

Auditing for the Australian Capital Territory

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AUDITOR-GENERAL
AUSTRALIAN CAPITAL TERRITORY



PA 01/13

3 June 2002

The Speaker
ACT Legislative Assembly
South Building
London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

In accordance with *Section 17* of the *Auditor-General Act 1996*, I transmit to the Speaker my report titled *Operation of the Public Access to Government Contracts Act* for presentation to the Legislative Assembly.

This Audit was undertaken by Jo Benton, Director, Performance Audits and Administration.

The Audit was undertaken with the assistance of Russell Livermore and Katinka Mutandadzi.

Yours sincerely,

John A Parkinson

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1 SUMMARY AND AUDIT OPINION

INTRODUCTION

1.1 This report presents a summary of the results of a performance audit that reviewed the operation of the *Public Access to Government Contracts Act 2000* (the Act).

SIGNIFICANCE OF THE ACT

1.2 The Act provides for the publication, as far as possible, of the terms of government contracts. In introducing the Bill for the Act the Bill's sponsor stated that:

This legislation seeks to enforce the public's right to know how their money is being spent and how public assets are managed, while giving business confidence that their privacy is protected.¹

THE SYSTEM FOR MAKING GOVERNMENT CONTRACTS AVAILABLE TO THE PUBLIC

1.3 The Act requires that a public text of government contracts with a value of more than \$50,000 be prepared and made available to the public. The Act limits information in contracts which can be made confidential and excluded from the public text. If a contract is to make certain information confidential, it must do so using provisions that follow the model confidentiality clause in the schedule of the Act.

1.4 The Act applies to government agencies. Government agencies are defined in the Act to mean the Territory or a Territory instrumentality but does not include a Territory owned corporation.

1.5 Where a government agency agrees to the inclusion of a confidentiality clause in a contract, the agency must provide a copy of the contract to the Auditor-General. The Act further requires that the Auditor-General maintain a register of contracts containing confidentiality clauses and to report every six months to a committee of the Legislative Assembly on the contracts added to the register. Annex A

¹ Australian Capital Territory Legislative Assembly, *Debates*, 5 May 1999, page 1338

provides further information on the system for making government contracts available to the public.

AUDIT APPROACH

1.6 The Procurement Policy sub-unit of the Department of Treasury oversees the operation of the Act. As a result, the audit was undertaken in close association with that sub-unit.

1.7 The audit focused on analysing those government contracts containing confidentiality clauses that were submitted to the Auditor-General. The audit also examined the Act and discussed its operation with procurement practitioners, legal advisers and others.

1.8 The Audit also had regard to the two lists and supporting statements forwarded to the Committee of the Legislative Assembly by the Auditor-General in accordance with the Act and the Committee's report to the Legislative Assembly on those lists. The Audit also considered the Government's response to the Committee's report that was presented to the Legislative Assembly on 7 March 2002.

1.9 The Audit was conducted in accordance with those Australian Auditing Standards applicable to performance audits and included those tests and other procedures that the Audit considered necessary in the circumstances.

AUDIT OBJECTIVE

1.10 The objective of this Audit was to provide an independent opinion to the Legislative Assembly on whether the Public Access to Government Contracts Act is effective and whether it is being administered effectively.

1.11 The audit opinion formed on the objective is set on page three.

AUDIT OPINION

The Public Access to Government Contracts Act is not effective and is not being administered effectively.

BASES FOR THE AUDIT OPINION

1.12 The opinion that *the Public Access to Government Contracts Act is not effective and is not being administered effectively* is based on the following findings.

- Not all contracts containing confidentiality clauses have been submitted to the Auditor-General as required by the Act. (*Chapter 2*)
- An analysis of the confidentiality clauses in the 41 contracts received by the Auditor-General shows that only five contracts appear to have fully complied with the Act. (*Chapter 2*)
- Not all contracts that contain confidential information need to be provided to the Auditor-General for inclusion in the register. (*Chapter 3*)
- There is nothing in the Act that requires any agency to take any positive steps to disclose the existence of a government contract. (*Chapter 3*)
- All contract amendments, including changes to the cost of a contract, must be published regardless of their significance or value. (*Chapter 3*)
- The Act does not apply to at least two Territory authorities. (*Chapter 3*)
- The Act and the model confidentiality clause are unclear in a number of important respects. (*Chapter 3*)
- The Act contains no provisions that require agency heads to certify that they have complied with it. (*Chapter 3*)

Summary

1.13 The Act is not effective because the Act and the model confidentiality clause are unclear in a number of important respects. In addition, there is nothing in the Act that requires an agency to disclose the existence of a government contract and the Act contains no compliance provisions. The Act is not being administered effectively because not all contracts containing confidentiality clauses are being submitted to the Auditor-General and most of those that have been submitted do not comply with the Act.

FUTURE ACTIONS

1.14 The following suggestions are made to address the audit findings detailed in this report.

Incompleteness of the Register (*Chapter 2*)

1.15 In view of the findings that the register maintained by the Auditor-General is incomplete, it is suggested that all agencies review the contracts that they have entered into since 21 December 2000. Where agencies ascertain that they have entered into contracts that should have been forwarded to the Auditor-General they should do so as soon as possible. It is also suggested that the administering department closely monitor this process. The monitoring process could include a certification by each agency that they have reviewed their contracts and have passed copies of all relevant contracts to the Auditor-General.

Status of Confidential Information under the Act (*Chapter 2*)

1.16 As it appears that most of the contracts forwarded to the Auditor-General have not fully complied with the requirements of the Act, it is possible that at least some of the information regarded as confidential by the contracting parties may not in fact be confidential under the Act. That is, information that justifiably should be protected may not in fact be protected. Accordingly, it is suggested that the legal implications of this matter should be followed up promptly.

Scope of the Register (*Chapter 3*)

1.17 If the parties to a government contract wish to make certain information in it confidential, they must do so by including a confidentiality clause in the contract. Copies of all contracts containing confidentiality clauses must be forwarded to the Auditor-General for inclusion in a register. It is at the discretion of the parties to a contract, however, as to whether they include a confidentiality clause in a contract that contains confidential information that derives its 'confidentiality' from another area of the law. As a result the register maintained by the Auditor-General is not a register of all contracts that contain confidential information.

1.18 Following consideration of this matter, the then Standing Committee on Finance and Public Administration (incorporating the

public Accounts Committee) recommended that operation of the Act be reviewed. The review would assess whether all confidential information in contracts is covered by the Act and whether some contracts regularly made by government agencies fall outside the terms of the Act. The Audit agrees that, in the light of the matters raised in this report, a review of the Act is warranted.

Disclosing the Existence of Government Contracts (*Chapter 3*)

1.19 There is no single public source document that lists all government contracts and indicates where they are available. In addition, there is nothing in the Act that requires any agency to take any positive steps to disclose the existence of a contract in any publicly accessible place. Accordingly, it is suggested that all agencies be required to publish a list of all contracts that they have entered into on a single internet site.

