



Australian Capital Territory

# Government Procurement Amendment Act 2024

A2024-2

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Name of Act	2
2	Commencement	2
3	Legislation amended	2
4	Legislation repealed	2
<b>Part 2</b>	<b>Government Procurement Act 2001</b>	
5	Long title	3
6	Section 2, note 1	3

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J2023-192

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## Contents

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	Page	
7	Sections 2A to 3B	3
8	Sections 4 and 4A	3
9	New part 1A	4
10	Parts 2 and 2A	8
11	Section 22D	18
12	Definitions—pt 2B Section 22E, definition of <i>tenderer</i>	19
13	Meaning of <i>territory-funded work</i> —pt 2B Section 22F (1), definition of <i>territory-funded work</i>	19
14	Section 22F (1), definition of <i>territory-funded work</i> , paragraph (a)	19
15	Section 22F (1), definition of <i>territory-funded work</i> , paragraph (b)	20
16	Section 22F (1), definition of <i>territory-funded work</i> , paragraph (c)	20
17	Section 22F (3), definition of <i>excluded services or works</i>	20
18	Division 2B.2 heading	20
19	Requirements for procurement—secure local jobs code certificates etc Section 22G (1) and (3)	21
20	Section 22G (4)	21
21	Section 22G (5)	21
22	Exemption from requirements—secure local jobs code certificates etc Section 22H (1) and (3)	21
23	Surrender of secure local jobs code certificate Section 22L (2)	22
24	Section 22L (3)	22
25	Section 22L (4)	22
26	Secure local jobs code Section 22M (2) (a)	22
27	Functions of council Section 22ZA (a) (ii)	23
28	Parts 3 and 3A	23
29	Part 4	23
30	Section 43 heading	23
31	Section 43	23
32	Section 43	23
33	Section 44 heading	24
34	Section 44, definition of <i>commercial account</i> , except example	24

## Contents

---

	Page	
35	Section 44, definition of <i>payment date</i> , paragraph (b)	24
36	Section 44	24
37	Interest on unpaid accounts Section 45 (1) and (2)	24
38	Section 45	25
39	Exclusion of inconsistent contractual terms Section 46	25
40	Section 46 (a)	25
41	Section 46	25
42	Section 47	25
43	New part 4	26
44	Part 4A	31
45	Section 48 heading	31
46	Sections 48, 49, 50 and 50A	31
47	Part 5	31
48	Sections 51 and 52	32
49	New part 12	34
50	Confidentiality obligations of Territory Schedule 1 reference	36
51	Schedule 1, section M (4)	36
52	Schedule 1, section M (5)	36
53	Dictionary, note 2	36
54	Dictionary, definition of <i>board</i>	37
55	Dictionary, definitions of <i>commercial account</i> and <i>confidential text</i>	37
56	Dictionary, new definition of <i>construction work</i>	37
57	Dictionary, definition of <i>contract</i>	37
58	Dictionary, new definitions	37
59	Dictionary, definition of <i>notifiable amendment</i>	38
60	Dictionary, definition of <i>notifiable contract</i>	38
61	Dictionary, definition of <i>notifiable contracts register</i>	38
62	Dictionary, definition of <i>notifiable invoice</i>	38
63	Dictionary, definition of <i>notifiable invoices register</i>	38
64	Dictionary, definition of <i>payment date</i>	38
65	Dictionary, new definition of <i>probity</i>	39

	Page
66	Dictionary, definition of <i>procurement</i> 39
67	Dictionary, new definition of <i>procurement contract</i> 39
68	Dictionary, definition of <i>public text</i> 39
69	Dictionary, new definition of <i>register</i> 39
70	Dictionary, definition of <i>relevant date</i> 39
71	Dictionary, definitions of <i>responsible chief executive officer</i> , <i>responsible Territory entity</i> and <i>reviewable decision</i> 40
72	Dictionary, new definition of <i>standing-offer arrangement</i> 41
73	Dictionary, definitions of <i>tenderer</i> and <i>Territory entity</i> 41
74	Dictionary, new definition of <i>value for money</i> 41
<b>Part 3</b>	<b>Government Procurement Regulation 2007</b>
75	New section 2 42
76	New part 1A 42
77	Parts 2 and 3 46
78	Sections 12AA and 12AB headings 59
79	Labour relations, training and workplace equity plan—Act, s 22G (6) (b) Section 12AC (1) (g) 59
80	Section 12AC (1) (i) 60
81	Parts 5 and 6 60
82	New dictionary 65
<b>Schedule 1</b>	<b>Health Infrastructure Enabling Act 2023— Consequential amendments</b> 67



Australian Capital Territory

# Government Procurement Amendment Act 2024

A2024-2

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An Act to amend the *Government Procurement Act 2001* and the *Government Procurement Regulation 2007*, and for other purposes

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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 2024*.

### 2 Commencement

This Act commences on 1 July 2024.

*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*.

*Note* This Act also amends the *Health Infrastructure Enabling Act 2023* (see sch 1).

### 4 Legislation repealed

The *Government Procurement (Relevant Standing Committee) Nomination 2012* (NI2012-602) is repealed.

## Part 2                      Government Procurement Act 2001

### 5            Long title

*substitute*

An Act about procurement by Territory entities for the Territory, and for other purposes

### 6            Section 2, note 1

*omit*

see section 3

*substitute*

see section 6

### 7            Sections 2A to 3B

*omit*

### 8            Sections 4 and 4A

*renumber as sections 3 and 4*

**9 New part 1A***insert***Part 1A Important concepts****5 Meaning of *procurement***

(1) In this Act:

***procurement***—

- (a) means the process by which a Territory entity—
  - (i) acquires goods or services by any contractual means, including purchase, lease or rent (with or without an option to buy), or exchange; or
  - (ii) deals in any legal or equitable estate or interest in land or deals in a right, power or privilege over, or in relation to, land as a sublease or licence over land, or part of land, in which the Territory or the Territory entity is the sublessee or licensee; and
- (b) includes the process by which a Territory entity disposes of goods by any contractual means, including sale.

*Note* **Interest**, in relation to land—see the [Legislation Act](#), dictionary, pt 1.

(2) Also, ***procurement*** includes a procurement by—

- (a) a Territory entity acting solely on behalf of another entity; or
- (b) another entity acting solely on behalf of a Territory entity.

**Example—par (a)**

Canberra Institute of Technology acting solely on behalf of CIT Solutions



- (3) However, **procurement** does not include—
- (a) acquiring goods or services for—
    - (i) resale; or
    - (ii) use in the production of goods for resale; or
  - (b) an acquisition of goods or services by a Territory entity from another Territory entity; or
  - (c) a dealing mentioned in subsection (1), definition of **procurement**, paragraph (a) (ii) between Territory entities; or
  - (d) a dealing in any legal or equitable estate or interest in land or a dealing in a right, power or privilege over, or in relation to, land other than as mentioned in subsection (1), definition of **procurement**, paragraph (a) (ii).

**Examples—par (d)**

- 1 the grant of a lease or licence of land under the *Planning Act 2023*
  - 2 the purchase of land by the Territory or a Territory entity
  - 3 the grant of a sublease or licence by the Territory or a Territory entity as sublessor or licensor
- (4) A regulation may prescribe that something is, or is not, procurement for this Act.
- (5) In this section:  
**sublease** includes an underlease.

## 6 **Meaning of Territory entity**

- (1) In this Act:  
**Territory entity** means—
- (a) a directorate; or
  - (b) the Office of the Legislative Assembly; or
  - (c) an officer of the Assembly; or

- (d) a territory authority or any other entity prescribed by regulation.
- (2) However, *Territory entity* does not include an entity prescribed by regulation not to be a Territory entity.

