



Australian Capital Territory

Government Procurement Amendment Act 2022

A2022-1

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Australian Capital Territory

Government Procurement Amendment Act 2022

A2022-1

An Act to amend the *Government Procurement Act 2001* and the *Government Procurement Regulation 2007*

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

Part 1 Preliminary

1 Name of Act

This Act is the *Government Procurement Amendment Act 2022*.

2 Commencement

This Act commences on 1 March 2022.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Government Procurement Act 2001* and the *Government Procurement Regulation 2007*.

Part 2 Government Procurement Act 2001

4 Meaning of *territory-funded work*—pt 2B Section 22F (1), definition of *territory-funded work*, paragraph (b)

substitute

- (b) services or works that are primarily for construction work (other than excluded services or works) within the meaning of the [Work Health and Safety Regulation 2011](#), section 289;
- (c) services or works that are primarily for any of the following:
 - (i) building or other industrial cleaning services within the meaning of the ANZSIC, Class 7311, Building and Other Industrial Cleaning Services;
 - (ii) traffic control services to redirect vehicles around a temporary disruption to a public road for the purpose of ensuring safety to workers or the public;
 - (iii) security services by a person who carries on a security activity within the meaning of the [Security Industry Act 2003](#), section 7.

5 Requirements for procurement—secure local jobs code certificates etc Section 22G (1) (b)

substitute

- (b) if the tenderer is required under subsection (1A) to submit a labour relations, training and workplace equity plan—submits the plan.

6 New section 22G (1A)*insert*

- (1A) For subsection (1) (b), a tenderer is required to submit a labour relations, training and workplace equity plan if—
- (a) for territory-funded work mentioned in section 22F (1), definition of *territory-funded work*, paragraphs (a) and (b)—the procurement has an estimated value of—
 - (i) \$200 000 or more; or
 - (ii) if another value is prescribed by regulation—the prescribed value; or
 - (b) for territory-funded work mentioned in section 22F (1), definition of *territory-funded work*, paragraph (c)—the procurement has an estimated value of—
 - (i) \$25 000 or more; or
 - (ii) if another value is prescribed by regulation—the prescribed value.

7 Division 2B.4 heading*substitute***Division 2B.4 Ensuring compliance with code****Subdivision 2B.4.1 Compliance measures**

8 **Complaints**
Section 22Q (3) (a)

omit

person who made the complaint

substitute

complainant

9 **New section 22Q (5) and (6)**

insert

- (5) The registrar must—
- (a) if the registrar decides to take no action on a complaint—tell the complainant about the registrar’s decision within 14 days after making the decision; and
 - (b) if the registrar is satisfied that an entity the subject of the complaint has failed to comply with the code—tell the complainant about what action under section 22T (1) (a) to (e) the registrar has taken against the entity the subject of the complaint within 14 days after taking the action.
- (6) Subsections (3) (a) and (5) do not apply if the complaint is made anonymously.

10 **Requests for information**
Section 22S (1) (e)

substitute

- (e) the registrar is reviewing or considering the entity’s compliance with the code.

11 New section 22SA

insert

22SA Suspension etc pending registrar's decision

- (1) This section applies if the registrar has reasonable grounds to suspect that an entity that holds a secure local jobs code certificate may have failed to comply with the code.
- (2) The registrar may, for a stated reasonable period—
 - (a) suspend the entity's certificate; or
 - (b) impose or amend conditions on the entity's certificate.

**12 Compliance
New section 22T (2) (d)**

insert

- (d) any information, document or other thing obtained under subdivision 2B.4.2 (Access to premises).

13 Section 22U heading

substitute

22U Compliance guidelines**14 New section 22U (1) (d)**

insert

- (d) an authorised person's access to premises under subdivision 2B.4.2.

15 New subdivision 2B.4.2

insert

Subdivision 2B.4.2 Access to premises**22UA Definitions—sdiv 2B.4.2**

In this subdivision:

authorised person means a person appointed under section 22UB.

occupier, of premises, means a person having the management or control, or otherwise being in charge, of the premises.

premises means any place at which an entity that holds a secure local jobs code certificate—

- (a) carries out territory-funded work, including administrative work; or
- (b) keeps records that relate to the territory-funded work.

22UB Authorised people and identity cards

- (1) The registrar may appoint a public servant as an authorised person for this subdivision.

