the clause.

10 Confidentiality clause must be registered by auditor-general

(1) The auditor-general must maintain a register of contracts containing confidentiality clauses.

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

11 Assembly to be informed of confidentiality clauses

10 (1) This section applies if the Speaker has notified the auditor-general of a committee of the Legislative Assembly to receive information under this section.

(2) The auditor-general must provide the committee with a copy of a contract containing a confidentiality clause within 14 days after receiving a copy under section 10.

15 (3) A government agency must, when asked by the committee, provide the committee with the information that the committee requires about a decision to agree to a confidentiality clause.

12 No liability for complying with Act

20 (1) This section applies to a government agency that is a party to a contract containing a confidentiality clause.

(2) The agency is not liable to another party to the contract or anyone else for anything done in good faith to comply with this Act.

13 Act does not affect other laws

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

14 Regulation-making powers

The Executive may make regulations for this Act.