

2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Special Minister of State)

Government Procurement Amendment Bill 2023

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2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Special Minister of State)

Government Procurement Amendment Bill 2023

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Government Procurement Amendment Act 2023*.

4 **2 Commencement**

5 This Act commences on 1 July 2024.

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

8 **3 Legislation amended**

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

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

13 **4 Legislation repealed**

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15 *Nomination 2012* (NI2012-602) is repealed.

1 **Part 2** **Government Procurement**
2 **Act 2001**

3 **5 Long title**

4 *substitute*

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

7 **6 Section 2, note 1**

8 *omit*

9 see section 3

10 *substitute*

11 see section 6

12 **7 Sections 2A to 3B**

13 *omit*

14 **8 Sections 4 and 4A**

15 *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

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

13 **Examples—par (d)**

- 14 1 the grant of a lease or licence of land under the *Planning Act 2023*
- 15 2 the purchase of land by the Territory or a Territory entity
- 16 3 the grant of a sublease or licence by the Territory or a Territory entity
- 17 as sublessor or licensor

18 (4) A regulation may prescribe that something is, or is not, procurement

19 for this Act.

20 (5) In this section:

21 *sublease* includes an underlease.

22 **6 Meaning of *Territory entity***

23 (1) In this Act:

24 *Territory entity* means—

- 25 (a) a directorate; or
- 26 (b) the Office of the Legislative Assembly; or
- 27 (c) an officer of the Assembly; or

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

4 **7 Probity**

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

13 **8 Value for money**

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

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

10 **Example—par (d)**

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

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

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

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

1 **9** **Meaning of *procurement contract***

2 In this Act:

3 ***procurement contract***—

4 (a) means a contract entered into by a Territory entity and another
5 entity for procurement under this Act; and

6 (b) includes a document prescribed by regulation.

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

8 **10** **Form of procurement contracts and amendments**

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

11 **10** **Parts 2 and 2A**

12 *substitute*

13 **Part 2** **Notifiable contracts and**
14 **notifiable invoices**

15 **Division 2.1** **Preliminary**

16 **11** **Application—pt 2**

17 (1) To remove any doubt, this part applies in relation to a procurement
18 contract entered into by—

19 (a) a Territory entity with an excluded body; or

20 (b) an excluded body acting on behalf of a Territory entity with
21 another excluded body.

22 **Example**

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

1 (2) In this section:

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

3 **12 Meaning of *notifiable contract*—pt 2**

4 (1) In this part:

5 *notifiable contract*—

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

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

10 (b) includes—

11 (i) a standing-offer arrangement; and

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

14 **Examples—subpar (ii)**

15 an order or a work order

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

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

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

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

1 **13 Meaning of *notifiable invoice*—pt 2**

2 In this part:

3 ***notifiable invoice***—

4 (a) means an invoice for—

5 (i) goods or services procured by, or provided to, a Territory
6 entity under a procurement contract payable by a
7 responsible Territory entity; and

8 (ii) the amount prescribed by regulation or more; and

9 (b) includes an invoice for reimbursement of costs payable by a
10 responsible Territory entity for the goods or services provided
11 by a contractor in the course of carrying out the contractor’s
12 work for a Territory entity; but

13 **Example**

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

16 (c) does not include an invoice—

17 (i) for goods or services provided by a Territory entity; or

18 (ii) prescribed by regulation.

19 **Division 2.2 Register**

20 **14 Keeping of register**

21 (1) The director-general must keep a register of notifiable contracts and
22 notifiable invoices (the *register*).

23 (2) The register must be kept electronically.

24 **Example—how register may be kept**

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

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

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

7 **15 Contents of register**

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

12 **Example**

13 information about and links to contracts that are not notifiable contracts

- 14 (3) If any part of a notifiable contract to which a notifiable invoice relates
15 is confidential text, any entry in the register for the invoice must not
16 contain any information that would disclose the confidential text,
17 other than as provided in the confidentiality clause included in the
18 contract.

- 19 (4) A regulation may prescribe the way in which documents are to be
20 entered in the register.

21 **Example—s (4)**

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

1 **Division 2.3** **Confidential text in notifiable**
2 **contracts**

3 **16** **Meaning of *confidential text*—pt 2**

4 (1) In this part:

5 *confidential text*, of a notifiable contract—

6 (a) means that part of the notifiable contract that a party to the
7 contract (including the Territory entity) is required to keep
8 confidential under—

9 (i) a provision of any contract that requires a party to the
10 notifiable contract to keep any part of the notifiable
11 contract confidential; or

12 (ii) any other requirement imposed by law that has the effect
13 of requiring a party to the notifiable contract to keep any
14 part of the notifiable contract confidential; and

15 (b) includes any personal information about a person.

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

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

20 (a) a notifiable contract that relates to the provision of legal
21 services;

22 (b) a notifiable contract for the employment of an individual.

