



Australian Capital Territory

Government Procurement Act 2001 No 28

Republication No 2

Republication date: 10 October 2002

Last amendment made by Act 2002 No 30

Amendments incorporated to 17 September 2002

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Government Procurement Act 2001* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 10 October 2002. It also includes any amendment, repeal or expiry affecting the republished law to 17 September 2002.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
17 September 2002



Australian Capital Territory

Government Procurement Act 2001

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Australian Capital Territory

Government Procurement Act 2001

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

Part 1 Preliminary

1 Name of Act

This Act is the *Government Procurement Act 2001*.

3 Dictionary

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

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 other legislation.

For example, the signpost definition '*responsible chief executive*—see the *Auditor-General Act 1996*, dictionary.' means that the expression 'responsible chief executive' is defined in the dictionary 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 *Legislation Act 2001*, s 155 and s 156 (1)).

4 Notes

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

Note See *Legislation Act 2001*, s 127 (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**

There is an Australian Capital Territory Government Procurement Board.

6 **Functions**

The functions of the board are—

- (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
- (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
- (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
- (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.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see *Legislation Act 2001*, s 196 and dict, pt 1, def of *entity*).

7 Procurement guidelines

- (1) The board may make procurement guidelines for this Act.
- (2) 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 a provision of an instrument) as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the *Legislation Act 2001*, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) A procurement guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

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—
- (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 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—
- (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

- (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.

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;
- (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.

Note For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

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

Note **Public employee** is defined in the *Legislation Act 2001*, dict, pt 1.

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

A member must be appointed for a term of not longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Legislation Act 2001*, s 208 and dict, pt 1, def of **appoint**).

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.

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.

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
 - (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
 - (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 *Legislation Act 2001*, s 210).

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

- (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
 - (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

- (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 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.
- (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.
- (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;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—
 - (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.
- (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 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—
 - (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

- (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 subsection (1).

Part 3 Miscellaneous

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

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.
- (2) The Territory entity must comply with the request.

24 **Regulation-making power**

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision for or in relation to any matter about which provision may be made by the procurement guidelines.
- (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.
- (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

- (1) The Minister must review the operation of this Act as soon as practicable after 24 May 2006.
- (2) A report on the outcome of the review must be presented by the Minister to the Legislative Assembly by 24 November 2006.
- (3) This section expires on 24 May 2007.

Dictionary

(see s 3)

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- exercise
- function
- public employee.

board means the Australian Capital Territory Government Procurement Board.

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.

procurement guidelines means the procurement guidelines under this Act.

responsible chief executive—see the *Auditor-General Act 1996*, dictionary.

Territory entity means—

- (a) an administrative unit; or
- (b) a Territory entity under the *Auditor-General Act 1996*.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Government Procurement Act 2001 No 28

notified 24 May 2001 (Gaz 2001 No 21)
commenced 24 May 2001 (s 2)

as amended by

Statute Law Amendment Act 2002 No 30 pt 3.33

notified LR 16 September 2002
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))
pt 3.33 commenced 17 September 2002

4 Amendment history

Commencement

s 2 om R1 (LA s 89 (4))

Dictionary

s 3 am 2002 No 30 amdt 3.387

Functions

s 6 am 2002 No 30 amdt 3.388

Procurement guidelines

s 7 am 2002 No 30 amdts 3.389-3.391

Appointment of members

s 12 am 2002 No 30 amdt 3.392

Term of appointment of members

s 13 sub 2002 No 30 amdt 3.393

Review of Act

s 25 sub 2002 No 30 amdt 3.394
exp 24 May 2007 (s 25 (3))

Dictionary

dict am 2002 No 30 amdt 3.395
def **responsible chief executive** sub 2002 No 30 amdt 3.396

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	not amended	24 May 2001

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