Reporting of Contract Amendments (*Chapter 3*)

1.20 All contract amendments, including changes to the contact price, must be published regardless of their value or significance. Accordingly, it is suggested that the Act be amended to provide for the public text of contracts to be amended in the instances set out in Chapter 3.

Scope of the Act (*Chapter 3*)

1.21 The University of Canberra and the University of Canberra College are not covered by the Act. Accordingly it is suggested that the Act be amended to apply to the University. If the Act were to be amended to apply to the University it would automatically apply to the University of Canberra College.

Absence of Compliance Provisions (*Chapter 3*)

1.22 The Act contains no provisions that require agency heads to certify that they have complied with it. The Audit agrees with the Public Accounts Committee that the Act be amended to require that agency heads certify in writing, to the Auditor-General, that details of contracts and amendments provided for the register are complete and accurate.

Model Confidentiality Clause (Chapter 3)

1.23 The model confidentiality clause in the Schedule to the Act requires that the kind of information to be kept confidential be listed in the contract. The term ‘kinds of information’, however, is not defined in the Act. Accordingly it is suggested that the meaning of the term ‘kinds of information’ be clarified.

Time for Contracts to be Available to the Public (Chapter 3)

1.24 The Act is silent on how long contracts covered by the Act are to be made available to the public. Accordingly, it is suggested that contracts be made available to the public for, say, three years after they have ceased to be current.

CONCLUSION

1.25 The Audit has drawn attention to a number of deficiencies in the operation of the Act. In part these deficiencies derive from shortcomings in the Act itself. Implementation of the legislative changes suggested in this report will provide a sound basis for the effective implementation of an important body of legislation.

DEPARTMENTAL RESPONSE TO THE REPORT

1.26 In accordance with section 18 of the *Auditor-General Act 1996*, a final draft of this report was provided to the Chief Executive of the Department of Treasury for his consideration and comments. The Chief Executive’s response is set in the following paragraphs.

I am pleased to note the Report’s findings that Treasury, as the administering department, has taken appropriate steps to advise all agencies of their responsibilities under the Act and to provide the opportunities for practitioners to clarify their understanding of the Act.

I also note that the report identifies a number of deficiencies and issues in relation to the operation of the Act.

The Government recently agreed to the recommendation made by the Standing Committee on Finance and Public Administration (Public Accounts Committee report No 28) that the operation of the Public Access to Government Contracts Act 2000 be reviewed.

The Department of Treasury will undertake that review. The suggestions made in the Report are timely and will provide valuable input into the review process. Accordingly, I have asked that these suggestions be carefully considered and that further consultations on these matters be held, as needed, with the Auditor-General's Office.

CONCLUDING COMMENTS

1.27 The Audit welcomes the Chief Executive's response.

2 ADMINISTRATION OF THE ACT

INTRODUCTION

2.1 This Chapter reviews the administration of the Public Access to Government Contracts Act in the light of experience gained during its first twelve months of operation by the Territory and its agencies.

2.2 This Chapter specifically reviews:

- the action taken by the administering department, that is the Department of Treasury, to familiarise agencies with their requirements under the Act;
- the reporting of contracts with confidentiality clauses to the Auditor-General; and
- the extent to which confidentiality clauses in government contracts comply with the Act.

SIGNIFICANT FINDINGS

- *Appropriate steps were undertaken by the administering department and others to advise all agencies of their responsibilities under the Act.*
- *Agencies have reported to the Auditor-General that 41 contracts with confidentiality clauses were entered into by Territory agencies during the year ending 21 December 2001.*
- *Not all contracts containing confidentiality clauses have been submitted to the Auditor-General as required by the Act.*
- *An analysis of the confidentiality clauses in the 41 contracts received by the Auditor-General shows that only five contracts appear to fully comply with the Act.*

ACTION TAKEN TO ADVISE AGENCIES OF THEIR REQUIREMENTS UNDER THE ACT

2.3 The Act came into effect on 21 December 2000. Since that time a number of steps have been undertaken by the administering department, that is the Department of Treasury, and others to advise all agencies of

their responsibilities under the Act.

2.4 The Department of Treasury issued two purchasing circulars in January 2001 on the Act. The first circular provided advice on the application of the Act and the second circular provided an example of the preparation of public texts of contracts.

2.5 In addition, the Department held two seminars for purchasing officers and other interested persons in March and May 2001. The seminars were designed to disseminate information on the Act and to provide a forum for practitioners to clarify their responsibilities under the Act. The seminars included presentations by officers from the departments of Treasury and Urban Services, the Government Solicitor's Office and the Auditor-General's Office. About 100 persons attended the seminars.

2.6 In addition, the Government Solicitor's Office issued a legal bulletin in January 2001 on the Act. The bulletin focused on key legal issues arising from the introduction of the new legislation. Furthermore, the Department of Urban Services posted information on the Act on its Buyers and Sellers Information Service (BASIS) website and provided related advice to agencies.

2.7 The Auditor-General forwarded a letter to 34 agencies on 22 February 2001 outlining the Act and requesting assistance from agencies in putting in place a system for both agencies and the Auditor-General to meet their responsibilities under the Act. The letter requested each agency to provide written advice of the procedures it had put in place to ensure that all relevant contracts and amendments were provided to the Auditor-General in a timely manner. Ultimately responses were received from about twenty agencies.

Audit Comments

2.8 Appropriate steps were taken by the administering department to advise all agencies of their responsibilities under the Act and to provide an opportunity for practitioners to clarify their understanding of the Act. In the early stages of introducing the Act there appeared to be a number of misconceptions about the purpose of the Act. A widely held misconception was a belief that the Act applied to the outputs of government contracts rather than to the information contained in the contracts. In addition, there appeared to be a tendency to make

information in contracts confidential 'just in case' a problem arose in the future. These misconceptions are progressively being corrected.

REPORTING OF CONTRACTS WITH CONFIDENTIALITY CLAUSES

2.9 In accordance with section 8 of the Act, government agencies that agree to the insertion of a confidentiality clause in a contract must provide the Auditor-General with a copy of the contract within 14 days after the contract, or amendment inserting the clause into the contract, is made. Furthermore, that section requires the Auditor-General to maintain a register of contracts containing confidentiality clauses. Details of contracts provided to the Auditor-General are entered in the register as they are received.

2.10 In accordance with section 9 of the Act, for each six months period the Auditor-General must give the appropriate Legislative Assembly committee a list of contracts inserted in the register during the period. The list must be given to the committee 'as soon as reasonably possible after the end of the period'.

