



New South Wales

Government (Open Market Competition) Bill 2003

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 2003

No. , 2003

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.

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| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Government (Open Market Competition) Act 2003</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> has the same meaning as it has in the <i>Ombudsman Act 1974</i> . | 13 14 |
| <i>public money</i> has the same meaning as it has in the <i>Public Finance and Audit Act 1983</i> . | 15 16 |
| 4 Government contracts and associated tendering documents to be freely available for public inspection | 17 18 |
| (1) A public authority that enters into a government contract must ensure that, for at least 2 weeks from the date on which the authority entered into the contract, copies of the contract, and (if the contract was awarded on the basis of tenders) copies of the successful tender for the contract: | 19 20 21 22 23 |
| (a) are made available during ordinary business hours for public inspection, free of charge, at the head office of the authority, and | 24 25 26 |
| (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. | 27 28 29 |
| (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. | 30 31 32 33 |

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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. | 1 2 3 4 |
| (4) | The Ombudsman is charged with the scrutiny of public authorities in their performance of the duties imposed on them by this section and, for that purpose, may conduct a preliminary inquiry into and investigate, and report to Parliament on, their performance of those duties. | 5 6 7 8 9 |
| (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 a preliminary inquiry, investigation or report under the <i>Ombudsman Act 1974</i> . | 10 11 12 13 |
| (6) | This section does not require a public authority to make available for public inspection any information whose disclosure the Ombudsman has certified could reasonably be expected: | 14 15 16 |
| | (a) to prejudice significantly the competitive commercial activities of that or any other public authority, or | 17 18 |
| | (b) to interfere significantly with contractual or other negotiations relating to the competitive commercial activities of that or any other public authority. | 19 20 21 |
| (7) | This section does not apply to or in respect of any government contract entered into before the date of assent to this Act. | 22 23 |
| 5 | Accounts of private organisations receiving government grants to be audited by Auditor-General | 24 25 |
| (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 may be 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> . | 26 27 28 29 30 |
| (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 a grant. | 31 32 33 34 35 |
| (3) | A report given by the Auditor-General under subsection (2) in relation to a person or body that has received public money from a public authority by way of a grant must indicate whether or not, in | 36 37 |
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| the opinion of the Auditor-General, the person or body has applied the public money, for the purposes for which it was granted, in an economic, efficient and effective manner. | 38 2 3 |
| (4) 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). | 4 5 6 7 |
| (5) 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. | 8 9 10 11 |
| 6 Application of Act | 12 |
| 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. | 13 14 15 |