## 7 **Probity**

- (1) In undertaking a procurement, a Territory entity must ensure that the procurement is undertaken with probity.
- (2) For this Act, a procurement undertaken by a Territory entity is undertaken with *probity* if—
  - (a) the Territory entity’s behaviour is ethical and there is evidence of this behaviour; and
  - (b) the procurement is undertaken with integrity, uprightness and honesty.

## 8 **Value for money**

- (1) For this Act, *value for money*, in relation to a procurement, means the best available outcome for the procurement that maximises the overall benefit to the Territory.
- (2) Any decisions made or functions exercised in relation to the following must achieve value for money:
  - (a) selecting an entity to supply goods or services;
  - (b) authorising, or committing the Territory to, the expenditure of any money;
  - (c) entering into a procurement contract for the procurement;
  - (d) spending any money;
  - (e) amending a procurement contract;
  - (f) anything else prescribed by regulation.

- (3) To achieve value for money, the responsible chief executive officer for a Territory entity must be satisfied that the decision or exercise of the function—
- (a) uses public resources in an efficient and effective manner; and
  - (b) manages any risks appropriately; and
  - (c) is undertaken by the Territory entity with probity; and
  - (d) complies with this Act, including any direction about government procurement practices given by the Minister under section 43.

**Example—par (d)**

a direction to consider a charter of procurement values in undertaking a procurement

*Note* A direction is a notifiable instrument, see s 43.

- (4) A regulation may prescribe any other matter the responsible chief executive officer for a Territory entity must be satisfied of or take into account to achieve value for money.
- (5) Any decision made under subsection (3) in relation to achieving value for money must be recorded in writing as soon as practicable after making the decision.
- (6) In particular, the written record must include the matters mentioned in subsections (3) and (4) of which the responsible chief executive officer was satisfied or took into account.

*Note* Under the *Financial Management Act 1996*, s 31A (1), the responsible director-general of a directorate may enter into, vary and administer a contract relating to the operations of the directorate if the director-general acts in accordance with that Act, s 31. Under s 31 (1), the responsible director-general of a directorate is accountable for the efficient and effective financial management of the public resources for which the directorate is responsible.

**9 Meaning of *procurement contract***

In this Act:

*procurement contract*—

- (a) means a contract entered into by a Territory entity and another entity for procurement under this Act; and
- (b) includes a document prescribed by regulation.

*Note* *Contract* includes a contract as amended (see dict).

**10 Form of procurement contracts and amendments**

A procurement contract, including any amendment of the contract, must be in writing.

**10 Parts 2 and 2A**

*substitute*

**Part 2 Notifiable contracts and notifiable invoices****Division 2.1 Preliminary****11 Application—pt 2**

- (1) To remove any doubt, this part applies in relation to a procurement contract entered into by—
  - (a) a Territory entity with an excluded body; or
  - (b) an excluded body acting on behalf of a Territory entity with another excluded body.

**Example**

The Territory represented by a Territory entity enters into a procurement contract with a Territory owned corporation. The Territory entity, but not the Territory owned corporation, is required to notify the contract under this part.

- (2) In this section:

*excluded body* means a body that is not a Territory entity.

## 12 Meaning of *notifiable contract*—pt 2

- (1) In this part:

*notifiable contract*—

- (a) means a procurement contract with a total consideration, or estimated total consideration, of at least the amount mentioned in subsection (2) (the *consideration amount*); and

*Note* *Contract* includes a contract as amended (see dict).

- (b) includes—

(i) a standing-offer arrangement; and

(ii) a contract entered into under a standing-offer arrangement; but

**Examples—subpar (ii)**

an order or a work order

- (c) does not include a procurement contract of a kind prescribed by regulation.

- (2) For this section, the *consideration amount* is—

(a) for a standing-offer arrangement—any amount; or

(b) for any other procurement contract (including a contract entered into under a standing-offer arrangement)—the amount prescribed by regulation.

**13 Meaning of *notifiable invoice*—pt 2**

In this part:

*notifiable invoice*—

- (a) means an invoice for—
  - (i) goods or services procured by, or provided to, a Territory entity under a procurement contract payable by a responsible Territory entity; and
  - (ii) the amount prescribed by regulation or more; and
- (b) includes an invoice for reimbursement of costs payable by a responsible Territory entity for the goods or services provided by a contractor in the course of carrying out the contractor's work for a Territory entity; but

**Example**

the cost of flights to Canberra, and accommodation in Canberra, for the contractor to inspect works

- (c) does not include an invoice—
  - (i) for goods or services provided by a Territory entity; or
  - (ii) prescribed by regulation.

**Division 2.2 Register****14 Keeping of register**

- (1) The director-general must keep a register of notifiable contracts and notifiable invoices (the *register*).
- (2) The register must be kept electronically.

**Example—how register may be kept**

The register may be kept in the form of, or as part of, 1 or more computer databases, and may include data compiled electronically from the databases.

- (3) The director-general may correct any mistake, error or omission in the register, subject to any requirements prescribed by regulation.

*Note* The responsible Territory entity for a notifiable contract or a notifiable invoice must enter into the register any information prescribed for s 15 for the contract or invoice and, if the information changes, update the information in the register (see regulation, s 12C).

## 15 Contents of register

- (1) A regulation may prescribe information that must be included in the register for each notifiable contract and each notifiable invoice.
- (2) The register may include anything else the director-general considers appropriate.

### **Example**

information about and links to contracts that are not notifiable contracts

- (3) If any part of a notifiable contract to which a notifiable invoice relates is confidential text, any entry in the register for the invoice must not contain any information that would disclose the confidential text, other than as provided in the confidentiality clause included in the contract.
- (4) A regulation may prescribe the way in which documents are to be entered in the register.

### **Example—s (4)**

requiring a document to be in portable document format or in rich text format

## Division 2.3                      Confidential text in notifiable contracts

### 16                      Meaning of *confidential text*—pt 2

(1) In this part:

*confidential text*, of a notifiable contract—

- (a) means that part of the notifiable contract that a party to the contract (including the Territory entity) is required to keep confidential under—
  - (i) a provision of any contract that requires a party to the notifiable contract to keep any part of the notifiable contract confidential; or
  - (ii) any other requirement imposed by law that has the effect of requiring a party to the notifiable contract to keep any part of the notifiable contract confidential; and
- (b) includes any personal information about a person.

*Note*     The Territory privacy principles apply to a Territory entity (see [Information Privacy Act 2014](#), sch 1).

(2) All text in the following notifiable contracts is taken to be confidential text:

- (a) a notifiable contract that relates to the provision of legal services;
- (b) a notifiable contract for the employment of an individual.

(3) In this section:

*personal information*—see the [Information Privacy Act 2014](#), section 8.



**17 Notice of effect of div 2.3 to contracting parties**

- (1) This section applies in relation to a proposed notifiable contract if—
  - (a) a party to the contract (including the Territory entity), proposes that any part of the contract be confidential text; or
  - (b) any part of the contract will be confidential text because of a requirement imposed by law that requires a party to the contract to keep the part confidential.
- (2) The responsible Territory entity for the notifiable contract must ensure that this division is drawn to the attention of all the proposed parties to the contract (other than a Territory entity).

**18 Grounds for confidentiality of information**

- (1) Any part of the text of a notifiable contract will be confidential text if a requirement imposed by law requires a party to the contract to keep the text confidential.