2.11 On 8 August 2001, the Auditor-General forwarded a list of the 22 contracts containing confidentiality clauses that were submitted to him during the six months ending 21 June 2001 to the then Chair of the then Standing Committee on Finance and Public Administration (incorporating the Public Accounts Committee). On 21 January 2002, the Auditor-General forwarded a second list of the 19 contracts containing confidentiality clauses that were submitted to him during the six months ending 21 December 2002 to the Chair of the Standing Committee on Public Accounts.

2.12 In total, nine agencies have reported that they entered into 41 contracts with confidentiality clauses during the year ending 21 December 2001. One agency entered into 24 contracts containing confidentiality clauses. Annex B provides information on the title of each contract; the parties to each contract; the date that each contract was signed; and the date that each contract was received by the Auditor-General.

2.13 The lists were provided to the Standing Committee without any assurance as to their accuracy and completeness. At the time the Auditor-General noted that agencies could be withholding relevant contracts

deliberately or unwittingly.

Audit Comments

2.14 That the Auditor-General was not able to give any assurance about the completeness or accuracy of the two lists submitted to the Standing Committee is a serious matter. In order to ascertain the extent to which agencies are complying with this requirement, the Audit asked three agencies to provide it with a list of all contracts valued at over \$50,000 that were entered into over the twelve months ending 22 December 2001.

2.15 In total, the Audit reviewed a sample of the 32 contracts entered into over the period by the three agencies. Nine of those contracts were found to contain confidentiality clauses. Two had been provided to the Auditor-General in accordance with the Act. Of the remaining seven contracts, three contained a confidentiality clause relating to information that derived its confidentiality from another law. The remaining four contracts should have been provided to the Auditor-General in accordance with the Act.

2.16 Separately the Auditor-General received letters from two other agencies advising him of the contracts containing confidentiality clauses that had been entered into over the six months ending 22 December 2001. One agency advised that it had entered into four contracts containing confidentiality clauses. Only one had been forwarded to the Auditor-General as required by the Act. The other agency advised that it had entered into seven contracts. Four had been provided to the Auditor-General as required by the Act.

2.17 The review confirms the Auditor-General's concern that the lists that he provided to the then Standing Committee on Finance and Public Administration (incorporating the Public Accounts Committee) may not contain all contracts with confidentiality clauses entered into during the period. The review also illustrates that contracts containing confidential information that derives its confidentiality from other laws are not being forwarded to the Auditor-General.

2.18 In view of the findings of the Audit's review, it is suggested that all agencies review the contracts that they have entered into since 21 December 2000 with a view to determining which contracts should have been forwarded to the Auditor-General in accordance with the Act.

Where agencies ascertain that they have entered into contracts that should have been forwarded to the Auditor-General they should do so as soon as possible. In view of the difficulties encountered with the administration of the Act, it is also suggested that the administering department closely monitor this process. The monitoring process could include a certification by each agency that they have reviewed their contracts and have passed copies of all relevant contracts to the Auditor-General.

2.19 Most agencies that submitted them to the Auditor-General failed to do so within 14 days as required by the Act. While this is not a significant issue in itself, it does suggest that some agencies may not have adequate systems in place to provide for the Act's requirements. In addition, the longer it takes for an agency to provide a copy of a contract to the Auditor-General the more likely it is that an agency will inadvertently omit to forward a copy to the Auditor-General.

CONFIDENTIALITY CLAUSES IN GOVERNMENT CONTRACTS

2.20 Section 12 of the Act states that if a government contract is to make certain information confidential, it must do so by using provisions 'that follow the effect of the model confidentiality clause in the Schedule to the Act'. The Schedule provides for an agency to 'list the kinds of information' in the contract that the parties have agreed to keep confidential.

2.21 The Schedule to the Act also provides for the parties to list the grounds that are relevant in reaching a decision that information should be made confidential. The grounds that may be used to determine that information is confidential are listed in sub-section 13(1) of the Act. Section 14 of the Act states that a 'confidentiality clause has no effect if ... it does not comply with section 12' of the Act.

Audit Comments

2.22 An analysis of the confidentiality clauses in the 41 contracts received by the Auditor-General shows that only five contracts or 12 percent of all contracts appear to fully comply with the Act. Table 2.1 summarises the Audit's findings in this regard.

Table 2.1 – Reasons for Non-Compliance with Model Clause in Act

Grounds for Non-Compliance	Number of Contracts ²
The kind of information to be kept confidential has been described in a broad and unhelpful manner	32
The contract does not include grounds used to determine that information is confidential	18
All statutory grounds for determining that information is confidential have been included in the contract without discrimination	13
The contract does not specify what information is confidential	4
The contract does not otherwise follow the effect of the model clause	14

2.23 The Table shows that most contracts appear to have described the confidential information contained therein in a broad and unhelpful manner. For example many contracts state that the ‘drawings, specifications ... and terms of this contract’ are confidential. One contract states that the ‘existence and terms of this contract’ are confidential. Another contract states that ‘all information relating to the event’ is confidential information.

2.24 The Table also shows that a significant number of contracts failed to include information required by the Act. In this regard, 18 contracts did not include the grounds used to determine that particular information is confidential. In addition, four contracts did not specify what information contained in them is confidential.

2.25 In 13 contracts all of the possible grounds listed in the Act for determining that material is confidential have been included in the contract without discrimination. In some cases it is possible that all of the grounds listed in the Act may be relevant. The inclusion of all possible grounds in the remaining cases, however, is not helpful for a person wishing to obtain an understanding of why particular information has been made confidential by the parties to the contract.

² The numbers in the Table do not add up to the total number of contracts because a number of contracts are non-compliant on more than one ground.

2.26 Detailed comments on the extent to which each contract complies with the Act is included in Annex C.

2.27 The Audit suggests that the failure of most contracts submitted to the Auditor-General to fully comply with the confidentiality clause is probably due to a combination of lack of familiarity with the Act and a lack of clarity in the legislation about the meaning of the term ‘kinds of information to be kept confidential’. The lack of clarity in the legislation and ways to resolve it are discussed in Chapter 3 – *Legislative Issues*.

2.28 As indicated above, section 14 of the Act states that a confidentiality clause has no effect if ‘it does not comply with section 12 (Confidentiality clause in a government contract)’. Also as indicated above, Section 12 of the Act states that ‘if a government contract is to make certain information confidential, it must do so by using provisions that ... follow the effect of the model confidentiality clause in the Schedule’ to the Act.

2.29 As it appears that most of the contracts forwarded to the Auditor-General have not fully complied with the requirements of the Act, it is possible that at least some of the information which justifiably should be confidential may not in fact be confidential under the Act. That is, information that should be protected may not in fact be protected. The legal implications of this matter should be followed up as a matter of priority.

CONCLUSION

2.30 This Chapter reviewed the administration of the Public Access to Government Contracts Act in the light of experience gained as a result of its first twelve months of operation by the Territory and its agencies. While appropriate steps have been taken by the administering department and others to familiarise practitioners with the expectations of the Act, there have been a number of important shortcomings in implementation.

