

2001

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

GOVERNMENT PROCUREMENT BILL 2001

EXPLANATORY MEMORANDUM

Circulated by the authority of the Treasurer

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Summary

This is a Bill for an Act to establish a government procurement Board (the Board) and make provision about the procurement of goods and services by Territory entities, and for related purposes.

The Government Procurement Bill 2001 (the Bill) creates the Government Procurement Board, with responsibility for the ongoing improvement of procurement practices and purchasing skills in Government agencies.

The Board's foremost responsibility will be the establishment of a procurement accreditation system which will govern purchasing activities and ensure that only officers with accredited skills and competencies perform major procurement activities, and that those officers use agreed procedures.

Other functions of the Board will be to develop, implement and review policies and practices for the procurement of goods, services and works by Territory entities, to give advice on procurement issues, and monitor the purchasing activities of Territory entities.

The Board will set the standards for procurement activities, and provide advice to chief executives, but will not have executive powers to enter contracts, nor to prevent agencies from entering contracts.

Revenue/Cost Implications

The Bill will establish a Government Procurement Board which is to be funded through appropriation to the Procurement Policy unit in the Department of Treasury. The Board will not generate any revenue for the Territory.

The procurement accreditation system to be established by the Board will operate on a 'user pays' basis within Government. Agency staff sponsored to participate in training and accreditation activities will be funded by the home agency. Training generally will be delivered by accredited private sector organisations.

Details of the Bill are attached.



Details of the Bill

PART 1 – PRELIMINARY

Clause 1 and 2 are formal requirements. They refer to the title of the Act and the commencement date of the Act, which is the day on which the Act is notified in the Gazette.

Clause 3 Dictionary – provides that the Dictionary at the end of the Act, which defines certain words and expressions used in the Act, is part of the Act.

Clause 4 Notes – specifies that a note included in the Act is explanatory and is not part of the Act.

PART 2 – GOVERNMENT PROCUREMENT BOARD

Clause 5 Government Procurement Board – This clause provides that there will be an Australian Capital Territory Government Procurement Board (the Board).

Clause 6 Functions – This clause details the functions of the Board to ensure whole-of-government consistency in procurement practice. In essence, the functions are to

- (a) develop, implement, monitor and review policies and practices regarding the entire process of procurement by the ACT Government;
- (b) establish an accreditation system which will be directed towards increased procurement skills and technical expertise across government;
- (c) develop and make Procurement Guidelines; and
- (d) advise on matters relating to procurement, including matters relating to management and training of ACT Government staff.

Importantly, the Board's functions will not detract from the accountability of agency chief executives. The Board will set the standards for procurement activities, and provide advice to chief executives, but will not have executive powers to enter contracts, nor to prevent agencies from entering contracts.

The Board will advise the Minister on industry and regional implications of Government purchasing, and the Board's activities will include monitoring the impacts of Government purchasing activities on local suppliers.

Clause 7 Procurement Guidelines – This clause provides the Board with the power to make Procurement Guidelines. The Procurement Guidelines will be the medium for the Board to set new procurement standards, to stipulate the procurement reporting requirements to be met by agencies, and to disseminate information about the purchasing reforms which it will implement.

The development of procurement policies and guidelines under the proposed arrangements will be similar to the current process. Those documents dealing with mandated practices (eg, accreditation arrangements and the associated value limits) will be identified as draft disallowable instruments during circulation.

It is proposed that with the establishment of the Board, each draft Procurement Guideline will be submitted to the Board for release to Chief Executives as an exposure draft for comment, and made available on the Internet. The final Guideline document will be submitted to the Board for approval, and then released by the Board.

All Procurement Guidelines will be issued as disallowable instruments.

The Board will also issue a Procurement Circular series which will serve as the vehicle for best practice statements not intended to be mandatory. (eg practices for debriefing unsuccessful tenderers).

Subclause (1) provides the Board with the power to make Procurement Guidelines under the Act.

Subclause (2) provides examples of the Guidelines the Board may make.

Subclause (3) allows the Board the flexibility to utilise any document from any source as an integral part of the Guidelines.

Subclause (4) provides that Procurement Guidelines will be disallowable instruments.

Clause 8 Ministerial directions to Board – This clause gives the Minister the power to give directions to the Board. These directions must be in writing and the Board must comply.

In relation to these directions, the Minister

- must consult with the Board before giving a direction; and
- within six sitting days of giving a direction under this section, must present the Legislative Assembly with a copy of that direction.

