

2025

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

ELEVENTH ASSEMBLY

GOVERNMENT PROCUREMENT AMENDMENT BILL 2025

EXPLANATORY STATEMENT

**Presented by
Rachel Stephen-Smith MLA
Minister for Finance
October 2025**

GOVERNMENT PROCUREMENT AMENDMENT BILL 2025

The Bill is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

INTRODUCTION

This explanatory statement relates to the Government Procurement Amendment Bill 2025 (Bill) as presented to the Legislative Assembly. This explanatory statement 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. This Explanatory Statement is to be read in conjunction with the Bill. The Explanatory Statement is not, and is not meant to be, a comprehensive description of the Bill. This Explanatory Statement provides information about why a Bill is proposed together with an explanation about the proposed legislative amendments.

OVERVIEW OF THE BILL

Substantial changes to the *Government Procurement Act 2001* (Act) and *Government Procurement Regulation 2007* (Regulation) commenced on 1 July 2024. These changes were delivered under the Procurement Reform Program to ensure that ACT Government procurements continue to be undertaken in alignment with community values, conducted with transparency, fairness and rigour, and achieve value for money. The changes delivered a legislative framework that is contemporary and draws upon best practice.

Since these changes commenced, the ACT Government has identified further enhancements to the legislation to better align it with policy objectives.

The amendments in the Bill reflect the ACT Government's commitment to promoting the participation of suppliers responding to ACT Government procurement, increasing operational efficiency, and making it easier for Territory entities to conduct procurements that are transparent, evidence-based and defensible.

CONSULTATION ON THE BILL

The Bill reflects the extensive engagement undertaken with Territory entities in formulating the scope of proposed changes for the purposes of policy approval and through broad engagement on key drafts of the Bill. More detailed consultation was undertaken with the Goods and Services Branch of Procurement ACT, Infrastructure Canberra, and the ACT Government Solicitor.

Directorates and other Territory agencies were also consulted in the development of this Bill. This consultation has supported the development of an approach that balances the need for greater clarity and improved operational efficiency with community expectations of transparency and accountability.

Further consultation will inform the development of training and guidance to assist Territory entities to understand and implement the changes.

CONSISTENCY WITH HUMAN RIGHTS

The Bill has the potential to promote an individual's right to privacy and reputation under section 12 of the *Human Rights Act 2004*, through clarifying provisions relating to treating personal information as confidential text for notifiable contracts.

The Bill also has the potential to promote the right to equality and non-discrimination under section 8 of the *Human Rights Act 2004*, through recognising the distinct challenges faced by Aboriginal and Torres Strait Islander persons in engaging with the ACT Government Procurement Framework.

Rights promoted

The right to privacy and reputation is promoted by the Bill through clarifying that, for the purposes of publication of notifiable contracts on the ACT Government Notifiable Contracts Register, both personal information and name of an individual comprise confidential text. An exception to this applies where a supplier provides goods or services in their own name. This clarification gives better effect to the policy intent of the changes that took effect on 1 July 2024, which specified confidential text includes personal information about a person.

While the privacy of individuals is promoted through ensuring that there are not named in notifiable contracts published on the Notifiable Contracts Register, the publication of other relevant details about the individual (for example, the capacity in which a Territory officer is entering into a contract) remains to preserve transparency – discussed below in relation to clause 6.

The right to equality and non-discrimination is promoted by clause 15 of this Bill by providing a mechanism for Territory entities to more readily engage Aboriginal and Torres Strait Islander entities. The Bill acknowledges the positive impact that government procurement can have in promoting Aboriginal and Torres Strait Islander economic participation and further increasing the opportunities for small and medium enterprises (SMEs) in the Canberra region to access procurement opportunities.

Rights limited

No human rights will be limited by this Bill.

GOVERNMENT PROCUREMENT AMENDMENT BILL 2025

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **GOVERNMENT PROCUREMENT AMENDMENT BILL 2025 D06**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Tara Cheyne MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This clause specified the title of the Act is the *Government Procurement Amendment Act 2025* (Amendment Act).

Clause 2 Commencement

This is a clause setting out when the Amendment Act will commence, being a date set by the Minister.

Clause 3 Legislation amended

This clause specifies the legislation that the Amendment Act will amend, namely, the Act and Regulation.