23 (3) In this section:

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

- 1 **17 Notice of effect of div 2.3 to contracting parties**
- 2 (1) This section applies in relation to a proposed notifiable contract if—
- 3 (a) a party to the contract (including the Territory entity), proposes
- 4 that any part of the contract be confidential text; or
- 5 (b) any part of the contract will be confidential text because of a
- 6 requirement imposed by law that requires a party to the contract
- 7 to keep the part confidential.
- 8 (2) The responsible Territory entity for the notifiable contract must
- 9 ensure that this division is drawn to the attention of all the proposed
- 10 parties to the contract (other than a Territory entity).
- 11 **18 Grounds for confidentiality of information**
- 12 (1) Any part of the text of a notifiable contract will be confidential text if
- 13 a requirement imposed by law requires a party to the contract to keep
- 14 the text confidential.
- 15 **Example**
- 16 a failure to comply with the requirement would create an action for breach of
- 17 confidence
- 18 (2) The responsible Territory entity for a notifiable contract to which
- 19 section 17 applies must not—
- 20 (a) propose that any part of the text of the contract be confidential
- 21 text unless reasonably satisfied that any disclosure of the text—
- 22 (i) would cause unreasonable detriment to the Territory or
- 23 another party to the contract; or
- 24 (ii) may put personal or public safety, or the security of the
- 25 Territory, at risk; or
- 26 **Examples**
- 27 1 construction plans for a correctional facility or law enforcement
- 28 facility
- 29 2 information about design, construction or operation of major
- 30 infrastructure or public works

- 1 (iii) would have a significant adverse effect on the financial,
2 legal or property interests of the Territory or a Territory
3 entity; or
- 4 (iv) would unreasonably constrain the development or
5 consideration of policy alternatives by the Territory; or
- 6 (v) would disclose information prescribed by regulation for
7 this section; or
- 8 (b) agree to any part of the text of the contract being confidential
9 text unless reasonably satisfied that any disclosure of the text
10 would—
- 11 (i) disclose a trade secret; or
- 12 **Example**
13 intellectual property, including software source codes
- 14 (ii) disclose an artistic, literary or cultural secret; or
- 15 **Examples**
16 1 details about a photographic shoot
17 2 text of an historic manuscript
18 3 a secret indigenous cultural practice
- 19 (iii) disclose information (other than a trade, artistic, literary or
20 cultural secret) having a commercial value that would be,
21 or could reasonably be expected to be, destroyed or
22 diminished if the information were disclosed; or
- 23 **Example**
24 information on the design and operation of goods
- 25 (iv) be an unreasonable disclosure of information about
26 internal costings or profit margins; or
- 27 **Examples**
28 1 hourly rates, on-costs and management fees
29 2 individual components of the contract's total consideration

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

24 **19 Model confidentiality clause required for confidential text**

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

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

4 (2) In this section:

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

7 **20 Invalidity of non-complying confidentiality clauses**

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

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

12 **21 Auditor-general's requests for contracts and information, 13 reporting obligations etc**

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

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

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

24 (3) In this section:

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

1 **Division 2.4** **Other matters**

2 **22** **Effect of disclosure of confidential text**

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

6 **22A** **Notice of effect of pt 2 to parties issuing invoices**

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

11 **22B** **Effect of other disclosure laws etc**

12 This part does not—

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

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

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

1 **22C** **No liability for complying with pt 2**

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

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

7 **11** **Section 22D**

8 *substitute*

9 **22D** **Application—div 2B.2**

10 (1) This section applies to a procurement by a Territory entity if the
11 Territory entity receives a quote, tender or other response in relation
12 to the procurement from any of the following (a *tenderer*):

- 13 (a) the Commonwealth or a State;
14 (b) an entity of the Commonwealth or a State;
15 (c) a territory-owned corporation;
16 (d) a territory authority that is not a Territory entity;
17 (e) a territory instrumentality.

18 **Example**

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

21 (2) The requirements for a procurement under division 2B.2 do not apply
22 to the following in relation to the procurement:

- 23 (a) the Territory entity;
24 (b) the tenderer.

- 1 (3) In this section:
- 2 *entity of the Commonwealth or a State* means an entity of the
- 3 Commonwealth or a State that exercises functions that correspond, or
- 4 substantially correspond, to the functions of—
- 5 (a) an entity mentioned in section 6 (1), definition of *Territory*
- 6 *entity*; or
- 7 (b) a territory-owned corporation; or
- 8 (c) a territory authority that is not a Territory entity; or
- 9 (d) a territory instrumentality.
- 10 *Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

11 **12 Definitions—pt 2B**

12 **Section 22E, definition of *tenderer***

13 *omit*

14 **13 Meaning of *territory-funded work*—pt 2B**

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

16 *omit*

17 services or works that are for a territory entity

18 *substitute*

19 services that are for a Territory entity

20 **14 Section 22F (1), definition of *territory-funded work*,**

21 **paragraph (a)**

22 *omit*

23 services or works

24 *substitute*

25 services

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

3 *substitute*

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

6 **16 Section 22F (1), definition of *territory-funded work*,**
7 **paragraph (c)**

8 *omit*

9 services or works

10 *substitute*

11 services

12 **17 Section 22F (3), definition of *excluded services or works***

13 *substitute*

14 *excluded services* means services prescribed by regulation.