**Example**

a failure to comply with the requirement would create an action for breach of confidence

- (2) The responsible Territory entity for a notifiable contract to which section 17 applies must not—
  - (a) propose that any part of the text of the contract be confidential text unless reasonably satisfied that any disclosure of the text—
    - (i) would cause unreasonable detriment to the Territory or another party to the contract; or
    - (ii) may put personal or public safety, or the security of the Territory, at risk; or

**Examples**

- 1 construction plans for a correctional facility or law enforcement facility
- 2 information about design, construction or operation of major infrastructure or public works

- (iii) would have a significant adverse effect on the financial, legal or property interests of the Territory or a Territory entity; or
  - (iv) would unreasonably constrain the development or consideration of policy alternatives by the Territory; or
  - (v) would disclose information prescribed by regulation for this section; or
- (b) agree to any part of the text of the contract being confidential text unless reasonably satisfied that any disclosure of the text would—
- (i) disclose a trade secret; or  
**Example**  
intellectual property, including software source codes
  - (ii) disclose an artistic, literary or cultural secret; or  
**Examples**
    - 1 details about a photographic shoot
    - 2 text of an historic manuscript
    - 3 a secret indigenous cultural practice
  - (iii) disclose information (other than a trade, artistic, literary or cultural secret) having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or  
**Example**  
information on the design and operation of goods
  - (iv) be an unreasonable disclosure of information about internal costings or profit margins; or  
**Examples**
    - 1 hourly rates, on-costs and management fees
    - 2 individual components of the contract's total consideration

- (v) disclose information that may put personal or public safety, or the security of the Territory, at risk; or
  - (vi) disclose information prescribed by regulation for this section.
- (3) Also, the responsible Territory entity for the notifiable contract must not propose that any part of the text of the contract be confidential text, or agree to any part of the text of the contract being confidential text, if—
  - (a) the substance of the information to which the text relates is public knowledge; or
  - (b) the effect of the proposal or agreement—
    - (i) would be to inappropriately restrict a Territory entity in the management or use of Territory assets; or
    - (ii) would not be in the public interest; or
    - (iii) would be to require the obligation of confidentiality to apply for longer than is reasonably necessary to protect the interest to which it relates.
- (4) If the responsible Territory entity for the notifiable contract agrees to a part of the text of the contract being confidential text, it must be noted in the contract that the text is confidential text.
- (5) The responsible Territory entity for the notifiable contract may delegate the Territory entity's functions under this section to a public employee.

## **19 Model confidentiality clause required for confidential text**

- (1) The text of a notifiable contract must not be made confidential text unless—
  - (a) a confidentiality clause that incorporates the substance of the model confidentiality clause, as far as is applicable, is included in the contract; and

(b) the confidentiality clause does not limit disclosure of information to a greater extent than provided in the model confidentiality clause.

(2) In this section:

*model confidentiality clause* means the model confidentiality clause set out in schedule 1.

## **20 Invalidity of non-complying confidentiality clauses**

Any confidentiality clause in, or applying to, a notifiable contract is void if the clause—

- (a) was included in the contract in contravention of section 18; or
- (b) does not comply with section 19.

## **21 Auditor-general's requests for contracts and information, reporting obligations etc**

(1) The responsible Territory entity for a notifiable contract that contains confidential text must, if requested by the auditor-general, give the auditor-general—

- (a) a copy of the contract; and
- (b) any other contract or information requested.

(2) If the auditor-general requests a copy of a notifiable contract that contains confidential text, the auditor-general must report to the relevant Assembly committee on whether the auditor-general is satisfied that confidential text in the contract complies with section 18 (1) or (2).

(3) In this section:

*confidential text* includes text that purports to be confidential text.

## Division 2.4 Other matters

### 22 Effect of disclosure of confidential text

If confidential text, or information about confidential text, is disclosed under this part, the disclosure does not affect the continuing force of the obligation of confidence.

### 22A Notice of effect of pt 2 to parties issuing invoices

The responsible Territory entity for the payment of a proposed notifiable invoice must ensure that this part is drawn to the attention of parties intending to provide a good or service for which an invoice is to be raised.

### 22B Effect of other disclosure laws etc

This part does not—

- (a) affect any other law applying in the ACT about the disclosure of documents or information; or
- (b) prevent responsible Territory entities from making available information about, or the text of, a notifiable contract or a notifiable invoice otherwise than as required by this part if any agency is required under law to do so or can otherwise properly do so.

*Note 1* The *Freedom of Information Act 2016* and the *Territory Records Act 2002* provide for how government information and Territory records may be accessed.

*Note 2* The Territory privacy principles under the *Information Privacy Act 2014*, sch 1 provide for the disclosure of personal information in certain circumstances.

**22C No liability for complying with pt 2**

The Territory or a Territory entity is not civilly liable to any of the following, or to anyone else, for anything done honestly under this part:

- (a) an entity that is a party to a notifiable contract;
- (b) an entity issuing a notifiable invoice.

**11 Section 22D**

*substitute*

**22D Application—div 2B.2**

- (1) This section applies to a procurement by a Territory entity if the Territory entity receives a quote, tender or other response in relation to the procurement from any of the following (a *tenderer*):
  - (a) the Commonwealth or a State;
  - (b) an entity of the Commonwealth or a State;
  - (c) a territory-owned corporation;
  - (d) a territory authority that is not a Territory entity;
  - (e) a territory instrumentality.

**Example**

a procurement of police services for the Territory from the Australian Federal Police

- (2) The requirements for a procurement under division 2B.2 do not apply to the following in relation to the procurement:
  - (a) the Territory entity;
  - (b) the tenderer.

(3) In this section:

*entity of the Commonwealth or a State* means an entity of the Commonwealth or a State that exercises functions that correspond, or substantially correspond, to the functions of—

- (a) an entity mentioned in section 6 (1), definition of *Territory entity*; or
- (b) a territory-owned corporation; or
- (c) a territory authority that is not a Territory entity; or
- (d) a territory instrumentality.

*Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

**12** **Definitions—pt 2B**  
**Section 22E, definition of *tenderer***

*omit*

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

*omit*

services or works that are for a territory entity

*substitute*

services that are for a Territory entity

**14** **Section 22F (1), definition of *territory-funded work*, paragraph (a)**

*omit*

services or works

*substitute*

services

**15 Section 22F (1), definition of *territory-funded work*, paragraph (b)**

*substitute*

(b) services that are primarily for construction work (other than excluded services);

**16 Section 22F (1), definition of *territory-funded work*, paragraph (c)**

*omit*

services or works

*substitute*

services

**17 Section 22F (3), definition of *excluded services or works***

*substitute*

*excluded services* means services prescribed by regulation.

**18 Division 2B.2 heading**

*substitute*

**Division 2B.2 Requirements for procurement by Territory entities**



**19 Requirements for procurement—secure local jobs code certificates etc  
Section 22G (1) and (3)**

*omit*

territory entity

*substitute*

Territory entity

**20 Section 22G (4)**

*omit*

A territory entity must not enter into a contract for procurement

*substitute*

A Territory entity must not enter into a procurement contract

**21 Section 22G (5)**

*omit*

contracts

*substitute*

procurement contracts

**22 Exemption from requirements—secure local jobs code certificates etc  
Section 22H (1) and (3)**

*omit*

territory entity

*substitute*

Territory entity

**23 Surrender of secure local jobs code certificate  
Section 22L (2)**

*omit*

contract with a territory entity

*substitute*

procurement contract with a Territory entity

**24 Section 22L (3)**

*substitute*

- (3) The registrar may request information from a Territory entity to enable the registrar to decide whether the entity that holds a secure local jobs code certificate is required to do so under a procurement contract with the Territory entity.

**25 Section 22L (4)**

*omit*

territory entity

*substitute*

Territory entity

**26 Secure local jobs code  
Section 22M (2) (a)**

*omit*

territory entity

*substitute*

Territory entity

**27**      **Functions of council  
Section 22ZA (a) (ii)**

*omit*

territory entities

*substitute*

Territory entities

**28**      **Parts 3 and 3A**

*omit*

**29**      **Part 4**

*renumber as part 3*

**30**      **Section 43 heading**

*substitute*

**43**      **Application—pt 3****31**      **Section 43**

*omit*

contract entered into by the Territory or a territory entity for procurement

*substitute*

procurement contract

**32**      **Section 43**

*renumber as section 23*

**33 Section 44 heading**

*substitute*

**44 Definitions—pt 3****34 Section 44, definition of *commercial account*, except example**

*substitute*

*commercial account* means an account given to a Territory entity for the payment of money under a procurement contract.