2.31 As a result, all agencies should review the contracts that they have entered into since the Act came into effect. Where agencies ascertain that they have entered into contracts that should have been forwarded to the Auditor-General they should do so as soon as possible. In addition, legal advice should be sought on the implications of confidential information which should justifiably be protected not being protected.

3 LEGISLATIVE ISSUES

INTRODUCTION

3.1 This Chapter reviews the provisions of the Public Access to Government Contracts Act in the light of experience gained during its first twelve months of operation by the Territory and its agencies.

3.2 This Chapter specifically reviews:

- the scope of the register maintained by the Auditor-General;
- the Act's disclosure provisions;
- the need to report contract variations to contracts made public under the Act;
- the scope of the Act;
- the Act's compliance provisions;
- the model confidentiality clause annexed to the Act;
- the time for which contracts are to be made available to the public; and
- the time for which material remains confidential.

SIGNIFICANT FINDINGS

- *Not all contracts that contain confidential information need to be provided to the Auditor-General for inclusion in the register.*
- *There is nothing in the Act that requires any agency to take any positive steps to disclose the existence of a government contract.*
- *All contract amendments, including changes to the contract price, must be published regardless of their significance or value.*
- *The Act does not apply to at least two Territory authorities.*
- *The Act contains no provisions that require agency heads to certify that they have complied with it.*

- *The Act and the model confidentiality clause are unclear in a number of important respects.*

SCOPE OF THE REGISTER

3.3 In accordance with sub-section 13(1) of the Act:

A government agency may agree to make information confidential under a government contract only if it has satisfied itself, in accordance with this section –

- (a) that the release of the information would result in –
 - (i) the unreasonable disclosure of personal information; or
 - (ii) the disclosure of a trade secret; or
 - (iii) the unreasonable disclosure of information with commercial value; or
 - (iv) the unreasonable disclosure of information about the business affairs of a person; or
- (b) that it is required by, or gives effect to, an obligation of confidentiality that arises from another source.

3.4 That is, certain information in a contract may, for the purposes of the Act, be made confidential by the parties where it satisfies the criteria specified in the Act. This must be done by including an appropriate confidentiality clause in the relevant contract in accordance with section 12 of the Act.

3.5 There is no obligation in the Act, however, for government agencies to include confidentiality clauses in contracts where information in the contract may be confidential as a result of some other law. This latter case would arise where certain information is required not to be disclosed by the operation of, for example, the *Privacy Act 1988* (Cwlth) or the *Health Records (Privacy and Access) Act 1997*(ACT). A number of other Acts and the common law would also be relevant in this regard.

3.6 The fact that there is no statutory obligation on government agencies to include a confidentiality clause in a contract that contains confidential information means that there are probably a number of contracts containing confidential information that are not recorded on any comprehensive data base. Examples of such contracts would be contracts for the sale of land by the Commissioner for Housing. These contracts

contain information that is made confidential pursuant to the Privacy Act.

3.7 The Auditor-General is required, pursuant to section 8(1) of the Act, to maintain a register of contracts containing confidentiality clauses. That is, the register is required to contain a list of all those contracts in which information is made confidential pursuant to the Act. There is no requirement in the Act for the Auditor-General to maintain a register of contracts containing information, that is to be treated as confidential as a result of the operation of some other law. Accordingly, the register is not a complete record of all contracts containing confidential information.

3.8 These matters were raised in the Auditor-General's report for the six months ending 21 June 2001, with the then Standing Committee. As a result the Committee stated that it:

is of the view that this was not the Assembly's intention when passing the Act. It could reasonably be assumed that paragraph 13 (1)(b) of the Act would capture other legislative requirements placed on agencies in developing contracts.³

3.9 As a result, the Committee recommended that the operation of the Public Access to Government Contracts Act be reviewed. The review would assess whether all confidential information in contracts is covered by the Act and whether some contracts made by government agencies fall outside the terms of the Act.

3.10 On 7 March 2002, the Treasurer presented the Government's response to the Committee's recommendations. In that response the Government indicated that it agreed with the recommendation and a report from the review to be undertaken by the Department of Treasury is expected to be submitted to the Government by the end of September 2002.

Audit Comments

3.11 The Audit agrees that in the light of the matters raised in this report, a review of the Act is warranted. It is hoped that matters raised in this report will assist in informing that review.

³ Public Accounts Committee Report No 48, August 2001, page 7.

3.12 The Act applies to all government contracts. The obligations under the Act are for government agencies to prepare a public text of a contract that excludes any confidential information, and then make that public text available to the public. If the parties to a government contract wish to make certain information in it confidential they must do so by including a confidentiality clause in the contract as required by the Act.

3.13 Copies of all contracts containing confidentiality clauses must be forwarded to the Auditor-General for inclusion in a register. As it is discretionary whether confidentiality clauses are included in contracts that contain confidential information that derives its 'confidentiality' from another area of the law, the register does not necessarily include all government contracts that contain confidential information.

3.14 There would appear to be two clear options available to address this matter. The first would be to agree to accept that the Act only applies to those contracts in which information is made confidential pursuant to the Act. The second option would be to seek to extend the operation of the Act such that the register would cover all contracts that contain confidential information.

3.15 Section 16 of the Act states that the 'Act does not change the effect of any other Territory law that deals with an obligation either to disclose or not to disclose information'. In addition, in accordance with ordinary principles, Commonwealth law would take precedence over Territory law to the extent of any inconsistency between them. That is, the Act only has effect to the extent that it does not conflict with other Territory or Commonwealth laws. Accordingly, no action would be necessary if it were agreed to accept that the Act should only address those contracts that contain confidential information as created by the Act.

3.16 If it were decided to pursue the second option, that is to extend the operation of the Act to cover all contracts that contain confidential information (including personal information as defined under the Privacy Act), it would be necessary to explicitly provide for such a requirement in the Act. Such a course would result in a very significant expansion in the size of the register maintained by the Auditor-General. It would also result in a considerable increase in administrative effort by both those involved in contract preparation and those involved in administering the scheme, including those in the Auditor-General's Office.

3.17 The Audit agrees that in the light of the matters raised in this report, a review of the Act is warranted.

DISCLOSING THE EXISTENCE OF GOVERNMENT CONTRACTS

3.18 Prior to the passage of the *Financial Management Act 1996* information on contracts entered into by Government agencies was published in the Government Gazette. Since that time the incidence of gazettal has declined.

3.19 Furthermore, the passage of the Public Access to Government Contracts Act has introduced a lack of uniformity into the method by which government contracts are published. The Act provides, at Section 7, for the public text of contracts to be made available to the public by either ‘making paper copies available for purchasing’ or by ‘making electronic copies available without charge’.