15 **18 Division 2B.2 heading**

16 *substitute*

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

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

4 *omit*
5 territory entity
6 *substitute*
7 Territory entity

8 **20 Section 22G (4)**

9 *omit*
10 A territory entity must not enter into a contract for procurement
11 *substitute*
12 A Territory entity must not enter into a procurement contract

13 **21 Section 22G (5)**

14 *omit*
15 contracts
16 *substitute*
17 procurement contracts

18 **22 Exemption from requirements—secure local jobs code**
19 **certificates etc**
20 **Section 22H (1) and (3)**

21 *omit*
22 territory entity
23 *substitute*
24 Territory entity

1 **23 Surrender of secure local jobs code certificate**
2 **Section 22L (2)**

3 *omit*

4 contract with a territory entity

5 *substitute*

6 procurement contract with a Territory entity

7 **24 Section 22L (3)**

8 *substitute*

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

13 **25 Section 22L (4)**

14 *omit*

15 territory entity

16 *substitute*

17 Territory entity

18 **26 Secure local jobs code**
19 **Section 22M (2) (a)**

20 *omit*

21 territory entity

22 *substitute*

23 Territory entity

1	27	Functions of council
2		Section 22ZA (a) (ii)
3		<i>omit</i>
4		territory entities
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7	28	Parts 3 and 3A
8		<i>omit</i>
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10		<i>renumber as part 3</i>
11	30	Section 43 heading
12		<i>substitute</i>
13	43	Application—pt 3
14	31	Section 43
15		<i>omit</i>
16		contract entered into by the Territory or a territory entity for
17		procurement
18		<i>substitute</i>
19		procurement contract
20	32	Section 43
21		<i>renumber as section 23</i>

1 **33 Section 44 heading**

2 *substitute*

3 **44 Definitions—pt 3**

4 **34 Section 44, definition of *commercial account*, except**
5 **example**

6 *substitute*

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

9 **35 Section 44, definition of *payment date*, paragraph (b)**

10 *omit*

11 the Territory or

12 **36 Section 44**

13 *renumber as section 24*

14 **37 Interest on unpaid accounts**
15 **Section 45 (1) and (2)**

16 *substitute*

17 (1) This section applies if—

18 (a) a Territory entity does not pay a commercial account in full by
19 the relevant date for the account; and

20 (b) the person to whom the account is payable requests, in writing,
21 that the Territory entity pay interest on the amount of the account
22 that remains unpaid from time to time after the payment date.

23 (2) The Territory entity is liable to pay the creditor a further amount by
24 way of interest on the amount of the account that remains unpaid from
25 time to time.

1	38	Section 45
2		<i>renumber as section 25</i>
3	39	Exclusion of inconsistent contractual terms
4		Section 46
5		<i>omit</i>
6		in a contract
7		<i>substitute</i>
8		in a procurement contract
9	40	Section 46 (a)
10		<i>omit</i>
11		section 43
12		<i>substitute</i>
13		section 23
14	41	Section 46
15		<i>renumber as section 26</i>
16	42	Section 47
17		<i>renumber as section 27</i>

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

1 (e) to provide advice to the Minister on any issue relevant to
2 procurements by Territory entities or the operation of this Act;
3 and

4 (f) to exercise any other function given to the board under this Act
5 or any other territory law.

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

9 **30 Recommendations of board**

10 (1) If the board makes a recommendation under section 29 (2) (b) to a
11 Territory entity in relation to a procurement, the Territory entity must
12 explain to the board, in writing, how the Territory entity has, or
13 intends to, address the board's recommendation.

14 (2) If the board considers that the Territory entity has not addressed, or
15 not adequately addressed, the board's recommendation, the board
16 must make a further recommendation in relation to the matter to the
17 responsible chief executive officer for the Territory entity.

18 (3) If the board makes a further recommendation to the responsible chief
19 executive officer for the Territory entity under subsection (2), the
20 officer must explain to the board, in writing, how the board's further
21 recommendation has been, or will be, addressed before the
22 procurement is undertaken or, if the procurement has commenced,
23 continues to be undertaken.

24 (4) If the procurement is in the planning period and the board considers
25 that its further recommendation has not been addressed, or not been
26 adequately addressed, the board must refer the matter to the
27 responsible Minister for the Territory entity.

28 (5) In this section:

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

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

7 **31 Ministerial directions to board**

- 8 (1) The Minister may give written directions to the board about the
9 exercise of its functions.
- 10 (2) However, the Minister must not give written directions to the board
11 about the exercise of its functions in relation to the following
12 Territory entities:
- 13 (a) the Office of the Legislative Assembly;
- 14 (b) an officer of the Assembly.
- 15 (3) Before giving a direction, the Minister must—
- 16 (a) tell the board of the intent of the proposed direction; and
- 17 (b) give the board a reasonable opportunity to comment on the
18 proposed direction; and
- 19 (c) consider any comments made by the board.
- 20 (4) The Minister must present a copy of a direction given under this
21 section to the Legislative Assembly within 6 sitting days after it is
22 given.
- 23 (5) The board must comply with a direction given to it under this section.
- 24 (6) For the *Competition and Consumer Act 2010* (Cwlth), this Act
25 authorises—
- 26 (a) the giving of a direction under this section; and

- 1 (b) the doing of, or the failure to do, anything by the board to
2 comply with a direction under this section.

3 **32 Constitution of board**

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

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

9 **33 Board members—appointment**

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

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

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

20 **34 Board members—conditions of appointment**

21 A regulation may prescribe—

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

1 **35 Board members—abuse of position**

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

7 Maximum penalty: imprisonment for 5 years.

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

14 Maximum penalty: imprisonment for 5 years.

- 15 (3) In this section:
- 16 *dishonestly*—a person acts dishonestly if—
- 17 (a) the person’s conduct is dishonest according to the standards of
- 18 ordinary people; and
- 19 (b) the person knows that the conduct is dishonest according to
- 20 those standards.