**35 Section 44, definition of *payment date*, paragraph (b)**

*omit*

the Territory or

**36 Section 44**

*renumber as section 24*

**37 Interest on unpaid accounts  
Section 45 (1) and (2)**

*substitute*

- (1) This section applies if—
  - (a) a Territory entity does not pay a commercial account in full by the relevant date for the account; and
  - (b) the person to whom the account is payable requests, in writing, that the Territory entity pay interest on the amount of the account that remains unpaid from time to time after the payment date.
- (2) The Territory entity is liable to pay the creditor a further amount by way of interest on the amount of the account that remains unpaid from time to time.

**38 Section 45**

*renumber as section 25*

**39 Exclusion of inconsistent contractual terms  
Section 46**

*omit*

in a contract

*substitute*

in a procurement contract

**40 Section 46 (a)**

*omit*

section 43

*substitute*

section 23

**41 Section 46**

*renumber as section 26*

**42 Section 47**

*renumber as section 27*

**43 New part 4***insert***Part 4 Government procurement board****28 Government Procurement Board**

There is an Australian Capital Territory Government Procurement Board.

**29 Purpose and functions of board**

- (1) The purpose of the board, through the exercise of its functions, is to provide strategic direction in relation to procurement for the Territory.
- (2) The functions of the board are—
  - (a) to review—
    - (i) procurements of a kind prescribed by regulation; and
    - (ii) government procurement practices; and
  - (b) if required, to make recommendations, in writing, to Territory entities in relation to procurements reviewed under paragraph (a) (i);
  - (c) if appropriate, endorse government procurement practices reviewed under paragraph (a) (ii); and
  - (d) to recommend that the Minister give a direction about government procurement practices to Territory entities under section 43; and

*Note* **Government procurement practices** are practices, policies or procedures to be used by Territory entities for undertaking procurements (see s 43 (1)).

- (e) to provide advice to the Minister on any issue relevant to procurements by Territory entities or the operation of this Act; and
- (f) to exercise any other function given to the board under this Act or any other territory law.

*Note* A provision of a law that gives an entity a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196).

### 30 Recommendations of board

- (1) If the board makes a recommendation under section 29 (2) (b) to a Territory entity in relation to a procurement, the Territory entity must explain to the board, in writing, how the Territory entity has, or intends to, address the board's recommendation.
- (2) If the board considers that the Territory entity has not addressed, or not adequately addressed, the board's recommendation, the board must make a further recommendation in relation to the matter to the responsible chief executive officer for the Territory entity.
- (3) If the board makes a further recommendation to the responsible chief executive officer for the Territory entity under subsection (2), the officer must explain to the board, in writing, how the board's further recommendation has been, or will be, addressed before the procurement is undertaken or, if the procurement has commenced, continues to be undertaken.
- (4) If the procurement is in the planning period and the board considers that its further recommendation has not been addressed, or not been adequately addressed, the board must refer the matter to the responsible Minister for the Territory entity.
- (5) In this section:

*planning period*, in relation to a procurement, means the period before a Territory entity seeks quotations or invites tenders for the procurement.

*responsible Minister*, for a Territory entity, means—

- (a) for a Territory entity that is a directorate or a territory authority—see the *Financial Management Act 1996*, dictionary; or
- (b) in any other case—a Minister nominated by the Minister administering this Act.

### **31 Ministerial directions to board**

- (1) The Minister may give written directions to the board about the exercise of its functions.
- (2) However, the Minister must not give written directions to the board about the exercise of its functions in relation to the following Territory entities:
  - (a) the Office of the Legislative Assembly;
  - (b) an officer of the Assembly.
- (3) 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.
- (4) 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.
- (5) The board must comply with a direction given to it under this section.
- (6) For the *Competition and Consumer Act 2010* (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.

### **32 Constitution of board**

The board consists of the following 9 part-time members:

- (a) the chairperson;
- (b) the deputy chairperson;
- (c) 3 public employee members;
- (d) 4 non-public employee members.

### **33 Board members—appointment**

- (1) The members are to be appointed by the Minister.

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

- (2) A person appointed as chairperson or as a non-public employee member must not be a public employee.
- (3) A person appointed as deputy chairperson or as a public employee member must be a public employee.
- (4) The instrument appointing, or evidencing the appointment of, a member must state whether the member is appointed as chairperson, deputy chairperson, a public employee member or a non-public employee member.

### **34 Board members—conditions of appointment**

A regulation may prescribe—

- (a) a member's term of appointment; and
- (b) any conditions on which a member is appointed in relation to matters not provided for by this part.

**35 Board members—abuse of position**

- (1) A person commits an offence if—
- (a) the person uses information gained because of being a member of the board; and
  - (b) the person does so with the intention of dishonestly obtaining a benefit for the person or someone else.

Maximum penalty: imprisonment for 5 years.

- (2) A person commits an offence if—
- (a) the person has stopped being a member of the board; and
  - (b) the person uses information that the person obtained because of being a member; and
  - (c) the person does so with the intention of dishonestly obtaining a benefit for the person or someone else.

Maximum penalty: imprisonment for 5 years.

- (3) In this section:

*dishonestly*—a person acts dishonestly if—

- (a) the person's conduct is dishonest according to the standards of ordinary people; and
- (b) the person knows that the conduct is dishonest according to those standards.

**36 Board members—ending appointment**

- (1) The Minister must end the appointment of the chairperson or a non-public employee member if the member becomes a public employee.
- (2) The Minister must end the appointment of the deputy chairperson or a public employee member if the person stops being 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 or personally insolvent; or
    - (ii) is absent, other than on leave approved by the Minister, from 3 consecutive meetings of the board; or
    - (iii) commits an offence against section 35 (Board members—abuse of position) or an indictable offence; or
  - (c) for a reason prescribed by regulation.

**44 Part 4A**

*renumber as part 5*

**45 Section 48 heading**

*substitute*

**48 Meaning of *reviewable decision*—pt 5****46 Sections 48, 49, 50 and 50A**

*renumber as sections 37, 38, 39 and 40*

**47 Part 5**

*renumber as part 7*

**48 Sections 51 and 52**

*substitute*

**41 Amounts inclusive of GST**

An amount mentioned in this Act is inclusive of any GST payable in relation to the amount.

*Note* A reference to an Act includes a reference to any regulation or other statutory instrument made or in force under the Act (see [Legislation Act](#), s 104).

**42 Government procurement rules**

- (1) The Minister may make rules in relation to procurements undertaken by Territory entities (the ***government procurement rules***).

**Example**

rules to ensure a procurement is undertaken with probity

- (2) A Territory entity must comply with any government procurement rules when exercising a function in relation to procurement.
- (3) The government procurement rules are a disallowable instrument.
- (4) In this section:

***Territory entity*** does not include—

- (a) the Office of the Legislative Assembly; and
- (b) an officer of the Assembly.

**43 Government procurement practices**

- (1) The Minister may give directions about practices, policies or procedures to be used by Territory entities for undertaking procurements (***government procurement practices***).
- (2) A Territory entity must comply with any direction when exercising a function in relation to procurement.

(3) A direction is a notifiable instrument.

(4) In this section:

*Territory entity*—see section 42 (4).

#### **44 Compliance with Act—annual reporting**

(1) The responsible chief executive officer for a Territory entity must ensure that the Territory entity complies with this Act.