Subclause (5) has been included to take advantage of an exemption in the Trade Practices Act. There is a provision in that Act which exempts ACT laws from the operation of the Act so that they can provide for things that would otherwise be prohibited, in this case, directions of the Board and compliance with directions.

Clause 9 Reports to Minister - This clause specifies that the Board must provide the Minister any reports the Minister requires, in addition to reports under this Act or any other law. It further specifies that such reports must conform to the Minister's requirements.

Clause 10 Providing information to Minister - This clause specifies that the Board must provide the Minister with any information about its operations that the Minister requires. It is envisaged that routine reporting will include for example, an annual report, and regular reports on agency non-compliance with Guidelines.

Clause 11 Constitution of Board - This clause provides that the Board shall comprise 7 members, namely

- the Chairperson, who under subclause 12 (2) will be a public employee as defined by the *Interpretation Act 1967*;
- three non public employee members; and
- three public employee members.

The requirement for three non public employees as members will provide the Board with access to external expertise not otherwise available from the public sector.

Clause 12 Appointment of members - This clause provides that the Minister appoints, by instrument, the Board members to their respective positions on the Board. It further provides that:

- the appointed Chairperson must be a public employee; and
- a public employee member must be a public employee.

Clause 13 Term of appointment of members - This clause limits an appointment to 3 years, and provides that the term of appointment be specified in the instrument of appointment. However, there is nothing to prevent the Minister appointing a Board member for a further period of appointment after the member's original appointment term has expired.

Clause 14 Honesty, care and diligence of members - This clause specifies the personal integrity standards required of the members of the Board in exercising their functions. The Board does not fall within the scope of Corporations Law, yet it is important that the members understand their responsibilities are similar to those of company directors.

Clause 15 Improper use of information - This clause provides for penalties in the event of a member of the Board making improper use of the information acquired in the course of a member's duties on the Board.

Clause 16 Ending of appointment of members - This clause details the circumstances under which the Minister must or may end a Board member's appointment.

Clause 17 Conditions of appointment generally - This clause specifies that the Minister may determine the conditions of appointment of Board members.

Clause 18 Time and place of meetings - This clause permits the Board to determine when and where meetings will be held, provided that the Board meets at

least every month. This is intended as a minimum frequency. Further, the Chairperson may call meetings at the request of the Minister or three members, provided that the Chairperson gives Board members reasonable notice.

Clause 19 Procedure governing proceedings of Board – This clause enables the Board to conduct proceedings as it considers appropriate and sets out the manner in which meetings shall be managed including:

- duties of the Chairperson;
- that the minimum attendance to convene a meeting is four members which must include one non-public employee member;
- voting rights and procedures;
- the keeping of minutes; and
- use of electronic systems and other forms of communication between participating members to conduct Board business. Board meetings can be held using electronic communication.

Clause 20 Disclosure of interests by members – This clause requires Board members to declare any direct or indirect financial interest in issues being, or about to be considered by the Board. Further, members with an interest must not be present when that issue is being considered or decided. All disclosure must be recorded in the Board minutes.

Clause 21 Arrangements for staff – This clause permits the Board to use public servants and allows access to human resources not otherwise available. It further provides that these public servants shall be managed in accordance with the *Public Sector Management Act 1994*.

PART 3 – MISCELLANEOUS

Clause 22 Responsible chief executive must ensure compliance with the Act - This clause ensures that compliance with the Act is required of chief executives in the ACT Government, as identified in the Guidelines.

Clause 23 Power to obtain information and documents - This clause gives the Board the power to requisition, in writing, any information it requires to carry out its functions. The information may be, for example, in the form of forward procurement plans, statements of agency procedural arrangements, or procurement methodology plans.

The Board will have power to obtain information from Government entities. This power is considered essential to enable it to monitor Government purchasing. The standard limitations on Government disclosure of information (in regard to personal privacy issues, and commercial in confidence information) will apply.

Clause 24 Regulation-making power – This clause allows the Executive to make regulations under the Act and seeks to ensure that all facets of procurement and procurement reform are within the scope of the Act.

Clause 25 Review of Act – This clause provides that the Act must be reviewed by report as soon as practicable after it has been in effect for 5 years, and, within 6 months the Minister must present the report to the Legislative Assembly. This provision is consistent with the Government’s intention to review and improve legislation after a reasonable period of implementation.

This clause will cease to exist 6 years after the date of commencement of the Act.

DICTIONARY The Dictionary contains the interpretation of words and phrases used in the Act.

