



New South Wales

Government (Open Market Competition) Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to ensure that copies of all Government contracts, together with copies of all associated tendering documents and results of all performance monitoring, are kept publicly available by all public authorities, and
- (b) to ensure that the accounts of persons and bodies that receive public money from a public authority by way of a grant are subject to inspection, examination and audit by the Auditor-General under the *Public Finance and Audit Act 1983*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 defines the expressions *government contract*, *public authority* and *public money* for the purposes of the proposed Act.

Clause 4 requires a public authority to ensure that copies of its government contracts, together with copies of the associated documents for any successful tender and results of all performance monitoring, are freely available for public inspection at its head office and on the Internet. The proposed section charges the Ombudsman with the supervision of public authorities in their performance of those duties, and provides that for that purpose the Ombudsman may conduct investigations and make reports to Parliament with respect to their performance of those duties. The proposed section will not apply to or in respect of any commercially sensitive contracts or any government contracts entered into before the date of assent to the proposed Act.

Clause 5 provides that the accounts of a person or body that receives public money from a public authority by way of a grant are subject to inspection, examination and audit by the Auditor-General, and that such of the activities of the person or body as are funded by the grant are subject to investigation and report by the Auditor-General.

Clause 6 provides that the proposed Act is to apply despite any other Act or law to the contrary, and despite any agreement or other document that purports to exclude, restrict or modify the operation of the proposed Act.

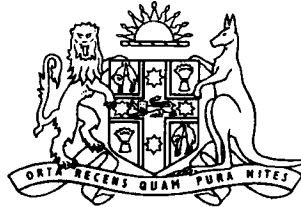


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New South Wales

Government (Open Market Competition) Bill 2002

No. , 2002

A Bill for

An Act to require Government contracts, and tenders relating to Government contracts, to be made available for public inspection, and to enable the Auditor-General to audit the accounts of persons and bodies that receive public money by way of grant.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Government (Open Market Competition) Act 2002</i> .	3
2 Commencement	4
This Act commences on the date of assent.	5
3 Definitions	6
In this Act:	7
<i>government contract</i> means a contract between a public authority and some other person (which may consist of another public authority) under which the other person undertakes to provide the public authority with goods or services, or both goods and services, but does not include a contract of employment.	8 9 10 11 12
<i>public authority</i> means:	13
(a) the Government of New South Wales, or	14
(b) a statutory body representing the Crown, or	15
(c) an authority constituted for a public purpose by or under an Act, or	16 17
(d) a statutory State owned corporation (or any of its subsidiaries) within the meaning of the <i>State Owned Corporations Act 1989</i> , or	18 19 20
(e) a council or county council within the meaning of the <i>Local Government Act 1993</i> .	21 22
<i>public money</i> has the same meaning as it has in the <i>Public Finance and Audit Act 1983</i> .	23 24
4 Government contracts and associated tendering documents to be freely available for public inspection	25 26
(1) A public authority that enters into a government contract must ensure that copies of the contract, and (if the contract was awarded on the basis of tenders) copies of the successful tender for the contract:	27 28 29
(a) are made available during ordinary business hours for public inspection, free of charge, at the head office of the authority, and	30 31 32

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| (b) | are made available on the authority's Internet site or (if the authority does not have an Internet site) on the Government of New South Wales Internet site. | 1
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| (2) | If the contract contains provisions requiring its performance to be monitored, the public authority must ensure that results of the monitoring are made available in the same way as the contract is required to be made available under this section. | 4
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| (3) | The information concerning a contract or tender that is required to be made available under this section must also be referenced, from the Government of New South Wales Internet site, in a central index of all such contracts and tenders. | 8
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| (4) | The Ombudsman is charged with the supervision of public authorities in their performance of the duties imposed on them by this section and, for that purpose, may investigate, and report to Parliament on, their performance of those functions. | 12
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| (5) | The Ombudsman has the same functions and immunities with respect to an investigation or report under subsection (4) as the Ombudsman has with respect to an investigation or report under the <i>Ombudsman Act 1974</i> . | 16
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| (6) | This section does not apply to any contract, or to any provision of a contract, that the Auditor-General certifies to be a contract or provision whose disclosure would commercially disadvantage any party to the contract. | 20
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| (7) | This section does not apply to or in respect of any government contract entered into before the date of assent to this Act. | 24
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| 5 | Accounts of private organisations receiving government grants to be audited by Auditor-General | 26
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| (1) | The accounts of any person or body (other than a public authority) that receives public money from a public authority by way of a grant are subject to inspection, examination and audit by the Auditor-General under Division 2 of Part 3 of the <i>Public Finance and Audit Act 1983</i> . | 28
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| (2) | In conducting an inspection, examination or audit under subsection (1), the Auditor-General may also investigate, and report to the Treasurer on, such activities of the person or body concerned as are funded by public money received from a public authority by way of grant. | 32
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(3) The Auditor-General has the same functions and immunities with respect to an investigation or report under subsection (2) as the Auditor-General has with respect to an inspection, examination or audit under subsection (1). 1
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(4) For the purposes of this section, a person or body receives public money by way of a grant if it receives public money otherwise than as consideration under a contract for the provision of goods or services. 5
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6 Application of Act 8

This Act applies despite any other Act or law to the contrary, and despite any agreement or other document that purports to exclude, restrict or modify its operation. 9
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