Audit Comments

3.20 At the time the Act was passed, it was envisaged that the majority of agencies would use the existing publication facility on the Department of Urban Services’ Buyers and Sellers Information Service (BASIS) website to publish contracts electronically. While this has occurred to some degree, there are many contracts that are not included on the BASIS site. As a result there is no single source document that lists all government contracts and indicates where they are available.

3.21 In addition, there is nothing in the Act that requires any agency to take any positive steps to disclose the existence of a contract in any publicly accessible place. Accordingly, an agency could theoretically comply with the Act by merely having paper copies of a contract available for purchase and doing no more.

3.22 ***Suggestions for Change*** – It is suggested that all agencies be required to publish a list of all contracts that they have awarded on a single internet site. This could be done by amending the Act or otherwise. Such a site could include key information on the contract such as the parties to the contract; the subject matter of the contract; the contract value; the date of the contract; whether it contains a confidentiality clause and advice on where copies of the contract could be viewed and obtained. Where contracts are very large and contain material

unsuitable for publication on the internet, such as drawings, provision could be made in the Act for such material to be made available in paper copy.

REPORTING OF CONTRACT AMENDMENTS

3.23 In accordance with sub-section 6(1) of the Act an agency must prepare a public text of a government contract. Sub-section 6(2) lists that information that must be included in the public text of a contract. That sub-section states that the public text must include ‘the full consideration to be given by the government agency’.

3.24 A government contract is defined by section 5 of the Act to include an amendment to a government contract. Section 7 of the Act states that the public text of each contract must be made available to the public. The combined effect of these sections means that all contract amendments, including changes to the contract price, must be published regardless of their significance or value.

Audit Comments

3.25 In some cases, contracts are amended routinely, for example, many building contracts are amended on a daily basis. Changes could be financial in nature or may relate to other matters contained in the contract such as the duration of the contract or the services or products to be supplied. The publication of all of such changes could become unreasonably onerous and expensive. These concerns may be overcome if only significant changes to contracts were required to be made public.

3.26 ***Suggestions for Legislative Change*** – It is suggested that consideration be given to amending the Act to provide for the public text of contracts to be amended only where:

- a. any agreed textual or other changes are made that would alter the information required to be published in the public text as included in sub-section 6(2) of the Act;
- b. aggregate changes to the contract value equal to or greater than 10 percent of the previously published contract value;
- c. changes to the net contract value are more than \$50,000; or
- d. any single variation valued at \$20,000 or above is agreed.

SCOPE OF THE ACT

3.27 The Act applies to ‘government agencies’ which are defined in section 4 of the Act to mean ‘the Territory or a Territory instrumentality, but does not include a Territory owned corporation’. In the dictionary to the *Legislation Act 2001* a Territory instrumentality is defined to mean a corporation that –

- (a) is established under an Act or statutory instrument, or under the Corporations Act; and
- (b) is a Territory instrumentality under the *Public Sector Management Act 1994*.

3.28 At sub-section 3(1) of the *Public Sector Management Act 1994* a ‘Territory instrumentality’ is defined, in part, as:

A body corporate that is established by or under an Act, or under the Corporations Law, and

- (a) is comprised of persons, or has a governing body comprised of persons, a majority of whom are appointed by a Minister or an agency or instrumentality of the Territory;
- (b) is subject to control or direction by a Minister; or
- (c) is declared under section (3A) to be a Territory instrumentality

3.29 The Audit understands that the University of Canberra believes that it is not a ‘Territory instrumentality’ because its governing body, that is the University Council, has ten members who are appointed by the Chief Minister, out of a possible 22 members. In addition, the University has not been declared a ‘territory instrumentality’ under section 3A of the Public Sector Management Act.

3.30 In addition the Audit understands that the University of Canberra College also believes that it is not a ‘Territory instrumentality’ because its board has five members none of whom are appointed by a Minister. The University appoints the members of the board of the College. In addition, the College has not been declared a ‘Territory instrumentality’ under section 3A of the Public Sector Management Act.

Audit Comments

3.31 ***Suggestions for Legislative Change*** - There would seem to be no reasonable grounds for the Act not to apply to the University or the University of Canberra College. Accordingly it is suggested that the Act be amended to apply to the University. If the Act were to be amended to apply to the University it would automatically apply to the University of Canberra College as the board of the College would then be comprised of persons who were appointed by a 'Territory instrumentality'.

COMPLIANCE PROVISIONS

3.32 The Act contains no provisions that require agency heads to certify that they have complied with it.

3.33 The Auditor-General's report to the Standing Committee on Finance and Public Administration (incorporating the Public Accounts Committee) for the six months ending 21 June 2001 stated that 'the list is provided without any assurance by my Office as to its accuracy and completeness'. As a result the then Standing Committee stated that:

there needs to be some assurance that the Auditor's register is accurate. The responsibility for making such an assurance cannot reside with the Auditor who is reliant on information provided by agencies. It can and should reside with the Chief Executive Officers of the government agenc(ies) providing the information.⁴

3.34 The Committee then recommended that the Act be amended to require Chief Executive Officers to certify in writing, to the Auditor-General, that the details of contracts and amendments provided for the register are the full and accurate details of contracts and that the time period required by the Act is complied with.

3.35 In its report the Committee recognised that such legislative change would not be possible to implement in the short term. It therefore suggested that administrative processes should be established in the interim. The Committee recommended that Ministers report to the next Assembly on what administrative processes have been established in each government agency to ensure compliance with the Act.

⁴ Public Accounts Committee Report No 28, August 2001, page 5.

3.36 On 7 March 2002, the Treasurer presented the Government's response to the Committee's recommendations. In that response the Government indicated that it agreed in principle with the recommendations. As part of that response the Treasurer indicated that an amendment to the Act would be drafted to:

- (a) confirm the responsibilities of Chief Executive Officers to put in place appropriate measures to ensure compliance with the requirements of the Act; and
- (b) specify agency reporting requirements.

3.37 In that response the Government also indicated that it had agreed with the Committee's recommendation that Ministers report to the next Assembly on what administrative processes have been established in each government agency to ensure compliance with the requirements of the Act.

Audit Comments

3.38 ***Suggestions for Legislative Change*** – The Audit agrees with the proposal to amend the Act to confirm the responsibilities of Chief Executive Officers in this regard. Certification by chief executive officers would provide an added level of assurance as to the completeness and accuracy of the contracts provided by agencies for inclusion in the register.

3.39 The Audit, however, notes departments have chief executives and not chief executive officers. In addition, some agencies have a senior administrative officer rather than a chief executive officer.

3.40 It is suggested therefore that the Act should be amended to require all agency heads to certify that the details of contracts and amendments provided for the register are complete and accurate. If such an amendment to the Act were made it would also facilitate the periodic audit of information provided by agencies for inclusion in the register.