(2) A Territory entity must, for each reporting year, prepare a report (a *compliance report*) about the Territory entity's compliance with this Act during the year, including—

(a) a statement about whether the Territory entity has complied with this Act during the year; and

(b) if the Territory entity has not complied with this Act during the year—details about how and why the entity has not complied with this Act.

(3) The Territory entity must—

(a) if the Territory entity is required to prepare an annual report under the *Annual Reports (Government Agencies) Act 2004*—include the compliance report in the entity's annual report for the reporting year; or

(b) in any other case—make the report publicly available.

**Example—publicly available**

published on the entity's website

(4) In this section:

*annual report*—see the *Annual Reports (Government Agencies) Act 2004*, dictionary.

*reporting year*—

- (a) if a Territory entity is required to prepare an annual report under the *Annual Reports (Government Agencies) Act 2004*—see that Act, dictionary; or
- (b) in any other case—means a financial year.

#### **45 Regulation-making power**

- (1) The Executive may make regulations for this Act.
- (2) A regulation may provide that—
  - (a) prescribed things are, or are not, goods or services for this Act; and
  - (b) prescribed kinds of procurements or procurement matters are exempt from this Act.
- (3) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

#### **49 New part 12**

*insert*

## **Part 12 Transitional—Government Procurement Amendment Act 2024**

#### **105 Instruments under pre-amendment Act and regulation**

- (1) An appointment under the pre-amendment Act, section 12 (Appointment of members) that is in force immediately before the commencement day—
  - (a) is taken to be an appointment under this Act, section 33; and

- (b) continues in force after the commencement day as if it were an appointment made under section 33 until the end of the term of the appointment, unless ended earlier.
- (2) A delegation under the pre-amendment Act, section 35 (Grounds for confidentiality of information), that is in force immediately before the commencement day, is taken to be a delegation under this Act, section 18.
- (3) A direction made under the pre-amendment regulation, section 13 (Procurement procedure), that is in force immediately before the commencement day, is taken to be a direction under this Act, section 43.
- (4) In this section:

*commencement day* means the day the *Government Procurement Amendment Act 2024*, section 3 commences.

*pre-amendment Act* means this Act as in force immediately before the commencement day.

*pre-amendment regulation* means the regulation for this Act as in force immediately before the commencement day.

## 106 Transitional regulations

A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Government Procurement Amendment Act 2024*.

## 107 Expiry—pt 12

This part expires 2 years after the day it commences.

*Note* A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

**50 Confidentiality obligations of Territory  
Schedule 1 reference**

*omit*

(see s 36)

*substitute*

(see s 19)

**51 Schedule 1, section M (4)**

*omit*

part 3 (Notifiable contracts)

*substitute*

part 2 (Notifiable contracts and notifiable invoices)

**52 Schedule 1, section M (5)**

*omit*

section 35 (1)

*substitute*

section 18 (1) and (2)

**53 Dictionary, note 2**

*insert*

- GST
- territory instrumentality



**54 Dictionary, definition of *board***

*omit*

section 5

*substitute*

section 28

**55 Dictionary, definitions of *commercial account* and *confidential text***

*substitute*

*commercial account*, for part 3 (Interest on commercial accounts)—see section 24.

*confidential text*, of a notifiable contract, for part 2 (Notifiable contracts and notifiable invoices)—see section 16.

**56 Dictionary, new definition of *construction work***

*insert*

*construction work*—see the [Work Health and Safety Regulation 2011](#), section 289.

**57 Dictionary, definition of *contract***

*substitute*

*contract* includes a contract as amended.

**58 Dictionary, new definitions**

*insert*

*goods* includes intellectual property.

*goods or services* includes goods or services related to construction work.

*Note* A regulation may provide that prescribed things are, or are not, goods or services for this Act (see s 45 (2) (b)).

*government procurement rules*—see section 42 (1).

*government procurement practices*—see section 43 (1).

**59 Dictionary, definition of *notifiable amendment***

*omit*

**60 Dictionary, definition of *notifiable contract***

*substitute*

*notifiable contract*, for part 2 (Notifiable contracts and notifiable invoices)—see section 12.

**61 Dictionary, definition of *notifiable contracts register***

*omit*

**62 Dictionary, definition of *notifiable invoice***

*substitute*

*notifiable invoice*, for part 2 (Notifiable contracts and notifiable invoices)—see section 13.

**63 Dictionary, definition of *notifiable invoices register***

*omit*

**64 Dictionary, definition of *payment date***

*substitute*

*payment date*, for a commercial account, for part 3 (Interest on commercial accounts)—see section 24.

**65 Dictionary, new definition of *probity***

*insert*

*probity*—see section 7.

**66 Dictionary, definition of *procurement***

*substitute*

*procurement*—see section 5.

**67 Dictionary, new definition of *procurement contract***

*insert*

*procurement contract*—see section 9.

**68 Dictionary, definition of *public text***

*omit*

**69 Dictionary, new definition of *register***

*insert*

*register*—see section 14 (1).

**70 Dictionary, definition of *relevant date***

*substitute*

*relevant date*, for the payment of a commercial account, for part 3 (Interest on commercial accounts)—see section 24.

**71 Dictionary, definitions of *responsible chief executive officer, responsible Territory entity* and *reviewable decision***

*substitute*

***responsible chief executive officer***, for a Territory entity, means—

- (a) if the entity is a directorate—the responsible director-general of the directorate under the *Financial Management Act 1996*; or
- (b) if the entity is the Office of the Legislative Assembly—the clerk of the Legislative Assembly; or
- (c) if the entity is an officer of the Assembly—the officer; or
- (d) if the entity is a territory authority—the chief executive officer of the authority under the *Financial Management Act 1996*; or
- (e) if the entity is prescribed by regulation—the person prescribed by regulation.

***responsible Territory entity***, for a procurement contract, means—

- (a) the Territory entity that is, or will be, responsible for the administration of the contract; or
- (b) if a Territory entity administers, or will administer, the contract for another Territory entity—the other Territory entity.

***reviewable decision***, for part 5 (Notification and review of decisions)—see section 37.

**72 Dictionary, new definition of *standing-offer arrangement***

*insert*

***standing-offer arrangement*** means an arrangement or agreement to supply stated goods or services on agreed terms, including pricing, that may be procured from time to time during a period stated in the arrangement or agreement.

**Examples**

common use arrangement, deed of standing offer, head agreement

**73 Dictionary, definitions of *tenderer* and *Territory entity***

*substitute*

***tenderer***, in relation to a procurement, means an entity that submits a quote, tender or other response in relation to the procurement.

***Territory entity***—see section 6.

**74 Dictionary, new definition of *value for money***

*insert*

***value for money***—see section 8 (1).

## Part 3 Government Procurement Regulation 2007

### 75 New section 2

*insert*

#### 2 Dictionary

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

*Note 1* The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*supplier*—see section 6 (2).’ means that the term ‘supplier’ is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 76 New part 1A

*insert*

## Part 1A Important concepts

### 3A Meaning of *procurement*—Act, s 5 (4)

- (1) The following are not *procurement*:
  - (a) a grant;
  - (b) an investment or borrowing under the [Financial Management Act 1996](#);

- (c) a loan or a rebate to, or provided by, a Territory entity;

**Example**

a concessional loan from the Australian Government to the Territory for loose-fill asbestos removal in the ACT

- (d) an acquisition or disposal by a Territory entity under another territory law.

**Example**

an acquisition under the *Lands Acquisition Act 1994*

- (2) In this section:

***grant***—

- (a) means a payment of public money to a person by the Territory, or on behalf of the Territory, to—
- (i) achieve a stated government policy outcome; and
  - (ii) assist the person achieve a stated objective; and
- (b) includes a payment—
- (i) made as a result of a selection process; or
  - (ii) made because stated criteria are satisfied; or
  - (iii) that is a one-off or ad hoc payment.