21 **36 Board members—ending appointment**

- 22 (1) The Minister must end the appointment of the chairperson or a non-
- 23 public employee member if the member becomes a public employee.
- 24 (2) The Minister must end the appointment of the deputy chairperson or
- 25 a public employee member if the person stops being a public
- 26 employee.

- 1 (3) The Minister may end the appointment of any member—
2 (a) for misbehaviour or physical or mental incapacity; or
3 (b) if the member—
4 (i) becomes bankrupt or personally insolvent; or
5 (ii) is absent, other than on leave approved by the Minister,
6 from 3 consecutive meetings of the board; or
7 (iii) commits an offence against section 35 (Board members—
8 abuse of position) or an indictable offence; or
9 (c) for a reason prescribed by regulation.

10 **44 Part 4A**

11 *renumber as part 5*

12 **45 Section 48 heading**

13 *substitute*

14 **48 Meaning of *reviewable decision*—pt 5**

15 **46 Sections 48, 49, 50 and 50A**

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

17 **47 Part 5**

18 *renumber as part 7*

48 Sections 51 and 52

2 *substitute*

41 Amounts inclusive of GST

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

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

42 Government procurement rules

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

Example

13 rules to ensure a procurement is undertaken with probity

14 (2) A Territory entity must comply with any government procurement
15 rules when exercising a function in relation to procurement.

16 (3) The government procurement rules are a disallowable instrument.

17 (4) In this section:

18 *Territory entity* does not include—

19 (a) the Office of the Legislative Assembly; and

20 (b) an officer of the Assembly.

43 Government procurement practices

22 (1) The Minister may give directions about practices, policies or
23 procedures to be used by Territory entities for undertaking
24 procurements (*government procurement practices*).

25 (2) A Territory entity must comply with any direction when exercising a
26 function in relation to procurement.

1 (3) A direction is a notifiable instrument.

2 (4) In this section:

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

4 **44 Compliance with Act—annual reporting**

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

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

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

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

15 (3) The Territory entity must—

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

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

21 **Example—publicly available**

22 published on the entity’s website

23 (4) In this section:

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

- 1 (b) continues in force after the commencement day as if it were an
2 appointment made under section 33 until the end of the term of
3 the appointment, unless ended earlier.
- 4 (2) A delegation under the pre-amendment Act, section 35 (Grounds for
5 confidentiality of information), that is in force immediately before the
6 commencement day, is taken to be a delegation under this Act,
7 section 18.
- 8 (3) A direction made under the pre-amendment regulation, section 13
9 (Procurement procedure), that is in force immediately before the
10 commencement day, is taken to be a direction under this Act,
11 section 43.
- 12 (4) In this section:
- 13 *commencement day* means the day the *Government Procurement*
14 *Amendment Act 2023*, section 3 commences.
- 15 *pre-amendment Act* means this Act as in force immediately before
16 the commencement day.
- 17 *pre-amendment regulation* means the regulation for this Act as in
18 force immediately before the commencement day.

19 **106 Transitional regulations**

20 A regulation may prescribe transitional matters necessary or
21 convenient to be prescribed because of the enactment of the
22 *Government Procurement Amendment Act 2023*.

23 **107 Expiry—pt 12**

24 This part expires 2 years after the day it commences.

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

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

3 *omit*

4 (see s 36)

5 *substitute*

6 (see s 19)

7 **51 Schedule 1, section M (4)**

8 *omit*

9 part 3 (Notifiable contracts)

10 *substitute*

11 part 2 (Notifiable contracts and notifiable invoices)

12 **52 Schedule 1, section M (5)**

13 *omit*

14 section 35 (1)

15 *substitute*

16 section 18 (1) and (2)

17 **53 Dictionary, note 2**

18 *insert*

- 19 • GST
20 • territory instrumentality

1 **54 Dictionary, definition of *board***

2 *omit*

3 section 5

4 *substitute*

5 section 28

6 **55 Dictionary, definitions of *commercial account* and**
7 ***confidential text***

8 *substitute*

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

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

13 **56 Dictionary, new definition of *construction work***

14 *insert*

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

17 **57 Dictionary, definition of *contract***

18 *substitute*

19 *contract* includes a contract as amended.

20 **58 Dictionary, new definitions**

21 *insert*

22 *goods* includes intellectual property.

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

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

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

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

7 **59 Dictionary, definition of *notifiable amendment***

8 *omit*

9 **60 Dictionary, definition of *notifiable contract***

10 *substitute*

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

13 **61 Dictionary, definition of *notifiable contracts register***

14 *omit*

15 **62 Dictionary, definition of *notifiable invoice***

16 *substitute*

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

19 **63 Dictionary, definition of *notifiable invoices register***

20 *omit*

21 **64 Dictionary, definition of *payment date***

22 *substitute*

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

- 1 **65 Dictionary, new definition of *probity***
- 2 *insert*
- 3 *probity*—see section 7.
- 4 **66 Dictionary, definition of *procurement***
- 5 *substitute*
- 6 *procurement*—see section 5.
- 7 **67 Dictionary, new definition of *procurement contract***
- 8 *insert*
- 9 *procurement contract*—see section 9.
- 10 **68 Dictionary, definition of *public text***
- 11 *omit*
- 12 **69 Dictionary, new definition of *register***
- 13 *insert*
- 14 *register*—see section 14 (1).
- 15 **70 Dictionary, definition of *relevant date***
- 16 *substitute*
- 17 *relevant date*, for the payment of a commercial account, for part 3
- 18 (Interest on commercial accounts)—see section 24.

