

2000
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Osborne)

**Public Access to Government Contracts Bill
2000**

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**Public Access to Government Contracts Bill
2000**

A BILL

FOR

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

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

PART 1—PRELIMINARY

1 Name of Act

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

2 Commencement

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

3 Definitions

In this Act, the following definitions apply:

government agency means the Territory or a Territory instrumentality.

government contract—see section 5.

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

4 Notes

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

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

5 Government contracts that Act applies to

10 This Act applies to a contract in writing (a **government contract**) that is—

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

(b) an amendment of such a contract;

made after the commencement of this section.

PART 2—MAKING GOVERNMENT CONTRACTS PUBLIC

6 Public text of a contract

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

7 Government contracts must be made public

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

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

Example

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

5 **8 No liability for complying with this Part**

(1) This section applies to a government agency that is a party to a government contract.

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

PART 3—CONFIDENTIALITY CLAUSES IN A GOVERNMENT CONTRACT

9 Confidentiality clause in a government contract

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

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

10 1 Grounds for confidentiality of information

(1) A government agency may agree to make information confidential under a government contract only if it has satisfied itself, in accordance with this section —

- (a) that the release of the information would result in—
 - 15 (i) the unreasonable disclosure of personal information; or
 - (ii) the disclosure of a trade secret; or
 - (iii) the unreasonable disclosure of information with commercial value; or
 - (iv) the unreasonable disclosure of information about the
20 business affairs of a person; or
- (b) that it is required by, or gives effect to, an obligation of confidentiality that arises from another source.

(2) However, a government agency may not agree to make information confidential if—

- 25 (a) it would inappropriately restrict a government agency in the management or use of Territory assets; or
- (b) it would not be in the public interest to do so; or
- (c) the information is already public knowledge; or
- (d) the information has been obtained by the government agency from
30 another source; or
- (e) the agreement would require the confidentiality to apply for longer than is necessary to protect the interest concerned.

SCHEDULE

(See s 9)

MODEL DEFINITION AND CONFIDENTIALITY CLAUSE

M. Definition of *confidential information*

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

N. Confidentiality obligations of the Territory

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

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

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