**Examples—grants**

- 1 a research grant
- 2 a community support grant
- 3 a grant for arts activities

***public money***—see the *Financial Management Act 1996*, dictionary.

**3B Prescribed territory authorities—Act, s 6 (1), def *Territory entity*, par (d)**

- (1) The following territory authorities are prescribed:
  - (a) the ACT Teacher Quality Institute;
  - (b) the Australian Capital Territory Insurance Authority;
  - (c) the Building and Construction Industry Training Fund Authority;
  - (d) the Cemeteries and Crematoria Authority;
  - (e) the Canberra Institute of Technology;
  - (f) the city renewal authority;
  - (g) the Cultural Facilities Corporation;
  - (h) the electoral commission;
  - (i) the gambling and racing commission;
  - (j) the independent competition and regulatory commission;
  - (k) the integrity commission;
  - (l) the legal aid commission;
  - (m) the Long Service Leave Authority;
  - (n) the Motor Accident Injuries Commission;
  - (o) the Office of the Auditor-General;
  - (p) the Office of the Work Health and Safety Commissioner;
  - (q) the public trustee and guardian;
  - (r) the suburban land agency.

- (2) In this section:

***ACT Teacher Quality Institute*** means the institute established under the *ACT Teacher Quality Institute Act 2010*, section 10.



*Australian Capital Territory Insurance Authority* means the authority established under the *Insurance Authority Act 2005*, section 7.

*Building and Construction Industry Training Fund Authority* means the authority established under the *Building and Construction Industry Training Levy Act 1999*, section 4.

*Cemeteries and Crematoria Authority* means the authority established under the *Cemeteries and Crematoria Act 2020*, section 113.

*Cultural Facilities Corporation* means the corporation established under the *Cultural Facilities Corporation Act 1997*, section 5.

*Long Service Leave Authority* means the authority established under the *Long Service Leave (Portable Schemes) Act 2009*, section 79A.

*Motor Accident Injuries Commission* means the commission established under the *Motor Accident Injuries Act 2019*, section 22.

*Office of the Auditor-General* means the office established under the *Auditor-General Act 1996*, division 2.4.

*Office of the Work Health and Safety Commissioner* means the office established under the *Work Health and Safety Act 2011*, schedule 2, section 2.18.

**3C      *Meaning of procurement contract—Act, s 9, def procurement contract, par (b)***

- (1) The following documents are prescribed:
  - (a) a labour relations, training and workplace equity plan;
  - (b) a plan—
    - (i) made in relation to local industry participation; and

- (ii) submitted by a tenderer in relation to an open tender procurement if the estimated total consideration of the procurement is \$5 million or more.

*Note* The Canberra Region Local Industry Participation Policy is accessible at [www.procurement.act.gov.au](http://www.procurement.act.gov.au).

## 77 Parts 2 and 3

*substitute*

## Part 2 Quotation and tender thresholds and exemptions

### Division 2.1 Preliminary

#### 4 Application—pt 2

- (1) This part does not apply to a procurement by a Territory entity if the procurement is—

- (a) under a standing-offer arrangement; or

*Note* Par (a) does not include a new standing-offer arrangement (see s (2)).

- (b) of a sublease or licence over land, or part of land, in which the Territory or the Territory entity is the sublessee or licensee; or

**Example**

the sublease of part of a building by the Territory for Territory use

- (c) of goods or services from the Commonwealth, a State or a local government, or an entity of the Commonwealth, a State or a local government; or

*Note* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

- (d) of research and development services, other than in relation to the planning of research and development services; or

**Examples—research and development services**

surveys, market research, product design, production of prototypes

**Example—planning of research and development services**

consulting as to what should be surveyed, researched, designed or produced

- (e) of Territory banking, borrowing or investment services; or

**Examples—borrowing services**

sale and distribution, settlement and clearing house, registry, issuing and paying agency and credit rating services

**Examples—investment services**

investment management, master custody and safekeeping, investment advisory, financial market data, indices, subscriptions and licensing and research services

- (f) for engaging a person in relation to any current or anticipated litigation or legal dispute; or

**Example**

engaging counsel, a barrister or an expert witness

- (g) for emergency works—

(i) to critical services that have been disrupted; or

(ii) to prevent an imminent danger to health and safety; or

- (h) of goods or services from outside of Australia, for use outside of Australia; or

- (i) a disposal.

(2) In this section:

***entity of the Commonwealth, a State or a local government*** means an entity of the Commonwealth, a State or a local government that exercises functions that correspond, or substantially correspond, to the functions of—

- (a) an entity mentioned in the [Act](#), section 6, definition of ***Territory entity***; or
- (b) a territory-owned corporation; or
- (c) a territory authority that is not a Territory entity; or
- (d) a territory instrumentality.

***standing-offer arrangement*** does not include a new standing-offer arrangement.

***sublease*** includes an underlease.

## 5 Delegation by responsible chief executive officer

The responsible chief executive officer for a Territory entity may delegate the officer's functions under this part to a public employee.

*Note* For laws about delegations, see the [Legislation Act](#), pt 19.4.

## Division 2.2 Quotation and tender thresholds

### 6 Low-value procurement

- (1) This section applies to a procurement by a Territory entity if the estimated total consideration of the procurement is less than \$25 000.
- (2) The Territory entity must seek at least 1 written quotation from an entity that can supply the goods or services (a ***supplier***) for the procurement.

## 7 Limited tender procurement

- (1) This section applies to a procurement by a Territory entity (a *limited tender procurement*) if the estimated total consideration of the procurement is—
  - (a) for goods or services that are not related to construction work—at least \$25 000 but less than \$500 000; and
  - (b) for goods or services related to construction work—at least \$25 000 but less than \$1 million.
- (2) The Territory entity must seek at least 3 written quotations from suppliers for the procurement.

## 8 Open tender procurement

- (1) This section applies to a procurement by a Territory entity (an *open tender procurement*) if the estimated total consideration of the procurement is—
  - (a) for goods or services that are not related to construction work—at least \$500 000; and
  - (b) for goods or services related to construction work—at least \$1 million.
- (2) The Territory entity must—
  - (a) invite tenders for the procurement; and
  - (b) advertise the invitation electronically for at least—
    - (i) 25 days; or
    - (ii) 10 days if—
      - (A) the Territory entity has published notice of the procurement electronically for at least 40 days, but not more than 12 months, before the first day the invitation is advertised; or

- (B) exceptional circumstances mean that an advertising period of 25 days is impracticable.
- (3) If there are 2 or more invitations for tenders for the procurement, each invitation must comply with the requirements mentioned in subsection (2) (b).