1 **71 Dictionary, definitions of *responsible chief executive***
2 ***officer, responsible Territory entity and reviewable***
3 ***decision***

4 *substitute*

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

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

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

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

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

1 **72 Dictionary, new definition of *standing-offer arrangement***

2 *insert*

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

7 **Examples**

8 common use arrangement, deed of standing offer, head agreement

9 **73 Dictionary, definitions of *tenderer* and *Territory entity***

10 *substitute*

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

13 *Territory entity*—see section 6.

14 **74 Dictionary, new definition of *value for money***

15 *insert*

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

1 **Part 3** **Government Procurement**
2 **Regulation 2007**

3 **75** **New section 2**

4 *insert*

5 **2** **Dictionary**

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

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

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

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

16 **76** **New part 1A**

17 *insert*

18 **Part 1A** **Important concepts**

19 **3A** **Meaning of *procurement*—Act, s 5 (4)**

20 (1) The following are not *procurement*:

21 (a) a grant;

22 (b) an investment or borrowing under the *Financial Management*
23 *Act 1996*;

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

2 **Example**

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

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

7 **Example**

8 an acquisition under the *Lands Acquisition Act 1994*

9 (2) In this section:

10 ***grant***—

11 (a) means a payment of public money to a person by the Territory,
12 or on behalf of the Territory, to—

13 (i) achieve a stated government policy outcome; and

14 (ii) assist the person achieve a stated objective; and

15 (b) includes a payment—

16 (i) made as a result of a selection process; or

17 (ii) made because stated criteria are satisfied; or

18 (iii) that is a one-off or ad hoc payment.

19 **Examples—grants**

20 1 a research grant

21 2 a community support grant

22 3 a grant for arts activities

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

- 1 **3B Prescribed territory authorities—Act, s 6 (1), def *Territory***
2 ***entity*, par (d)**
- 3 (1) The following territory authorities are prescribed:
- 4 (a) the ACT Teacher Quality Institute;
- 5 (b) the Australian Capital Territory Insurance Authority;
- 6 (c) the Building and Construction Industry Training Fund
7 Authority;
- 8 (d) the Cemeteries and Crematoria Authority;
- 9 (e) the Canberra Institute of Technology;
- 10 (f) the city renewal authority;
- 11 (g) the Cultural Facilities Corporation;
- 12 (h) the electoral commission;
- 13 (i) the gambling and racing commission;
- 14 (j) the independent competition and regulatory commission;
- 15 (k) the integrity commission;
- 16 (l) the legal aid commission;
- 17 (m) the Long Service Leave Authority;
- 18 (n) the Motor Accident Injuries Commission;
- 19 (o) the Office of the Auditor-General;
- 20 (p) the Office of the Work Health and Safety Commissioner;
- 21 (q) the public trustee and guardian;
- 22 (r) the suburban land agency.
- 23 (2) In this section:
- 24 *ACT Teacher Quality Institute* means the institute established under
25 the *ACT Teacher Quality Institute Act 2010*, section 10.

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

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

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

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

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

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

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

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

21 **3C Meaning of *procurement contract*—Act, s 9,**
22 **def *procurement contract*, par (b)**

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

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

4 *Note* The Canberra Region Local Industry Participation Policy is
5 accessible at www.procurement.act.gov.au.

6 **77 Parts 2 and 3**

7 *substitute*

8 **Part 2 Quotation and tender thresholds** 9 **and exemptions**

10 **Division 2.1 Preliminary**

11 **4 Application—pt 2**

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

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

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

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

19 **Example**

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

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

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

- 1 (d) of research and development services, other than in relation to
2 the planning of research and development services; or
3 **Examples—research and development services**
4 surveys, market research, product design, production of prototypes
5 **Example—planning of research and development services**
6 consulting as to what should be surveyed, researched, designed or produced
7 (e) of Territory banking, borrowing or investment services; or
8 **Examples—borrowing services**
9 sale and distribution, settlement and clearing house, registry, issuing and
10 paying agency and credit rating services
11 **Examples—investment services**
12 investment management, master custody and safekeeping, investment
13 advisory, financial market data, indices, subscriptions and licensing and
14 research services
15 (f) for engaging a person in relation to any current or anticipated
16 litigation or legal dispute; or
17 **Example**
18 engaging counsel, a barrister or an expert witness
19 (g) for emergency works—
20 (i) to critical services that have been disrupted; or
21 (ii) to prevent an imminent danger to health and safety; or
22 (h) of goods or services from outside of Australia, for use outside of
23 Australia; or
24 (i) a disposal.