3.41 ***Suggestions for Better Practice*** – The Audit supports the proposal that Ministers report to the next Assembly on what administrative processes have been established in each government agency to ensure compliance with the requirements of the Act.

MODEL CONFIDENTIALITY CLAUSE

3.42 Paragraph M of the Model confidentiality clause in the Schedule to the Act states that ‘In this agreement, *confidential information* means [list of the kinds of information to be kept confidential]’. The term ‘kinds of information’, however, is not defined in the Act.

Audit Comments

3.43 The Audit has examined the way in which agencies have listed ‘the kinds of information to be kept confidential’. The Audit considers that most agencies that have included confidentiality clauses in their contracts have interpreted the term ‘kinds of information’ too broadly. As a result the terms used are not considered to be helpful in forming an understanding of what the confidential matters are in individual contracts. This matter is discussed in more detail in Chapter 2 *Administration of the Act*. Specific instances of where the kind of information to be kept confidential appears to be described too broadly are listed in Annex C.

3.44 *Suggestions for Change* - A reason for non-compliance with the legislation could be because sub-clause M of the model clause is unclear. Accordingly it is suggested that the meaning of the term ‘kinds of information’ be clarified. This could be done by amending the Act or otherwise.

TIME FOR CONTRACTS TO BE AVAILABLE TO THE PUBLIC

3.45 The Act is silent on how long contracts covered by the Act are to be made available to the public.

3.46 There are two sections in the Act relating to the period that information should be kept confidential. Sub-section 13(2) of the Act states that:

A government agency must not agree to make information confidential if-

...

- (e) the agreement would require the confidentiality to apply for longer than is necessary to protect the interest concerned.

Whereas section 15 of the Act states that:

If information required to be kept confidential by a confidentiality clause is disclosed under this Act, that disclosure does not affect the continuing force of the confidentiality clause under the agreement.

3.47 Neither of these provisions address the question of the duration for which government contracts covered by the Act should be publicly available.

Audit Comments

3.48 *Suggestions for Change* - Contracts covered by the Act should be available to the public for as long as they are current and for a reasonable period thereafter. Accordingly, it is suggested contracts be made available to the public for three years after they have ceased to be current. This could be done by amending the Act or otherwise.

CONCLUSION

3.49 This chapter reviewed the provisions of the Public Access to Government Contracts Act in the light of experience gained as a result of its first twelve months of operation. The Audit has noted a number of areas where consideration should be given to changing present arrangements to take account of identified deficiencies.

3.50 The chapter also drew attention to the concerns of the then Standing Committee on Finance and Public Administration (incorporating the Public Accounts Committee) about the scope of the register. That is, whether the register should apply to all confidential material in government contracts or only information that is made confidential by force of the Act.

LEGISLATIVE FRAMEWORK

Introduction

This Annex outlines the statutory framework and administrative procedures relating to the Public Access to Government Contracts Act.

In introducing the Bill for the Act the Bill's sponsor stated that:

This legislation seeks to enforce the public's right to know how their money is being spent and how public assets are managed, while giving business confidence that their privacy is protected.⁵

The Act commenced on 21 December 2000.

Making Government Contracts Public

The Act provides for the publication, as far as possible, of the terms of government contracts. The effect of the Act is to require a government agency to prepare a public text of a contract to be made available to the public.

The Act applies to all contracts made in writing after the commencement of the Act, to which a government agency is a party. The Act also applies to amendments to all government contracts covered by the Act. It does not, however, apply to employment contracts, contracts for the settlement of liability to an individual, or contracts for consideration of \$50,000 or less.

The Act defines a government agency to mean the Territory or a Territory instrumentality. The definition specifically excludes a Territory owned corporation.

Public Text of Contracts

The public text of a contract includes all of the text of a contract that is not confidential and must include information specified in subsection 6 (2) of the Act. The public text of a contract must be produced within 21 days of the making of a government contract. The public text is required to be made available in written or electronic form.

Confidential Information

If a government contract is to make certain information confidential, it must do so using provisions that follow the model confidentiality clause

⁵ Australian Capital Territory Legislative Assembly, *Debates*, 5 May 1999, page 1338

in the schedule to the Act. In particular, the kinds of information to be kept confidential and the grounds for confidentiality must be listed. Confidentiality clauses that are not made in accordance with the legislation will have no effect.

Grounds for Confidentiality

The Act sets out grounds that government agencies must satisfy before information in a contract is made confidential. The grounds are:

- the unreasonable disclosure of personal information;
- the disclosure of trade secrets;
- the unreasonable disclosure of information with commercial value;
- the unreasonable disclosure of information about the business affairs of a person; or
- that it is required by, or gives effect to an obligation of confidentiality that arises from another source.

Notification to Contractors

The Act also has provisions requiring the government to notify those parties that it is making contracts with about the effect of the Act. In this way it is intended that no party to a government contract will not know that information in contracts that they make with government agencies will be made available to the public if it is not specifically held to be confidential in accordance with the Act or some other law.

Role of the Auditor-General

Subsection 8 (2) of the Act requires agencies to provide the Auditor-General with copies of contracts, or amendments of contracts, which contain confidentiality clauses. These copies are to be provided within 14 days of the contract or amendment being made. The Act further requires the Auditor-General to maintain a register of contracts containing confidentiality clauses and every six months after the commencement of the Act to provide the appropriate Legislative Assembly committee with a list of the contracts inserted in the register.

In other words, shortly after 21 June and 21 December each year, the Auditor-General will produce a list of contracts containing confidentiality clauses that have been received in the previous six months. This list will be provided to the Standing Committee on Public Accounts.

Role of the Legislative Assembly

The Act contains a provision that enables a committee of the Legislative Assembly to have an oversight role in the process. Section 9 of the Act provides that the government agency must, when asked by the committee, give the committee information about decisions to agree to confidentiality clauses being inserted in contracts.