Note For laws about appointments, see the [Legislation Act](#), pt 19.3.

- (2) The registrar must give an authorised person an identity card that states the person's name and appointment as an authorised person.
- (3) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.

22UC Entry to premises

- (1) For this division, an authorised person may—
 - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public; or
 - (b) at any time, enter premises with the occupier’s consent; or
 - (c) at any time, enter premises if the registrar suspects on reasonable grounds that—
 - (i) an entity has failed to comply with its obligations under the code; and
 - (ii) immediate entry to the premises is necessary to investigate if the entity has failed to comply.
- (2) However, subsection (1) (a) and (c) does not authorise entry into premises, or a part of the premises, that are used for residential purposes.
- (3) An authorised person may, without the occupier’s consent, enter the land around premises to ask for consent to enter premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.

22UD Production of identity card

An authorised person must not remain at premises entered under this subdivision if the authorised person does not show their identity card when asked by the occupier.

22UE Consent to entry

- (1) This section applies if an authorised person intends to ask the occupier of premises to consent to the authorised person entering the premises under section 22UC (1) (b).
- (2) Before asking for the consent, the authorised person must—
 - (a) show the occupier the person's identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that any information, document or other thing obtained under this subdivision may be—
 - (A) used as evidence for action to be taken under section 22T; or
 - (B) given to another authority under section 22UG and that authority may use the information, document or other thing as evidence in court; and
 - (iii) that consent may be refused.
- (3) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
 - (a) that the occupier was told the matters mentioned in subsection (2) (b); and
 - (b) that the occupier consents to the entry; and
 - (c) stating the time and date when consent was given.
- (4) If the occupier signs an acknowledgment of consent, the authorised person must, as soon as practicable, give a copy to the occupier.

- (5) If information, a document or any other thing obtained under this subdivision is used in a proceeding under a law in force in the Territory, a court must find that an occupier did not consent to entry to premises by an authorised person if—
- (a) a question arises, in a proceeding in the court, whether the occupier consented to the entry; and
 - (b) an acknowledgment of consent for the entry is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

22UF General powers on entry to premises

- (1) An authorised person who enters premises under this subdivision may, for this division, do 1 or more of the following in relation to the premises or anything at the premises:
- (a) inspect or examine;
 - (b) copy, or take an extract from, any document relating to noncompliance, or suspected noncompliance, with the code by an entity;
 - (c) take photographs, films, or audio, video or other recordings;
 - (d) require the occupier, or anyone else at the premises, to give information or answer questions;
 - (e) require the occupier to produce a document or any other thing (whether the document or other thing is at the premises or elsewhere) that the occupier has, or has access to, reasonably needed to exercise the authorised person's powers under this subdivision;

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

- (f) require the occupier to give the authorised person copies of documents produced under paragraph (e);
 - (g) require the occupier to give the authorised person reasonable help (at no cost) to exercise a power under this subdivision.
- (2) The registrar may take an action mentioned in section 22T (1) (a) to (e) against an entity that holds a secure local jobs code certificate if the entity—
- (a) fails to comply with a requirement made under subsection (1) (d), (e), (f) or (g); or
 - (b) obstructs or hinders an authorised person exercising a power under this subdivision.

22UG Disclosure of information

- (1) The registrar may give any information, document or other thing obtained under this subdivision to a responsible authority if the registrar considers that—
- (a) the information, document or other thing is relevant to the exercise of the functions of the responsible authority; and
 - (b) the disclosure of the information, document or other thing to the responsible authority is appropriate.
- (2) In this section:

responsible authority means an entity responsible for the administration of a workplace law.

workplace law means—

- (a) a law of the Commonwealth, a State or the Territory that relates to workplace standards; and
- (b) any other law prescribed by regulation.

22UH Damage etc to be minimised

In the exercise, or purported exercise, of a power under this subdivision, an authorised person must take all reasonable steps to ensure that the authorised person causes as little inconvenience, detriment and damage as is practicable.

22UI Protection from liability

- (1) An official is not civilly liable for anything done, or omitted to be done, honestly and without recklessness—
 - (a) in the exercise of a function under this division; or
 - (b) in the reasonable belief that the act of omission was in the exercise of a function under this division.
- (2) Any civil liability that would, apart from this section, attach to the official attaches instead to the Territory.
- (3) In this section:

official means—

 - (a) the registrar; or
 - (b) an authorised person.