- 1 (2) In this section:
- 2 *entity of the Commonwealth, a State or a local government* means
- 3 an entity of the Commonwealth, a State or a local government that
- 4 exercises functions that correspond, or substantially correspond, to
- 5 the functions of—
- 6 (a) an entity mentioned in the [Act](#), section 6, definition of *Territory*
- 7 *entity*; or
- 8 (b) a territory-owned corporation; or
- 9 (c) a territory authority that is not a Territory entity; or
- 10 (d) a territory instrumentality.
- 11 *standing-offer arrangement* does not include a new standing-offer
- 12 arrangement.
- 13 *sublease* includes an underlease.
- 14 **5 Delegation by responsible chief executive officer**
- 15 The responsible chief executive officer for a Territory entity may
- 16 delegate the officer’s functions under this part to a public employee.
- 17 *Note* For laws about delegations, see the [Legislation Act](#), pt 19.4.

18 **Division 2.2 Quotation and tender thresholds**

19 **6 Low-value procurement**

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

1 **7 Limited tender procurement**

- 2 (1) This section applies to a procurement by a Territory entity (a *limited*
3 *tender procurement*) if the estimated total consideration of the
4 procurement is—
5 (a) for goods or services that are not related to construction work—
6 at least \$25 000 but less than \$500 000; and
7 (b) for goods or services related to construction work—at least
8 \$25 000 but less than \$1 million.
9 (2) The Territory entity must seek at least 3 written quotations from
10 suppliers for the procurement.

11 **8 Open tender procurement**

- 12 (1) This section applies to a procurement by a Territory entity (an *open*
13 *tender procurement*) if the estimated total consideration of the
14 procurement is—
15 (a) for goods or services that are not related to construction work—
16 at least \$500 000; and
17 (b) for goods or services related to construction work—at least
18 \$1 million.
19 (2) The Territory entity must—
20 (a) invite tenders for the procurement; and
21 (b) advertise the invitation electronically for at least—
22 (i) 25 days; or
23 (ii) 10 days if—
24 (A) the Territory entity has published notice of the
25 procurement electronically for at least 40 days, but
26 not more than 12 months, before the first day the
27 invitation is advertised; or

1 (B) exceptional circumstances mean that an advertising
2 period of 25 days is impracticable.

3 (3) If there are 2 or more invitations for tenders for the procurement, each
4 invitation must comply with the requirements mentioned in
5 subsection (2) (b).

6 **Division 2.3 Exemptions**

7 **9 Exemption reasons—limited and open tender** 8 **procurement**

9 (1) The responsible chief executive officer for a Territory entity may
10 exempt the Territory entity under section 10 or section 10A for any
11 of the following reasons (the *exemption reasons*):

12 (a) for a procurement that includes 2 or more approaches to
13 market—in response to the first approach to market, the
14 Territory entity did not receive—

15 (i) any written quotations or tenders; or

16 (ii) any written quotations or tenders that would achieve value
17 for money; or

18 (iii) any written quotations or tenders that met the minimum
19 requirements for content and format; or

20 (iv) any written quotations or tenders that satisfy the conditions
21 for participation;

22 (b) the goods or services to be procured are needed urgently as a
23 result of an unforeseen event outside of the Territory's control;

24 (c) the need for a procurement has arisen unexpectedly and is not
25 routine;

26 **Examples**

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

- 1 (d) only 1 supplier, or a limited number of suppliers, can supply a
2 particular good or service because—
- 3 (i) the good or service to be procured is artwork; or
- 4 (ii) there is a need to protect patents, copyrights or other
5 exclusive rights or proprietary information; or
- 6 (iii) a supplier with specialist knowledge or equipment is
7 required;
- 8 (e) the procurement is for another procurement from an existing
9 supplier and a new supplier is not feasible—
- 10 (i) for technical reasons; or
- 11 **Examples**
- 12 1 compatibility with existing equipment, software or services
- 13 2 a condition under a warranty
- 14 (ii) because it would cause significant inconvenience or
15 substantial duplication of costs for the Territory entity;
- 16 (f) the good or service to be procured is a commodity;
- 17 (g) the good or service to be procured is—
- 18 (i) a prototype; or
- 19 (ii) an original good or service intended for limited initial
20 release; or
- 21 (iii) developed at the Territory entity's request for research or
22 development purposes;
- 23 (h) the procurement is from a winner of a design contest, if—
- 24 (i) the contest was held to award the winner with a design
25 contract; and
- 26 (ii) the contest is conducted in a way that complies with the
27 Act; and

- 1 (iii) the contest judges are independent;
- 2 (i) there is an existing procurement contract (the *initial*
3 *procurement contract*) for goods or services related to
4 construction work and the procurement is for additional goods
5 or services that—
- 6 (i) were not included in the initial procurement contract but
7 were within the objectives of the written quotation or
8 tender process for the initial procurement contract; and
- 9 (ii) have become necessary, as a result of an unforeseen event,
10 to complete the construction work under the initial
11 procurement contract; and
- 12 (iii) the total value of any contract awarded for procurement of
13 the additional goods or services will not exceed 50% of the
14 value of the initial procurement contract.

15 (2) In this section:

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

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

22 **Example—condition**

23 a requirement to undertake an accreditation or validation procedure

24 **10 Exemptions—limited tender procurement**

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

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

- 12 (3) In this section:

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

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

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

22 **Examples—certifying entities**

- 23 1 Supply Nation
- 24 2 National Aboriginal Community Controlled Health Organisation (NACCHO)
- 25 3 Office of the Registrar of Indigenous Corporations

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

- 4 (a) Bombala;
5 (b) Boorowa;
6 (c) Cooma-Monaro;
7 (d) Eurobodalla;
8 (e) Goulburn-Mulwaree;
9 (f) Harden;
10 (g) Palerang;
11 (h) Queanbeyan;
12 (i) Snowy River;
13 (j) Upper Lachlan;
14 (k) Yass Valley;
15 (l) Young.