**REGISTER OF CONTRACTS CONTAINING CONFIDENTIALITY CLAUSES
FOR THE YEAR ENDING 21 DECEMBER 2001**

AGO Reference No.	Title on Contract	Contract No. (where identified)	Government Agency Submitting the Contract to AGO	Other Party to the Contract	Date Signed	Date Received by AGO
01/1	TRIPS Replacement Project		Department of Urban Services	CSC Australia P/L	28/02/2001	05/03/2001
01/2	Provision and Management of Services	ACTHFM1/00 SOUTH	ACT Housing	Transfield Services (Australia) P/L	01/03/2001	15/03/2001
01/3	Provision and Management of Services	ACTHFM1/00 NORTH	ACT Housing	Haden FM P/L	01/03/2001	15/03/2001
01/4	Management and Provision of Travel and Related Services		Chief Minister's Department	Carlson Wagonlit Travel Australia	04/04/2001	12/04/2001
01/5	Development of Parts Sections 56 & 35 Division of City		Department of Urban Services	Queensland Investment Corporation (QIC)	21/12/2000	12/04/2001
01/6	Electronic Voting and Vote Counting System		ACT Electoral Commission	Software Improvements P/L	12/04/2001	24/04/2001

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Title on Contract	Contract No. (where identified)	Government Agency Submitting the Contract to AGO	Other Party to the Contract	Date Signed	Date Received by AGO
01/7	The Provision of Payroll Bureau Services.		Chief Minister's Department	CSI Holdings Pty Limited (trading as CITEC)	23/05/2001	01/06/2001
01/8	The Provision of Communication and Advertising Services.	C01188	ACT Electoral Commission	Grey Advertising Canberra Pty Ltd	14/06/2001	26/06/2001
01/9	Belconnen Remand Centre Upgrade.	Project No. 2001.0454	Department of Treasury	Manteena Pty Ltd	20/06/2001	28/06/2001
01/10	Design, supply, erection, maintenance, dismantling and removal of temporary corporate hoeker, flooring and fitout at the GMC 400 Canberra 2001 V8 supercar event.	6A	Canberra Tourism and Events Corporation	Moreton Hire Services Pty Limited	08/06/2001	06/07/2001
01/11	Design, hire, installation, maintenance and removal of temporary public address systems at the GMC 400 Canberra 2001 V8 supercar event.	8	Canberra Tourism and Events Corporation	Australian Concert Productions Pty Ltd	05/06/2001	06/07/2001

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Title on Contract	Contract No. (where identified)	Government Agency Submitting the Contract to AGO	Other Party to the Contract	Date Signed	Date Received by AGO
01/12	Cleaning services and rubbish removal at the GMC 400 Canberra V8 supercar event.	11	Canberra Tourism and Events Corporation	City Group Pty Ltd	05/06/2001	06/07/2001
01/13	Supply, installation, maintenance and removal of temporary amenities blocks at the GMC 400 Canberra 2001 V8 supercar event.	19	Canberra Tourism and Events Corporation	Coates Hire Operations Pty Ltd	05/06/2001	06/07/2001
01/14	Civil engineering works for the GMC 400 Canberra 2001 V8 supercar event.	13A	Canberra Tourism and Events Corporation	Guideline (A.C.T) Pty Limited	07/06/2001	11/07/2001
01/15	Signage agreement.		Canberra Tourism and Events Corporation	Signs Incorporated Pty Ltd	05/06/2001	11/07/2001
01/16	Transportation, supply, installation, maintenance and removal of temporary portable buildings at the GMC 400 Canberra 2001 V8 supercar event.	1	Canberra Tourism and Events Corporation	Coates Hire Operations Pty Ltd	05/06/2001	11/07/2001

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Title on Contract	Contract No. (where identified)	Government Agency Submitting the Contract to AGO	Other Party to the Contract	Date Signed	Date Received by AGO
01/17	Naming rights sponsorship agreement.		Canberra Tourism and Events Corporation	Subaru (Aust) Pty Limited	28/05/2001	11/07/2001
01/18	Sponsorship agreement.		Canberra Tourism and Events Corporation	Silverstone Berhad	22/05/2001	11/07/2001
01/19	Design, Supply, erection, dismantling and maintenance of temporary corporate platforms at the GMC 400 Canberra 2001 V8 supercar event.	5	Canberra Tourism and Events Corporation	Australian Staging and Rigging Pty Ltd	29/06/2001	11/07/2001
01/20	Sponsorship agreement.		Canberra Tourism and Events Corporation	Australian Capital Television Pty Limited (trading as Ten Capital)	01/06/2001	18/07/2001
01/21	Sponsorship agreement.		Canberra Tourism and Events Corporation	The Federal Capital Press of Australia Pty Limited (trading as The Canberra Times)	24/05/2001	18/07/2001

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Title on Contract	Contract No. (where identified)	Government Agency Submitting the Contract to AGO	Other Party to the Contract	Date Signed	Date Received by AGO
01/22	Provision of a new ultrasound machine in the ACT BreastScreen Program.		ACT Community Care	ATL Ultrasound	31/01/01 and 02/04/01	16/07/2001
01/23	Provision of human resource management and recruitment support services.		InTACT	Spherion Outsourcing Solutions Pty Ltd	24/01/2001	24/07/2001
01/24	Sponsorship agreement.		Canberra Tourism and Events Corporation	Canberra FM Radio Pty Limited (trading as FM104.7)	08/06/2001	23/08/2001
01/25	Design, supply, erection, maintenance, dismantling and removal of temporary corporate hoeker, flooring and fitout at the GMC 400 Canberra 2001 V8 supercar event.	6	Canberra Tourism and Events Corporation	Stewart Barlen Canberra Pty Ltd	10/07/2001	23/08/2001
01/26	Design, supply, erect and dismantle of temporary grandstand seating at the GMC 400 Canberra V8 supercar event.	8	Canberra Tourism and Events Corporation	Australian seating systems Pty Ltd	30/07/2001	23/08/2001

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Title on Contract	Contract No. (where identified)	Government Agency Submitting the Contract to AGO	Other Party to the Contract	Date Signed	Date Received by AGO
01/27	Design, supply, installation and removal of temporary electrical reticulation, fitout and generators at the GMC 400 Canberra 2001 V8 supercar event.	12	Canberra Tourism and Events Corporation	Rent Elec Proprietary Limited	20/07/2001	23/08/2001
01/28	Supply of event services at the GMC 400 Canberra V8 supercar event.		Canberra Tourism and Events Corporation	Sailique Pty Limited	20/07/2001	23/08/2001
01/29	Supply, installation and removal of temporary hoeckers and fitout for Floriade 2001.		Canberra Tourism and Events Corporation	Pages Event Hire	20/07/2001	23/08/2001
01/30	Data entry of information contained on ballot papers.	C01338	ACT Electoral Commission	The Green and Green Group Pty Limited	15/08/2001	28/08/2001
01/31	Printing of the 2001 ACT election ballot papers on behalf of ACT Electoral Commission.	C01339	ACT Electoral Commission	IMSEP Pty Ltd T/A National Capital Printing	16/08/2001	28/08/2001

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Title on Contract	Contract No. (where identified)	Government Agency Submitting the Contract to AGO	Other Party to the Contract	Date Signed	Date Received by AGO
01/32	Design, supply, installation, maintenance and removal of temporary plumbing works at the GMC 400 Canberra 2001 V8 supercar event.	16	Canberra Tourism and Events Corporation	Royaltee Pty Ltd	05/07/2001	30/08/2001
01/33	Client Care Information Systems (CCIS).		ACT Community Care	Deloitte Consulting Pty Ltd	13/09/2001	17/09/2001
01/34	Electricity Sale Agreement.		Department of Treasury	ActewAGL Retail	29/08/2001	19/09/2001
01/35	Security Services Agreement.		Canberra Tourism and Events Corporation	Star Security (ACT) Pty Ltd	Not dated.	26/09/2001
01/36	Supply and Installation of Storage Area Network.		ACT Government Solicitor	Com Tech Integration Services Pty Limited	28/9/2001	12/10/2001
01/37	Sponsorship agreement.		Canberra Tourism and Events Corporation	Ford Motor Company of Australia Limited	Not dated.	16/10/2001

