

2017

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

**GOVERNMENT PROCUREMENT (FINANCIAL INTEGRITY) AMENDMENT
BILL 2017**

EXPLANATORY STATEMENT

**Presented by
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GOVERNMENT PROCUREMENT (FINANCIAL INTEGRITY) AMENDMENT BILL 2017

This explanatory statement relates to the *Government Procurement (Financial Integrity) Amendment Bill 2017* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Background

The purpose of the Bill is to improve integrity in Government expenditure.

The reduction of the notifiable invoices threshold will increase transparency and accountability in Government spending. By publishing the payments made by Government agencies, the community can scrutinise how their money is being spent. The additional probity related to spending further reinforces procurement principles, including value for money.

The Bill increases the reporting requirements for payments made by the Territory, or by a Territory entity. The extension of reporting obligations to property, reimbursements, and act of grace payments will capture spending that otherwise is difficult to determine or infrequently reported.

Overview of the Bill

The Bill amends the following Acts and Regulation:

- *Government Procurement Act 2001*
- *Financial Management Act 1996*
- *Government Procurement Regulation 2007*
- *Taxation Administration Act 1999*
- *University of Canberra Act 1989*

The amendments increase reporting requirements for Government expenditure to improve integrity in spending, and provide the ACT community with a better opportunity to examine how taxpayer's money is disbursed.

Human Rights

The provisions of the Bill have marginal potential effects on an individual's human rights. If an individual's human rights were limited in any capacity, the limitations would be no more than under existing legislation.

Nature of the right affected

Section 12 of the *Human Rights Act 2004* entitles individuals to the right to privacy and reputation. Clause 1.1 of the Bill proposes the creation of an act of grace payments register under the *Financial Management Act 1996*, which includes the publication of information relating to payments every quarter.

The act of grace register will contain and publish, as far as practicable, the following:

- The date the payment was authorised by the Treasurer;
- The date of the payment;
- The amount of the payment;
- The grounds for the payment;
- The directorate or territory authority that made the payment;
- Anything else prescribed by regulation.

The Bill mirrors provisions in section 130 of the *Financial Management Act 1996* preserving the identity of the payee unless disclosure was agreed to by the payee as a condition of authorising the payment.

If a person reading the register had knowledge of a number of specific particulars relating to an individual's circumstances, there is a small chance that they may be able to identify an individual.

Without knowledge of an individual's recognisable state of affairs, the possibility that individuals could be identified solely on the information within the register is remote.

The importance of the purpose of the limitation

Accountability and transparency in Government expenditure underpins the *Government Procurement Act 2001*, and these principles have been affirmed in other legislation. The publication of the majority of the information contained in the register, in a directorate or territory authority's financial statements, is part of normal practice and required under section 130 of the *Financial Management Act 1996*.

The public interest in regularly scrutinising Government expenditure does not materially compromise an individual's rights under section 12 of the *Human Rights Act*.

The nature and extent of the limitation

While there may be some concern that the information contained in the register may effect an individual's right to privacy and reputation, the information published is not substantially different that already provided for under section 130 of the *Financial Management Act 1996*. Section 130 states:

(8) A payment made by a directorate or territory authority under this section must be reported in notes to the financial statements of the directorate or territory authority that relate to the financial year when the payment was made.

(9) The notes must indicate in relation to each payment under this section the amount and grounds for the payment.

(10) The notes relating to a payment under this section must not disclose the identity of the payee unless disclosure was agreed to by the payee as a condition of authorising the payment.

Importantly, the proposed Clause 1.1 replicates subsection (10), providing that the payee's identity must not be disclosed unless agreed to prior to authorisation of the payment.

As the identity of the payee is preserved as a matter of importance, Clause 1.1 is materially consistent with section 130 of the *Financial Management Act 1996*. The identity of payees has not historically been endangered. This suggests the impact of these disclosures on an individual's human rights is negligible.

The relationship between the limitation and its purpose

The publication of the information in the proposed act of grace register has already been found to be in the public's interest, demonstrated through the inclusion of obligations under the *Financial Management Act 1996*. Act of grace payments are funded through the public purse and may be worth many thousands of dollars. This necessitates the need for disclosure. The Bill increases the frequency of publication without significantly compromising the identity of the payee.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

It is not considered that there are less restrictive means available to achieve the purpose. The limitation and protections associated with the act of grace register can be found in existing legislation. The Bill does not propose further limits and is consistent with section 130 of the *Financial Management Act 1996*. The extent of any limitation on an individual's rights is reasonable and proportionate when compared to the public interest in ensuring integrity in Government expenditure.

CLAUSE NOTES

Clause 1 Name of Act

The clause provides that the name of the Act is the *Government Procurement (Financial Integrity) Amendment Act 2017*.

Clause 2 Commencement

The clause provides that the commencement date of the Act is 1 January 2018.

Clause 3 Legislation amended

The clause provides that the Act amends the following legislation:

- *Government Procurement Act 2001*
- *Financial Management Act 1996*
- *Government Procurement Regulation 2007*
- *Taxation Administration Act 1999*
- *University of Canberra Act 1989*

Clause 4 What is a notifiable invoice? – pt 3A

Section 42A

This clause amends the threshold and definition of a notifiable invoice. The threshold has been halved to \$12,500, and the new definition captures payments for property and reimbursements. Property acquisitions by the Territory, or a Territory entity, have been included. Goods, services, works or property provided by the Territory or Territory entity; granting of a licence or lease of land, and sales of a lease of land; and an invoice prescribed by regulation have been exempted. Reimbursements to contractors for the cost of flights to and accommodation in Canberra during the course of carrying out work for the Territory have been captured under the extended definition.

Clause 5 Contents of notifiable invoices register

New section 42C (1) (ga)

This clause inserts the requirement for the contract number and contract name or title to be included in the contents of the notifiable invoices register.

Schedule 1 Other amendments

Part 1.1 Financial Management Act 1996

[Clause 1.1] New section 130A

This clause creates an act of grace payments register for payments made under section 130 of the *Financial Management Act 1996*. The register is to be kept electronically by the director-general, and the director-general may correct any mistake, error or omission in the register.

The register must include the following for each act of grace payment made:

- The date the payment was authorised by the Treasurer;
- The date of the payment;
- The amount of the payment;
- The grounds for the payment;
- The directorate or territory authority that made the payment;
- Anything else prescribed by regulation.

The register may include anything else the director-general considers appropriate. The responsible directorate or territory authority must, within 21 days after the end of the quarter which the payment was made, either enter the information in the register or provide it to the director-general for entry in the register. The directorate or territory authority must not disclose the identity of the payee unless the payee agreed to the disclosure.

The director-general must ensure, as far as practicable, that a copy the information contained in the register is accessible on a website approved by the director-general at all times, for at least two years, and without charge by the Territory.

[Clause 1.2] Dictionary, note 2

This clause inserts the term ‘quarter’ in the Dictionary, note 2. This term will be defined by the *Legislation Act 2001*.

Part 1.2 Government Procurement Regulation 2007

[Clause 1.3] Section 12C

This clause omits section 12C from the *Government Procurement Regulation 2007*.

Part 1.3 Taxation Administration Act 1999

[Clause 1.4] Section 97

This clause inserts a reference to section 130A of the *Financial Management Act 1996*.

Part 1.4 University of Canberra 1989

[Clause 1.5] Section 35 (4)

This clause inserts a reference to section 130A of the *Financial Management Act 1996*.