

Introduced by Mr A A Tink, MP

First print



New South Wales

Public Finance and Audit Amendment (Contract Provisions Disclosure) Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to require the public disclosure of particulars of contracts for carrying out any public works project where the cost or estimated cost of the project is more than \$5,000,000 and at least 20 per cent of that cost is to be met from money derived from non-Government sources.

Explanatory note

Outline of provisions

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

Clause 2 provides that the proposed Act will commence on the date on which the Governor assents to it.

Clause 3 gives effect to Schedule 1, which amends the *Public Finance and Audit Act 1983*.

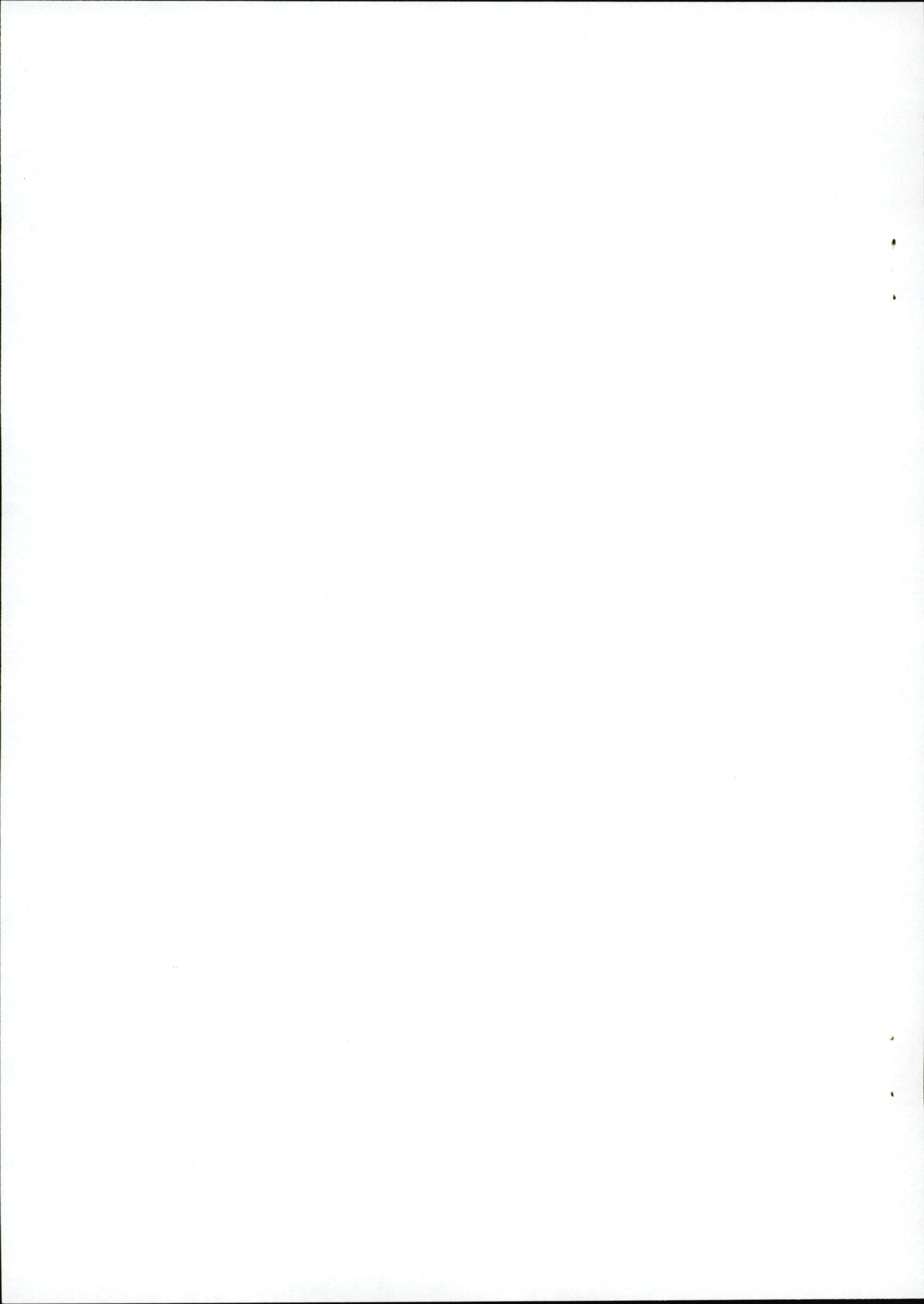
Schedule 1 Amendment

Schedule 1 inserts into the *Public Finance and Audit Act 1983* proposed Part 4A. The proposed Part contains the following provisions:

- Proposed section 58A, which provides that the new Part will apply to any contract to carry out a public work where the cost or estimated cost of carrying out the work is more than \$5,000,000 and at least 20 per cent of that cost is met or to be met from funds provided or to be provided otherwise than from public money or from the funds of a public authority,
- Proposed section 58B, which defines the expressions *contract*, *contract statement*, *contracting party*, *public authority*, *public money*, *public sector contracting party* and *public work* for the purposes of that Part,
- Proposed section 58C, which will require the public sector contracting party (for example, the relevant Minister) to a contract to which the Part applies to provide the Auditor-General with a contract statement containing comprehensive particulars of the contract,
- Proposed section 58D, which will require the Auditor-General to examine a contract statement provided under proposed section 58C and prepare a report on it for the Legislative Assembly,
- Proposed section 58E, which will require the Auditor-General to present his or her report on the contract statement to the Legislative Assembly, together with that statement,
- Proposed section 58F, which will require the Auditor-General to report to the Public Accounts Committee:
 - (a) if the Auditor-General considers that there has been a failure to comply with a requirement of the Part or of the Auditor-General under the Part, or
 - (b) if a contract statement contains false or misleading information or is inaccurate or incomplete, or
 - (c) if a person has obstructed the Auditor-General in the exercise of a function conferred by the Part.

Explanatory note

- Proposed section 58G, which makes it clear that:
 - (a) the proposed Part will apply to a contract despite the provisions of the contract, and
 - (b) the proposed Part will not operate as a breach of contract or confidence, or so as to give rise to a remedy by a contracting party or to cause or permit the termination of a contract.



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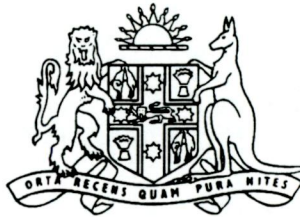


New South Wales

Public Finance and Audit Amendment (Contract Provisions Disclosure) Bill 1995

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New South Wales

Public Finance and Audit Amendment (Contract Provisions Disclosure) Bill 1995

No. , 1995

A Bill for

An Act to amend the *Public Finance and Audit Act 1983* to require the disclosure of particulars of certain contracts for carrying out privately funded public works; and for related purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Public Finance and Audit Amendment (Contract Provisions Disclosure) Act 1995*.

2 Commencement

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This Act commences on the date of assent.

3 Amendment of Public Finance and Audit Act 1983 No 152

The *Public Finance and Audit Act 1983* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Section 3)

Part 4A

Insert after section 58:

Part 4A Disclosure of information about privately funded public works contracts 5

58A Contracts to which Part applies

- (1) This Part applies to any contract to carry out a public work where:
- (a) the work is begun after the commencement of this Part, and 10
 - (b) the cost or estimated cost of carrying out the work is more than \$5,000,000, and
 - (c) at least 20 per cent of the cost is to be met from funds that are or are to be provided otherwise than from public money or from funds of a public authority. 15
- (2) This Part does not apply to a contract if:
- (a) all of the provisions of the contract have been publicly disclosed, or 20
 - (b) the contract is available for inspection during ordinary business hours by any member of the public who wishes to inspect it.

58B Definitions

In this section: 25

contract includes any associated contract, arrangement or understanding.

contract statement means a statement under section 58C.

contracting party means a party to a contract to which this Part applies. 30

public authority means any body established or constituted by an Act and includes a State owned corporation, but does not include the council of a local government area.

public money includes money of the Commonwealth as well as money as defined in section 4 (1). 5

public sector contracting party means:

- (a) the relevant Minister or other public officer in the case of a contract entered into on behalf of the Crown, the State or the Government, or 10
- (b) the relevant public authority in the case of a contract entered into by such an authority.

public work includes a new public work or a reconstruction, extension, improvement, repair or maintenance of an existing public work. 15

58C Public sector contracting party to provide contract statement to Auditor-General

- (1) If a contract to which this Part applies has been entered into, the public sector contracting party must provide the Auditor-General with a contract statement containing the following particulars: 20
 - (a) the names of each of the contracting parties,
 - (b) particulars of the public work to be carried out under the contract,
 - (c) if a contracting party is a body corporate, the name of any other body corporate that is, to the knowledge of the public sector contracting party, related to the party by virtue of section 50 of the *Corporations Law*, 25
 - (d) the duration of the contract, 30
 - (e) particulars of the consideration to be given by the public sector contracting party for the carrying out of the public work,
 - (f) if the contract provides for a transfer of a public work or other asset to the State or to a public authority at a future date, particulars of the proposed transfer, including the scheduled date for that transfer, the asset to be transferred and any consideration to be given for that transfer, 35