## Division 2.3 Exemptions

### 9 Exemption reasons—limited and open tender procurement

- (1) The responsible chief executive officer for a Territory entity may exempt the Territory entity under section 10 or section 10A for any of the following reasons (the *exemption reasons*):
- (a) for a procurement that includes 2 or more approaches to market—in response to the first approach to market, the Territory entity did not receive—
    - (i) any written quotations or tenders; or
    - (ii) any written quotations or tenders that would achieve value for money; or
    - (iii) any written quotations or tenders that met the minimum requirements for content and format; or
    - (iv) any written quotations or tenders that satisfy the conditions for participation;
  - (b) the goods or services to be procured are needed urgently as a result of an unforeseen event outside of the Territory's control;
  - (c) the need for a procurement has arisen unexpectedly and is not routine;

#### Examples

unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, receivership

- (d) only 1 supplier, or a limited number of suppliers, can supply a particular good or service because—
  - (i) the good or service to be procured is artwork; or
  - (ii) there is a need to protect patents, copyrights or other exclusive rights or proprietary information; or
  - (iii) a supplier with specialist knowledge or equipment is required;
- (e) the procurement is for another procurement from an existing supplier and a new supplier is not feasible—
  - (i) for technical reasons; or

**Examples**

  - 1 compatibility with existing equipment, software or services
  - 2 a condition under a warranty
  - (ii) because it would cause significant inconvenience or substantial duplication of costs for the Territory entity;
- (f) the good or service to be procured is a commodity;
- (g) the good or service to be procured is—
  - (i) a prototype; or
  - (ii) an original good or service intended for limited initial release; or
  - (iii) developed at the Territory entity's request for research or development purposes;
- (h) the procurement is from a winner of a design contest, if—
  - (i) the contest was held to award the winner with a design contract; and
  - (ii) the contest is conducted in a way that complies with the Act; and

- (iii) the contest judges are independent;
- (i) there is an existing procurement contract (the *initial procurement contract*) for goods or services related to construction work and the procurement is for additional goods or services that—
  - (i) were not included in the initial procurement contract but were within the objectives of the written quotation or tender process for the initial procurement contract; and
  - (ii) have become necessary, as a result of an unforeseen event, to complete the construction work under the initial procurement contract; and
  - (iii) the total value of any contract awarded for procurement of the additional goods or services will not exceed 50% of the value of the initial procurement contract.
- (2) In this section:

*approach to market*, in relation to a procurement, means to seek written quotations or invite tenders for the procurement.

*conditions for participation* means any conditions that a potential supplier must comply with in order for the supplier's written quotation or tender to be considered or to otherwise participate in the procurement process.

**Example—condition**

a requirement to undertake an accreditation or validation procedure

## 10 Exemptions—limited tender procurement

- (1) The responsible chief executive officer for a Territory entity may, in writing, exempt the Territory entity from the requirement under section 7 (2) to seek at least 3 written quotations from suppliers for a limited tender procurement.



- (2) However, the responsible chief executive officer may exempt the Territory entity only if satisfied on reasonable grounds that—
- (a) at least 1 of the exemption reasons applies in relation to the procurement; or
  - (b) the Territory entity intends to seek a written quotation from—
    - (i) a supplier that is a certified Aboriginal or Torres Strait Islander entity; or
    - (ii) both of the following:
      - (A) a supplier that is an entity based in the ACT or surrounding region;
      - (B) a supplier that is a small or medium business entity.

- (3) In this section:

***Aboriginal or Torres Strait Islander person***—see the *Aboriginal and Torres Strait Islander Children and Young People Commissioner Act 2022*, dictionary.

***certified Aboriginal or Torres Strait Islander entity*** means an entity that—

- (a) is at least 50% owned and operated by an Aboriginal or Torres Strait Islander person; and
- (b) has been certified by another entity to be owned and operated by an Aboriginal or Torres Strait Islander person.

**Examples—certifying entities**

- 1 Supply Nation
- 2 National Aboriginal Community Controlled Health Organisation (NACCHO)
- 3 Office of the Registrar of Indigenous Corporations

*entity based in the ACT or surrounding region* means an entity that is permanently and primarily located in the ACT or an area surrounding the ACT, including the following shires:

- (a) Bombala;
- (b) Boorowa;
- (c) Cooma-Monaro;
- (d) Eurobodalla;
- (e) Goulburn-Mulwaree;
- (f) Harden;
- (g) Palerang;
- (h) Queanbeyan;
- (i) Snowy River;
- (j) Upper Lachlan;
- (k) Yass Valley;
- (l) Young.

*small or medium business entity* means an entity that employs less than 200 people.

#### **10A Exemptions—open tender procurement**

- (1) The responsible chief executive officer for a Territory entity may, in writing, exempt the Territory entity from the requirements mentioned in section 8 (2) to invite tenders and advertise electronically for an open tender procurement.
- (2) However, the responsible chief executive officer may exempt the Territory entity only if satisfied on reasonable grounds that at least 1 of the exemption reasons applies in relation to the procurement.

**10B Exemptions—directions**

If the responsible chief executive officer for a Territory entity exempts the Territory entity under section 10 or section 10A for a procurement, the officer may, in writing, direct the Territory entity to do 1 or more of the following:

- (a) seek a stated kind or number of written quotations for the procurement;
- (b) seek a written quotation or invite a tender from a stated supplier for the procurement.

**Division 2.4 Open tender procurement****10C Notice of procurements for open tender procurements**

- (1) If a Territory entity proposes to undertake an open tender procurement, the Territory entity must, as soon as practicable, publish notice of the procurement electronically.

**Example—public notice electronically**

on the TendersACT website

- (2) A notice must include—
  - (a) the subject matter of the procurement; and
  - (b) the date the Territory entity intends to invite tenders for the procurement and advertise electronically.
- (3) If any of the details included in the notice change, the Territory entity must, as soon as practicable, update the notice.

**10D Late tenders**

- (1) This section applies if—
  - (a) a Territory entity invites tenders for an open tender procurement; and
  - (b) a supplier submits a tender in relation to the procurement; but

- (c) the tender was submitted after the last day of the period during which the Territory entity was accepting tenders.
- (2) The Territory entity must not accept the supplier's tender in relation to the procurement, unless the tender was submitted late due to an act or omission by the Territory entity.

## **Part 3    Notifiable contracts and notifiable invoices**

### **11                      Notifiable contract threshold—Act, s 12 (2) (b)**

The prescribed amount is \$25 000.

### **12                      Notifiable invoice threshold—Act, s 13 (a) (ii)**

The prescribed amount is \$25 000.

### **12A                    Contents of register—Act, s 15 (1)**

- (1) The following information is prescribed for each notifiable contract:
  - (a) the parties to the contract;
  - (b) the responsible Territory entity for the contract and any change in the responsible Territory entity for the contract;
  - (c) the title of the contract;
  - (d) a brief description of what the contract is for;
  - (e) the type of contract;
  - (f) a unique identifying number for the contract;
  - (g) the date the contract was made;
  - (h) the date the contract ends;

- (i) if the date the contract ends may be extended—the circumstances under, and the period for which, the date may be extended;
- (j) the value of the total consideration, or estimated total consideration, for the contract;
- (k) whether the responsible Territory entity was exempted from any requirement for the procurement to which the contract relates;

**Example**

a Territory entity was exempted from quotation and tender requirements for a procurement under pt 2

- (l) if the contract is amended—
  - (i) a brief description of the amendment; and
  - (iii) the date the amendment was made;
- (m) whether any part of the contract is confidential text;
- (n) if any part of the contract is confidential text—a brief indication of what the confidential text relates to;

*Note* **Contract** includes a contract as amended (see dict)

**Examples**

see examples for the [Act](#), s 18 (2) (b)

- (o) whether the secure local jobs code applies to the contract;
- (p) any other information about the contract required to be included in the register in any direction given by the Minister under the [Act](#), section 43 (Government procurement practices);
- (q) an electronic copy of the public text (if any) of the contract as made and of any amendment of the contract;
- (r) where anyone can obtain a printed copy of the public text (if any) of the contract as made and of any amendment of the contract.

- (2) The following information is prescribed for each notifiable invoice:
- (a) the name of the entity invoicing the responsible Territory entity;
  - (b) if the entity invoicing the responsible Territory entity has an ABN—the ABN;
  - (c) the name of the responsible Territory entity for the invoice;
  - (d) a brief description of what the invoice is for;
  - (e) if the invoice relates to a notifiable contract—the contract's unique identifying number;
  - (f) the date the invoice was received;
  - (g) the date the invoice was paid;
  - (h) the value of the good or service charged for under the invoice.
- (3) In this section:
- public text**, of a notifiable contract, means—
- (a) the text (if any) of the contract that is not confidential text; and
  - (b) any confidential text of the contract—
    - (i) that ceases to be confidential in accordance with the contract or by the agreement of the parties to the contract; or
    - (ii) the substance of which has become public knowledge.