Part 2 Government Procurement Act 2001

Clause 4 Meaning of procurement (Section 5)

This clause makes a minor change to the definition of ‘procurement,’ by removing the word ‘contractual.’ The word ‘contractual’ is not necessary to explain how goods or services might be acquired for the purposes of the definition.

Clause 5 Form of procurement contracts and amendments (Section 10)

This clause clarifies that a procurement contract must be in writing if it has an estimated total consideration of \$500 or more, and aligns with the amendment outlined at clause 14, creating simplified procurement process for very low value procurements. This amendment supports the more efficient conduct of very low value procurements, substantially reducing the administrative burden for both suppliers and Territory entities for such procurements.

The \$500 threshold represents a balance between the desirability of reducing the administrative burden for suppliers and Territory entities, and transparency and accountability for the expenditure of public funds.

The amendment does not affect the requirements to achieve value for money for procurements with an estimated total consideration of less than \$500, or to maintain robust records for such procurements.

Clause 6 Meaning of confidential text (Section 16(1)(b))

This clause clarifies that confidential text includes both personal information about an individual and the name of an individual, other than the name of an individual supplying goods or services in their own name.

Names may not in all cases comprise personal information. However, the policy intent of this clause is to ensure that all names are treated consistently as confidential text, except where an individual's name is also the name of the relevant supplier.

The Act requires that specified value for money decisions must be recorded in writing (see section 8 (5) and (6) of the Act), and this clause does not alter that requirement.

An individual named in a procurement will still be able to be identified if required: for example, through the full text version of the procurement contract (which must be retained by the procuring Territory entity), procurement documentation that records the delegate for a procurement, and other records such as instruments of delegation and organisation extracts.

Information about a notifiable contract must still be published, together with the notifiable contract itself, specifying details about the scale, scope and nature of the notifiable contract.

This clause also does not alter section 22B of the Act, regarding the operation of other disclosure laws.

Clause 7 Section 16(2)

This clause specifies that all text in a notifiable contract for legal services comprises confidential text and maintains the privilege in those procurement contracts.

This clause also deletes a reference to a contract for the employment of an individual, which is not a procurement and as such would not be a notifiable contract.

Clause 8 Compliance with Act – annual reporting (new Section 44(2A))

This clause specifies that a compliance report need not include details about the Territory's compliance with the instruments specified.

This clause reflects the policy intent to capture in a compliance report the Territory entity's compliance with the Act itself and Regulation, but not other instruments.

Clause 9 Dictionary, definition of *standing-offer arrangement*, example

This clause includes the term 'panel arrangement' as an example of a standing-offer arrangement as defined in the Act. The inclusion of this example reflects that panel arrangements are a commonly used type of standing-offer agreement.

Part 3 Government Procurement Regulation 2007

Clause 10 Section 3B heading

This clause replaces the reference to ‘territory authorities’, reflecting the policy intent that other types of entities may also be prescribed in this section of the Regulation.

Clause 11 Section 3B (1)

This clause deletes the reference to ‘territory authorities,’ reflecting the policy intent that other types of entities may be prescribed in this section of the Regulation.

Clause 12 Application – pt 2 (Section 4(1)(a), note)

This clause clarifies that Part 2 of the Regulation applies to a procurement to enter a standing-offer arrangement, as distinguished from a procurement under a standing-offer arrangement. A ‘procurement to enter into a standing-offer arrangement’ is intended to capture the establishment of a standing-offer arrangement, or the substantive refresh of a standing-offer arrangement, but not a procurement under a standing-offer arrangement such as a work order under a panel deed.

Clause 13 (Section 4(2) definition of *standing-offer arrangement*)

This clause deletes the above definition, on the basis that this term is defined in the Act and does not need to be duplicated. Definitions in the Act apply to the Regulation.

Clause 14 Low-value procurement (new Section 6(3))

This clause clarifies that the quotation requirement for a low-value procurement with an estimated total consideration of less than \$500 is for one oral quotation.

A quotation for a low-value procurement must still be in writing if it has an estimated total consideration of \$500 or more.

Consistent with clause 5, this amendment supports the more efficient conduct of very low value procurements, substantially reducing the administrative burden for both suppliers and Territory entities for such procurements.

The amendment does not affect the requirement to achieve value for money for procurements with an estimated total consideration of less than \$500 or to maintain robust records of decisions for such procurements.