16 New section 50A

in part 4A, insert

50A Applications for review by complainant

- (1) This section applies if a complainant applies to the ACAT for review of a reviewable decision in relation to an entity that holds a secure local jobs code certificate (the *affected entity*).

- (2) The registrar must, within 7 days after receiving the complainant's application for review, give the affected entity—
- (a) written notice stating that—
 - (i) the complainant has made an application to the ACAT; and
 - (ii) the affected entity may, within 7 days after the registrar's notice is given, apply to the ACAT to be joined as a new party to the application; and
 - (b) a copy of the application; and
 - (c) any notice given by the ACAT in relation to the application.
- (3) If an affected entity makes an application under subsection (2) (b), the ACAT must join the entity as a new party to the complainant's application.

17 Schedule 2

substitute

Schedule 2 Reviewable decisions

(see pt 4A)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	22J	decision not to grant secure local jobs code certificate	applicant
2	22K (1) (b) and (2)	decision to impose, amend or remove condition on secure local jobs code certificate	entity that holds certificate
3	22SA (2) (a)	decision to suspend secure local jobs code certificate including decision to suspend following complaint under s 22Q	entity that holds certificate

column 1 item	column 2 section	column 3 decision	column 4 entity
4	22SA (2) (a)	decision to suspend secure local jobs code certificate following complaint under s 22Q	complainant
5	22SA (2) (a)	decision not to suspend secure local jobs code certificate following complaint under s 22Q	complainant
6	22SA (2) (b)	decision to impose conditions on secure local jobs code certificate including decision to impose conditions following complaint under s 22Q	entity that holds certificate
7	22SA (2) (b)	decision to impose, amend or remove conditions on secure local jobs code certificate following complaint under s 22Q	complainant
8	22SA (2) (b)	decision not to impose or amend conditions on secure local jobs code certificate following complaint under s 22Q	complainant
9	22T (1) (a)	decision to take no action following complaint under s 22Q	complainant
10	22T (1) (b)	decision to cancel secure local jobs code certificate including decision to cancel following complaint under s 22Q	entity that holds certificate
11	22T (1) (b)	decision to cancel secure local jobs code certificate following complaint under s 22Q	complainant

column 1 item	column 2 section	column 3 decision	column 4 entity
12	22T (1) (b)	decision not to cancel secure local jobs code certificate following complaint under s 22Q	complainant
13	22T (1) (c)	decision to suspend secure local jobs code certificate including decision to suspend following complaint under s 22Q	entity that holds certificate
14	22T (1) (c)	decision to suspend secure local jobs code certificate following complaint under s 22Q	complainant
15	22T (1) (c)	decision not to suspend secure local jobs code certificate following complaint under s 22Q	complainant
16	22T (1) (d)	decision to prohibit application for secure local jobs code certificate including decision to prohibit following complaint under s 22Q	entity that is prohibited from making application
17	22T (1) (d)	decision to prohibit application for secure local jobs code certificate following complaint under s 22Q	complainant
18	22T (1) (d)	decision not to prohibit application for secure local jobs code certificate following complaint under s 22Q	complainant

column 1 item	column 2 section	column 3 decision	column 4 entity
19	22T (1) (e)	decision to impose or amend conditions on secure local jobs code certificate including decision to impose or amend conditions following complaint under s 22Q	entity that holds certificate
20	22T (1) (e)	decision to impose, amend or remove conditions on secure local jobs code certificate following complaint under s 22Q	complainant
21	22T (1) (e)	decision not to impose or amend conditions on secure local jobs code certificate following complaint under s 22Q	complainant

18 Dictionary, new definitions

insert

authorised person, for subdivision 2B.4.2 (Access to premises)—see section 22UA.

complainant means a person who makes a complaint under section 22Q (1) in relation to an entity that holds a secure local jobs code certificate.

occupier, of premises, for subdivision 2B.4.2 (Access to premises)—see section 22UA.

premises, for subdivision 2B.4.2 (Access to premises)—see section 22UA.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 November 2021.

2 Notification

Notified under the [Legislation Act](#) on 16 February 2022.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Government Procurement Amendment Bill 2022, which originated in the Legislative Assembly as the Government Procurement Amendment Bill 2021 and was passed by the Assembly on 9 February 2022.

Clerk of the Legislative Assembly

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