## **12B Public access to information on register**

- (1) The director-general must ensure, as far as practicable, that a copy of the following information is accessible on a website approved by the director-general at all times and—
- (a) for information mentioned in section 12A (1) for a notifiable contract—for at least 2 years after the day the notifiable contract ends; and

(b) for information mentioned in section 12A (2) for a notifiable invoice—for at least 2 years.

(2) Access is to be provided without charge by the Territory.

### **12C Territory entities to enter information in register**

(1) The responsible Territory entity for a notifiable contract must, within 21 days after the day the contract is made, enter any information mentioned in section 12A (1) for the contract in the register.

(2) The responsible Territory entity for a notifiable invoice must, within 21 days after the end of the month in which the invoice was paid, enter any information mentioned in section 12A (2) for the invoice in the register.

(3) The Territory entity must also, within 21 days after the day a change in any information mentioned in section 12A happens, update the information in the register.

*Note* **Contract** includes a contract as amended (see dict).

## **78 Sections 12AA and 12AB headings**

*substitute*

**12AA Prescribed value of services—Act, s 22F (1) (a) (ii)**

**12AB Excluded services—Act, s 22F (3)**

**79 Labour relations, training and workplace equity plan—  
Act, s 22G (6) (b)  
Section 12AC (1) (g)**

*omit*

or works

**80 Section 12AC (1) (i)**

*omit*

the Territory or a territory entity

*substitute*

a Territory entity

**81 Parts 5 and 6**

*substitute*

**Part 5 Procurement board****Division 5.1 Board review of procurements****13 Application—div 5.1**

This division—

- (a) applies to a procurement by a Territory entity to enter into a standing-offer arrangement (a *new standing-offer arrangement*); but
- (b) does not apply to procurement by a Territory entity under—
  - (i) a standing-offer arrangement; or
  - (ii) a contract entered into under a standing-offer arrangement.

**14 Procurements to be reviewed by board—Act, s 29 (2) (a) (i)**

- (1) The following procurements by Territory entities must be reviewed by the board:
  - (a) a procurement, including an acquisition or a disposal, that is in the planning period and has an estimated total consideration of \$7 million or more;



(b) a procurement that is in the planning period and for which at least 1 of the following applies:

(i) there are significant concerns about probity;

**Example**

there is a high or extreme probity risk rating in relation to the procurement

(ii) the procurement relates to information and communications technology that includes an element of system development or redesign;

(iii) the procurement is a new a standing-offer arrangement;

(iv) the procurement proposes to substantially change the scope or nature of an existing procurement contract;

**Examples—substantially change**

- 1 extending the date an existing procurement contract ends, but this was not considered when undertaking the procurement and the contract does not provide for any extension
- 2 changing the nature or volume of goods or services provided
- 3 changing a delivery schedule or completion date
- 4 changing the total consideration of an existing procurement contract
- 5 multiple small changes that, taken together, represent a substantial change to an existing procurement contract

(c) a procurement—

(i) that has been undertaken but a procurement contract has not yet been entered into; and

(ii) for which there are significant concerns about probity;

**Example**

a Territory entity has not addressed a recommendation in relation to probity

- (d) a procurement that is referred to the board by any of the following entities:
  - (i) the Minister;
  - (ii) a responsible chief executive officer for a Territory entity;
  - (iii) the administrative unit responsible for administering the Act;
  - (iv) Major Projects Canberra;
  - (v) a person who has been engaged by a Territory entity to investigate whether the procurement was undertaken with probity;
- (e) a procurement, other than a procurement mentioned in paragraphs (a) to (d), that the board considers should be reviewed.

- (2) In this section:

*planning period*, in relation to a procurement, means the period before a Territory entity seeks quotations or invites tenders for the procurement.

## **Division 5.2                      Board members—conditions of appointment**

### **15                      Board members—term of appointment—Act, s 34 (a)**

- (1) A board member must be appointed for a term of not more than 3 years.
- (2) A person who has been a member for 2 consecutive terms is not eligible for reappointment.

**16 Board members—honesty, care and diligence—Act, s 34 (b)**

In exercising the functions of a board member, the 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.

**17 Board members—disclosure of interests—Act, s 34 (b)**

- (1) This section applies to a board 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.

**18 Board members—ending appointment—Act, s 36 (3) (c)**

Contravening either section 16 or section 17 without reasonable excuse is prescribed.

**Division 5.3 Board proceedings and reporting****19 Annual board meeting**

The board must meet at least once each financial year to discuss how the board proposes to improve the processes and management of procurements undertaken by Territory entities under the Act.

**20 Board annual report**

- (1) The board must, within 30 days of the start of each financial year, give a report to the Minister (an *annual report*).
- (2) An annual report for a financial year must include the following in relation to the previous financial year:
  - (a) the board's performance during the year in relation to providing strategic direction in relation to procurement for the Territory;
  - (b) whether, during the year, any member disclosed an interest under section 17, and if so, how the disclosure was dealt with;
  - (c) details about each procurement reviewed by the board during the year, including—
    - (i) the reason for review under section 14; and
    - (ii) whether the board made any recommendations; and
    - (iii) if the board did make a recommendation—whether the board dealt with the matter in accordance with any government procurement rules, and if so, how the matter was dealt with;

- (d) details about—
- (i) any procurement practices reviewed and endorsed by the board during the year; and
  - (ii) any recommendations made by the board during the year in relation to any anticipated government procurement practices;
- (e) details about any advice the board provided during the year about any practices, policies or procedures used by Territory entities in relation to undertaking procurements;
- (f) any other matter that the Minister reasonably requires.

## 82 New dictionary

*insert*

## Dictionary

(see s 2)

*Note 1* The [Legislation Act](#) contains definitions relevant to this Act. For example:

- Canberra Institute of Technology
- city renewal authority
- electoral commission
- entity
- function
- gambling and racing commission
- independent competition and regulatory commission
- integrity commission
- legal aid commission
- public employee
- public trustee and guardian
- suburban land agency
- work health and safety commissioner.

*Note 2* Terms used in this regulation have the same meaning that they have in the *Government Procurement Act 2001*. For example, the following terms are defined in the *Act*, dict:

- approved auditor
- board
- code
- construction work
- government procurement practices (see s 43 (1))
- notifiable contract
- notifiable invoice
- probity (see s 7)
- procurement (see s 5)
- responsible chief executive officer
- secure local jobs code
- secure local jobs code certificate
- secure local jobs code register
- tenderer
- Territory entity (see s 6)
- territory-funded work
- value for money (see s 8 (1)).

***exemption reasons***—see section 9 (1).

***limited tender procurement***—see section 7 (1).

***new standing-offer arrangement***—see section 13 (a).

***open tender procurement***—see section 8 (1).

***supplier***—see section 6 (2).

## Schedule 1 Health Infrastructure Enabling Act 2023—Consequential amendments

(see s 3)

### [1.1] Section 6 (5) (a) (i)

*substitute*

- (i) section 8 (3) to (5) (Value for money); and

### [1.2] Section 6 (5) (b) (i) and (ii)

- (i) part 2 (Quotation and tender thresholds and exemptions); and
- (ii) division 5.1 (Board review of procurements); and

### [1.3] Section 6 (6), definition of *territory entity*

*substitute*

***Territory entity***—see the [Government Procurement Act 2001](#), section 6.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2 November 2023.

**2 Notification**

Notified under the [Legislation Act](#) on 19 February 2024.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Government Procurement Amendment Bill 2024, which originated in the Legislative Assembly as the Government Procurement Amendment Bill 2023 and was passed by the Assembly on 7 February 2024.

Clerk of the Legislative Assembly

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