

**2011**

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

**GOVERNMENT PROCUREMENT AMENDMENT BILL 2011**

**EXPLANATORY STATEMENT**

**Presented by  
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## Summary

This Bill amends the *Government Procurement Act 2001* (the Act).

## Overview of the Bill

The *Government Procurement Amendment Bill 2011* (the Bill) introduces three amendments to the Act.

The first amendment removes from the Act the setting of the threshold value for contracts and contract amendments that are required to be notified on the ACT Government Contracts Register, and clarifies that the thresholds will now be prescribed by regulation. This is to ensure that the threshold is set in one place, thereby avoiding any confusion that might arise from having a different threshold being set in the Act from that set by regulation. At the time of the amendments, the relevant regulation is the *Government Procurement Regulation 2007*.

In the Government Response to the Standing Committee on Public Accounts Report No. 13: *Inquiry into ACT Government Procurement*, the Government has undertaken to align and keep aligned: the notifiable contracts threshold; the threshold for seeking more than one quotation for goods, services or works; and the threshold for agencies to seek the assistance of Shared Services in undertaking their procurements. The setting of the notifiable contracts threshold by regulation enables a quicker and easier change to the threshold than would occur if a change required an amendment to the Act.

The second amendment reduces the frequency of reports on reportable contracts that a responsible territory entity must make to the appropriate Legislative Assembly committee. A reportable contract is a notifiable contract that contains confidential text that is removed when a contract is made available. The amendment will relieve administrative process and satisfy the appropriate Legislative Assembly committee's role in the scrutiny of the Territory's reportable contracts.

The final amendment will remedy an anomaly in the Act in relation to the length of time that a notifiable contract is to remain publicly accessible. The amendment clarifies that an electronic copy of a notifiable contract is to be made publicly available from the ACT Government Contract Register for at least two years after the contract ends. Public access to the electronic copy of a notifiable contract may be extended beyond the date the contract ends at the discretion of the Territory.

## **Details of the Bill**

### **Clause 1 Name of Act**

This Act is the *Government Procurement Amendment Act 2011*.

### **Clause 2 – Commencement**

This clause provides that the Act will commence on the day after its notification.

### **Clause 3 – Legislation amended**

This clause provides that the Act amends the *Government Procurement Act 2001*.

### **Clause 4 – What is a *notifiable contract***

#### **Section 25 (2) (a), except note**

This clause refines the definition of a notifiable contract provided in section 25 (1) by specifying that a notifiable contract does not include a contract with a value less than the prescribed amount, as set by regulation.

### **Clause 5 – Section 25 (2) (a), example, except note**

This clause substitutes a new example to clarify the meaning of a notifiable contract. The new example incorporates the threshold as being prescribed by regulation.

### **Clause 6 – Meaning of *notifiable amendment***

#### **Section 26 (a) (ii)**

Section 26 provides the meaning of a notifiable amendment, including the thresholds that determine when any increase to the total consideration of the contract constitutes a notifiable amendment. Clause 6 specifies that the value of the determining threshold as expressed in dollars is prescribed by regulation.

### **Clause 7 – Section 26, example, except note**

This clause substitutes a new example to clarify the meaning of a notifiable amendment. The new example incorporates the threshold as being prescribed by regulation.

### **Clause 8 – Public access to material on register**

#### **Section 29 (1) (b)**

This clause substitutes the word “ends” for the word “expires” to make the terminology in this provision consistent with that of other provisions in the Act.

### **Clause 9 – Public text of contracts to be made available**

#### **Section 31 (3)**

This clause removes an anomaly in the Act in relation to the time that an electronic copy of a contract is to be kept publicly available. This clause amends section 31 to require that a contract is to remain available to the public for a period of two (2) years after the day the contract ends and, in so doing, removes an inconsistency with section 29 (1) (b).

**Clause 10 – Contracts and information to be given to auditor-general**  
**New Section 38 (2)**

This clause inserts a definition of “reportable contract”, which is referenced in section 38 (1), and a definition of “confidential text”, which is referenced in the definition of reportable contract. These definitions are also cross referenced in section 39 (6), by clause 11 below.

**Clause 11 – Responsible territory entity’s reporting obligations for contracts etc**  
**Section 39 (6), definitions of *confidential text*, *reportable contract***  
**and *reporting period***

This clause substitutes three definitions that apply in this section. The definitions of “confidential text” and “reportable contract” are cross referenced to the new section 38 (2) and the definition of “reporting period” increases the reporting period from a six (6) month reporting period to a twelve (12) month reporting period, ending on 31 March.

**Clause 12 – Auditor-general’s reporting obligations for contracts etc**  
**Section 39A (3), definition of *confidential text***

This clause substitutes a new definition of “confidential text” to cross reference the new section 38 (2).

**Clause 13 – No liability for complying with pt 3**  
**Section 42 (2), definition of *reportable contract***

This clause substitutes a new definition of “reportable contract” to cross reference the new section 38 (2).