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

18 **10A Exemptions—open tender procurement**

- 19 (1) The responsible chief executive officer for a Territory entity may, in
20 writing, exempt the Territory entity from the requirements mentioned
21 in section 8 (2) to invite tenders and advertise electronically for an
22 open tender procurement.
- 23 (2) However, the responsible chief executive officer may exempt the
24 Territory entity only if satisfied on reasonable grounds that at least
25 1 of the exemption reasons applies in relation to the procurement.

1 **10B Exemptions—directions**

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

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

10 **Division 2.4 Open tender procurement**

11 **10C Notice of procurements for open tender procurements**

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

15 **Example—public notice electronically**
16 on the TendersACT website

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

23 **10D Late tenders**

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

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

6 **Part 3** **Notifiable contracts and**
7 **notifiable invoices**

8 **11 Notifiable contract threshold—Act, s 12 (2) (b)**

9 The prescribed amount is \$25 000.

10 **12 Notifiable invoice threshold—Act, s 13 (a) (ii)**

11 The prescribed amount is \$25 000.

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

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

- 1 (i) if the date the contract ends may be extended—
2 the circumstances under, and the period for which, the date may
3 be extended;
- 4 (j) the value of the total consideration, or estimated total
5 consideration, for the contract;
- 6 (k) whether the responsible Territory entity was exempted from any
7 requirement for the procurement to which the contract relates;
- 8 **Example**
9 a Territory entity was exempted from quotation and tender requirements for
10 a procurement under pt 2
- 11 (l) if the contract is amended—
12 (i) a brief description of the amendment; and
13 (iii) the date the amendment was made;
- 14 (m) whether any part of the contract is confidential text;
- 15 *Note* **Contract** includes a contract as amended (see dict)
- 16 (n) if any part of the contract is confidential text—a brief indication
17 of what the confidential text relates to;
- 18 **Examples**
19 see examples for the [Act](#), s 18 (2) (b)
- 20 (o) whether the secure local jobs code applies to the contract;
- 21 (p) any other information about the contract required to be included
22 in the register in any direction given by the Minister under the
23 [Act](#), section 43 (Government procurement practices);
- 24 (q) an electronic copy of the public text (if any) of the contract as
25 made and of any amendment of the contract;
- 26 (r) where anyone can obtain a printed copy of the public text
27 (if any) of the contract as made and of any amendment of the
28 contract.

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

20 **12B Public access to information on register**

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

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

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

4 **12C Territory entities to enter information in register**

5 (1) The responsible Territory entity for a notifiable contract must, within
6 21 days after the day the contract is made, enter any information
7 mentioned in section 12A (1) for the contract in the register.

8 (2) The responsible Territory entity for a notifiable invoice must, within
9 21 days after the end of the month in which the invoice was paid,
10 enter any information mentioned in section 12A (2) for the invoice in
11 the register.

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

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

16 **78 Sections 12AA and 12AB headings**

17 *substitute*

18 **12AA Prescribed value of services—Act, s 22F (1) (a) (ii)**

19 **12AB Excluded services—Act, s 22F (3)**

20 **79 Labour relations, training and workplace equity plan—**
21 **Act, s 22G (6) (b)**
22 **Section 12AC (1) (g)**

23 *omit*

24 or works

80 Section 12AC (1) (i)

2 *omit*

3 the Territory or a territory entity

4 *substitute*

5 a Territory entity

81 Parts 5 and 6

7 *substitute*

8 Part 5 Procurement board**9 Division 5.1 Board review of procurements****10 13 Application—div 5.1**

11 This division—

12 (a) applies to a procurement by a Territory entity to enter into a
13 standing-offer arrangement (a *new standing-offer*
14 *arrangement*); but

15 (b) does not apply to procurement by a Territory entity under—

16 (i) a standing-offer arrangement; or

17 (ii) a contract entered into under a standing-offer arrangement.

**18 14 Procurements to be reviewed by board—Act,
19 s 29 (2) (a) (i)**

20 (1) The following procurements by Territory entities must be reviewed
21 by the board:

22 (a) a procurement, including an acquisition or a disposal, that is in
23 the planning period and has an estimated total consideration of
24 \$7 million or more;

- 1 (b) a procurement that is in the planning period and for which at
2 least 1 of the following applies:
- 3 (i) there are significant concerns about probity;
- 4 **Example**
5 there is a high or extreme probity risk rating in relation to the
6 procurement
- 7 (ii) the procurement relates to information and
8 communications technology that includes an element of
9 system development or redesign;
- 10 (iii) the procurement is a new a standing-offer arrangement;
- 11 (iv) the procurement proposes to substantially change the
12 scope or nature of an existing procurement contract;
- 13 **Examples—substantially change**
- 14 1 extending the date an existing procurement contract ends, but
15 this was not considered when undertaking the procurement and
16 the contract does not provide for any extension
- 17 2 changing the nature or volume of goods or services provided
- 18 3 changing a delivery schedule or completion date
- 19 4 changing the total consideration of an existing procurement
20 contract
- 21 5 multiple small changes that, taken together, represent a
22 substantial change to an existing procurement contract
- 23 (c) a procurement—
- 24 (i) that has been undertaken but a procurement contract has
25 not yet been entered into; and
- 26 (ii) for which there are significant concerns about probity;
- 27 **Example**
28 a Territory entity has not addressed a recommendation in relation to
29 probity