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- (g) if the contract provides for any asset belonging to the State or a public authority to be transferred to a non-public sector contracting party, particulars of the proposed transfer, including the scheduled date for that transfer, the asset to be transferred and any consideration to be given for that transfer, 5
- (h) particulars of any arrangements made under the contract for the maintenance or repair of the public work to which the contract relates, 5
- (i) particulars of any amounts payable under the contract by or on behalf of the public sector contracting party and of any provision of the contract under which those amounts can be varied, 10
- (j) if the contract contains a provision under which the terms of the contract may be renegotiated, particulars of that provision, 15
- (k) if the contract provides for any risk involved in carrying out or operating the proposed public work to be shared between the contracting parties, particulars as to how that risk is to be shared, 20
- (l) if the public sector contracting party has given any guarantee or undertaking as to the repayment of any loan obtained to finance the carrying out of the public work or as to any other matter arising under the contract, particulars of the guarantee or undertaking, including any liability that the State or a public authority may incur at some future time, 25
- (m) if a cost-benefit analysis has been carried out in relation to any matter with which the contract is concerned, particulars of the result of that analysis, 30
- (n) any information relating to the contract or the performance of the contract that:
- (i) is required to be lodged with, or notified to, the Australian Securities Commission under the *Corporations Law* or under any other law, or 35
 - (ii) is required by the rules of a securities exchange to be notified to the exchange. 40
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Schedule 1 Amendment

- (2) Subsection (1) must be complied with within 90 days after the contract is entered into or, if the contract was entered into before the commencement of this Part, within 90 days after that commencement. However, the public sector contracting party is not absolved from complying with that subsection only because that party has already failed to comply with that subsection and may therefore be liable to a penalty for that failure. 5
- (3) The contract statement does not have to contain information relating to a non-public sector contracting party in so far as the inclusion of the information would: 10
- (a) reveal that party's cost structure or the amount of profit likely to be derived by that party from performing the contract, or
 - (b) reveal any know-how or other trade secret belonging to that party, or 15
 - (c) otherwise place that party at a commercial disadvantage with its trade competitors.
- (4) The public sector contracting party may amend a contract statement provided under this section, but only with the consent of the Auditor-General. 20
- (5) A person must not include in a contract statement information that is, to the person's knowledge, false or misleading in a material respect.
- 58D Auditor-General to report on contract statement** 25
- (1) On being provided with a contract statement, the Auditor-General must examine the statement and must then prepare a report on the statement. The report must indicate whether or not, in the opinion of the Auditor-General, the requirements of section 58C have been complied with. 30
- (2) To enable the Auditor-General to exercise the functions conferred or imposed by subsection (1), the Auditor-General may require any party to the contract concerned to produce that contract or any other document of a kind referred to in section 58C (1) that relates to that contract, or an authenticated copy of that contract or document, for inspection by the Auditor-General. 35

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- (3) A contracting party must comply with a requirement made under subsection (2) within 7 days after being notified of the requirement by the Auditor-General or within such extended period as the Auditor-General may allow. 5

58E Auditor-General's report to be presented to Legislative Assembly

- (1) As soon as practicable after preparing a report on a contract statement, the Auditor-General must present the report and the statement to the Legislative Assembly, if the Legislative Assembly is then sitting. 10
- (2) If, when the Auditor-General seeks to present the report and contract statement to the Legislative Assembly, the Legislative Assembly is not sitting, the Auditor-General must present the report and contract statement to the Clerk of that Assembly to be dealt with in accordance with section 63C. 15

58F Auditor-General to report non-compliance to Public Accounts Committee

If the Auditor-General forms the view that: 20

- (a) a contracting party has failed to comply with a requirement of this Part or a requirement of the Auditor-General made under this Part, or
- (b) a contract statement provided to the Auditor-General contains false or misleading information or is inaccurate or incomplete, or 25
- (c) any person has obstructed the Auditor-General in the exercise of a function conferred or imposed on the Auditor-General by this Part,

the Auditor-General must report the matter to the Public Accounts Committee as soon as practicable after forming that view. 30

58G Operation of Part

- (1) This Part applies to a contract irrespective of the provisions of the contract.
- (2) The operation of this Part is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or 5
 - (b) as giving rise to any remedy by a contracting party, or
 - (c) as causing or permitting the termination of a contract, or 10
 - (d) as an event of default under a contract.