The \$500 threshold represents a balance between the desirability of reducing the administrative burden for both suppliers and Territory entities, and transparency and accountability for all expenditure of public funds.

Clause 15 Limited tender procurement (Section 7(2))

This clause permits Territory entities to obtain a single quotation from a certified Aboriginal or Torres Strait Islander entity, or an entity that is both an SME and based in the Canberra region for limited value procurements. This amendment reduces the administrative steps that a procuring Territory entity must take to approach such an entity, where the certified Aboriginal or Torres Strait Islander entity or SME has the capability and capacity to provide the required goods or services. This amendment does not displace the requirement to achieve value for money in relevant procurements.

This clause also updates outdated references to local government areas for the purposes of the definition of an 'entity based in the ACT or surrounding region,' and defines 'Aboriginal or Torres Strait Islander person' consistent with contemporary drafting practice.

This clause does not alter the meaning of a small or medium business entity.

Clause 16 Exemption reasons – limited and open tender procurement (Section 9(1A))

This clause clarifies that subsection 9(1)(i) of the Regulation applies whether the additional goods or services are supplied under the initial procurement contract as amended or a new procurement contract. This clause removes any ambiguity as to whether a particular form of procurement contract is required.

Clause 17 Section 10

This clause has been simplified, in light of the inclusions in subsections 7(2) and (3) of the Regulation, to specify that the responsible chief executive officer for a Territory entity may, in writing, exempt the Territory entity from the requirement to seek three written quotations if satisfied on reasonable grounds that at least one of the exemption reasons applies.

Clause 18 Late tenders (Section 10D(1)(c))

This clause clarifies that if a Territory entity invites tenders for an open tender procurement and a supplier submits a tender in relation to the procurement, but the tender was submitted after the period during which the Territory entity was accepting tenders, the Territory entity must not accept the supplier's tender in relation to the procurement, unless the tender was submitted late due to an act or omission by the Territory entity.

Clause 19 Contents of register – Act, s15(1) (Section 12A(1)(q))

This clause clarifies that documents applied, adopted or incorporated into a notifiable procurement contract need not be published on the contracts register. This reflects that such documents are often very large or in proprietary formats or are created after the procurement contract is executed.

Consistent with section 8 of the Act, the procuring Territory entity must still maintain a full text version of the notifiable procurement contract, including documents applied, adopted or incorporated into a notifiable procurement contract.

Further, under section 12A(1)(r), it remains the case that the register for each notifiable contract must specify where anyone can obtain a printed copy of the public text (if any) of the contract as made and of any amendment of the contract.

Clause 20 Application – div 5.1 (Section 13(a))

This clause deletes a reference to a definition that is no longer used in the Act and Regulation.

Clause 21 Procurements to be reviewed by board – Act, s29(2)(a)(i) (Section 14(1))

This clause clarifies the procurements that require review by the Government Procurement Board (Board), with a focus on procurements of a higher scale, scope and risk.

This clause retains provisions that allow any procurement to be referred by specified entities to the Board for review. An outdated reference to ‘Major Projects Canberra’ has been deleted, noting that any responsible chief executive officer for a Territory entity may refer a procurement to the Board. This would include the Director-General of Infrastructure Canberra, the successor entity to Major Projects Canberra.

The Board may also select procurements for review, assisting the Board to perform its functions.

The clause deletes examples from this section of the Regulation, including for what may be considered a substantial change. To support Territory entities to better understand what changes constitute substantially changing a procurement contract, a range of examples will be available in published guidance. This will also allow flexibility for emerging strategic issues to be identified and incorporated into this guidance as required.

This clause clarifies that procurements of a kind mentioned in section 9(1)(i) of the Regulation need not be reviewed and creates provision to allow review upon referral. This balances the agility and efficiency required in managing construction projects, while also allowing for Board review as required.

Clause 22 Division 5.3, heading

This clause updates the division heading to reflect the amendments to section 20 of the Regulation.

Clause 23 Board annual report (Section 20)

This clause deletes section 20 of the Regulation. This reflects that the Board's reporting obligations are captured in its Terms of Reference and Strategic Direction, and under the *Annual Reports (Government Agencies) Act 2004*.

Clause 24 Dictionary, note 2

This clause notes that this term is defined in the Act.

Clause 25 Dictionary, definition of new standing-offer arrangement

This clause deletes a definition that is no longer used in the Regulation.