- 1 (d) a procurement that is referred to the board by any of the
2 following entities:
- 3 (i) the Minister;
- 4 (ii) a responsible chief executive officer for a Territory entity;
- 5 (iii) the administrative unit responsible for administering the
6 Act;
- 7 (iv) Major Projects Canberra;
- 8 (v) a person who has been engaged by a Territory entity to
9 investigate whether the procurement was undertaken with
10 probity;
- 11 (e) a procurement, other than a procurement mentioned in
12 paragraphs (a) to (d), that the board considers should be
13 reviewed.
- 14 (2) In this section:
- 15 *planning period*, in relation to a procurement, means the period
16 before a Territory entity seeks quotations or invites tenders for the
17 procurement.

18 **Division 5.2 Board members—conditions of**
19 **appointment**

20 **15 Board members—term of appointment—Act, s 34 (a)**

- 21 (1) A board member must be appointed for a term of not more than
22 3 years.
- 23 (2) A person who has been a member for 2 consecutive terms is not
24 eligible for reappointment.

- 1 **16 Board members—honesty, care and diligence—Act,**
2 **s 34 (b)**
- 3 In exercising the functions of a board member, the member must
4 exercise the degree of honesty, care and diligence required to be
5 exercised by a director of a company in relation to the affairs of the
6 company.
- 7 **17 Board members—disclosure of interests—Act, s 34 (b)**
- 8 (1) This section applies to a board member if—
- 9 (a) the member has a direct or indirect financial interest, or a direct
10 or indirect interest of any other kind, in an issue being
11 considered, or about to be considered, by the board; and
- 12 (b) the interest could conflict with the proper exercise of the
13 member’s functions in relation to the board’s consideration of
14 the issue.
- 15 (2) As soon as practicable after the relevant facts come to the member’s
16 knowledge, the member must disclose the nature of the interest to a
17 meeting of the board.
- 18 (3) The disclosure must be recorded in the board’s minutes and, unless
19 the board otherwise decides, the member must not—
- 20 (a) be present when the board considers the issue; or
21 (b) take part in a decision of the board on the issue.
- 22 (4) Any other member who also has a direct or indirect financial interest
23 in the issue must not—
- 24 (a) be present when the board is considering its decision under
25 subsection (3); or
26 (b) take part in making the decision.

- 1 **18** **Board members—ending appointment—Act, s 36 (3) (c)**
2 Contravening either section 16 or section 17 without reasonable
3 excuse is prescribed.

4 **Division 5.3** **Board proceedings and reporting**

5 **19** **Annual board meeting**

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

9 **20** **Board annual report**

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

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

11 82 New dictionary

12 *insert*

13 Dictionary

14 (see s 2)

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

16 For example:

- 17 • Canberra Institute of Technology
- 18 • city renewal authority
- 19 • electoral commission
- 20 • entity
- 21 • function
- 22 • gambling and racing commission
- 23 • independent competition and regulatory commission
- 24 • integrity commission
- 25 • legal aid commission
- 26 • public employee
- 27 • public trustee and guardian
- 28 • suburban land agency
- 29 • work health and safety commissioner.

- 1 *Note 2* Terms used in this regulation have the same meaning that they have in
2 the *Government Procurement Act 2001*. For example, the following
3 terms are defined in the *Act*, dict:
- 4 • approved auditor
 - 5 • board
 - 6 • code
 - 7 • construction work
 - 8 • government procurement practices (see s 43 (1))
 - 9 • notifiable contract
 - 10 • notifiable invoice
 - 11 • probity (see s 7)
 - 12 • procurement (see s 5)
 - 13 • responsible chief executive officer
 - 14 • secure local jobs code
 - 15 • secure local jobs code certificate
 - 16 • secure local jobs code register
 - 17 • tenderer
 - 18 • Territory entity (see s 6)
 - 19 • territory-funded work
 - 20 • value for money (see s 8 (1)).
- 21 ***exemption reasons***—see section 9 (1).
- 22 ***limited tender procurement***—see section 7 (1).
- 23 ***new standing-offer arrangement***—see section 13 (a).
- 24 ***open tender procurement***—see section 8 (1).
- 25 ***supplier***—see section 6 (2).

1 **Schedule 1 Health Infrastructure Enabling**
2 **Act 2023—Consequential**
3 **amendments**

4 (see s 3)

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

6 *substitute*

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

8 **[1.2] Section 6 (5) (b) (i) and (ii)**

9 (i) part 2 (Quotation and tender thresholds and exemptions);
10 and

11 (ii) division 5.1 (Board review of procurements); and

12 **[1.3] Section 6 (6), definition of *territory entity***

13 *substitute*

14 ***Territory entity***—see the *Government Procurement Act 2001*,
15 section 6.

Endnotes

1 Presentation speech

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

2 Notification

Notified under the [Legislation Act](#) on 2023.

3 Republications of amended laws

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

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