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Title on Contract	Contract No. (where identified)	Government Agency Submitting the Contract to AGO	Other Party to the Contract	Date Signed	Date Received by AGO
01/38	Asphaltic concrete road resurfacing the GMC 400 Canberra 2001 V8 supercar event.	13	Canberra Tourism and Events Corporation	CSR Ltd	17/10/2001	24/10/2001
01/39	Electricity Sale Agreement.		Department of Health and Community Care	ActewAGL Retail	01/11/2001	13/11/2001
01/40	Supply and maintenance of two way radio equipment for the GMC400 V8 supercar event.		Canberra Tourism and Events Corporation	Motorola Australia Pty Limited	09/11/2001	13/11/2001
01/41	Provision of Horticultural Services to Floriade 2002,2003 and 2004.	Not Numbered	Canberra Tourism and Events Corporation	Cityscape Services	Not Dated	21/12/2001

COMMENTS ON THE EXTENT TO WHICH EACH CONTRACT COMPLIES WITH THE ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/1	Department of Urban Services	TRIPS Replacement Project	31	The contract fully complies with Act.
01/2	ACT Housing	Provision and Management of Services	1.1 & 17	The contract does not fully comply with model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. That is the contract describes ‘the existence and terms of this contract...’ as being confidential. In addition, Clause 17.13 states that Schedule 2 and Annexure 4 are confidential between the parties. No grounds for confidentiality are mentioned in the contract as required by model clause N4.
01/3	ACT Housing	Provision and Management of Services	1.1 & 17	The contract does not fully comply with model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. That is the contract describes ‘the existence and terms of this contract...’ as being confidential. In addition, Clause 17.13 states that Schedule 2 and Annexure 4 are confidential between the parties. No grounds for confidentiality are mentioned in the contract as required by model clause N4.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/4	Chief Minister's Department	Management and Provision of Travel and Related Services	Schedule 4	The contract does not fully comply with model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. The contract states that 'confidential information means 'information about the commercial arrangements between the company and any third party and to which the Territory is not a contracting party'.
01/5	Department of Urban Services	Development of Parts Sections 56 & 35 Division of City	26	The contract does not fully comply with model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes information that 'relates to the business affairs of the a party or is by its nature confidential ...' as being confidential. No grounds for confidentiality are mentioned in the contract as required by model clause N4.
01/6	ACT Electoral Commission	Electronic Voting and Vote Counting System	31	The contract fully complies with Act.
01/7	Chief Minister's Department	The Provision of Payroll Bureau Services	Schedule 5	The contract fully complies with Act.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/8	ACT Electoral Commission	The Provision of Communication and Advertising Services	1.40	The contract does not follow the effect of the model confidentiality clause in the Act. the contract does not list the kinds of information to be kept confidential. No grounds for confidentiality are mentioned in the contract as required by model clause N4.
01/9	Department of Treasury	Belconnen Remand Centre Upgrade	24	The contract does not follow the effect of the model confidentiality clause in the Act. The contract does not list the kinds of information to be kept confidential. No grounds for confidentiality are mentioned in the contract as required by model clause N4.
01/10	Canberra Tourism and Events Corporation	Design, supply, erection, maintenance, dismantling and removal of temporary corporate hoeccker, flooring and fitout at the GMC 400 Canberra 2001 V8 supercar event	8.6	The contract does not fully comply with model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes 'drawings, specifications ...and the terms of this contract' as matters to be kept confidential. The grounds for confidentiality at sub-section 13(1) of the Act have been reproduced fully in the contract and some of the grounds mentioned may not apply to the confidential information in the contract.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/11	Canberra Tourism and Events Corporation	Design, hire, installation, maintenance and removal of temporary public address systems at the GMC 400 Canberra 2001 V8 supercar event	8.6	The contract does not fully comply with model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. That is 'drawings, specifications ...' and 'the terms of this contract'. The grounds for confidentiality at sub-section 13(1) have been reproduced fully and some of the grounds mentioned may not apply to the contract.
01/12	Canberra Tourism and Events Corporation	Cleaning services and rubbish removal at the GMC 400 Canberra V8 supercar event	1.1 & 25	The contract does not fully comply with model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. That is, the contract states that confidential information means information that: '(i) is confidential in its nature (ii) is designated by the principal as confidential (iii) the contractor knows or ought to know is confidential'. No grounds for confidentiality are mentioned in the contract as required by model clause N4.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/13	Canberra Tourism and Events Corporation	Supply, installation, maintenance and removal of temporary amenities blocks at the GMC 400 Canberra 2001 V8 supercar event.	8.6	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes 'drawings, specifications ... and the terms of this contract' as being confidential. The grounds for confidentiality at sub-section 13(1) of the Act have been reproduced fully in the contract and some of the grounds mentioned may not apply to the confidential information in the contract
01/14	Canberra Tourism and Events Corporation	Civil engineering works for the GMC 400 Canberra 2001 V8 supercar event.	8.6	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes 'drawings, specifications ...and the terms of this contract' as being confidential. The grounds for confidentiality at sub-section 13(1) of the Act have been reproduced fully in the contract and some of the grounds mentioned may not apply to the confidential information in the contract.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/15	Canberra Tourism and Events Corporation	Signage agreement	1.1 & 8	The contract does not follow the effect of the model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. That is 'all information relating to the Works' and 'all other information treated by CTEC as confidential' are described as being confidential. The contract does not include make any reference to the information contained in model clause N.1. That is no reference is made to the principles of open and accountable government. The contract does not state that the Act applies to it. The grounds for confidentiality at sub-section 13(1) of the Act have been reproduced fully in the contract and some of the grounds mentioned may not apply to the confidential information in the contract.
01/16	Canberra Tourism and Events Corporation	Transportation, supply, installation, maintenance and removal of temporary portable buildings at the GMC 400 Canberra 2001 V8 supercar event.	8.6	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes 'drawings, specifications ...' and 'the terms of this contract' as being confidential. The grounds for confidentiality at sub-section 13(1) of the Act have been reproduced fully in the contract and some of the grounds mentioned may not apply to the confidential information in the contract.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/17	Canberra Tourism and Events Corporation	Naming rights sponsorship agreement	1.1 & 27	The contract does not fully comply with model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes all information relating to 'the Event' and 'all other information treated by CTEC and confidential' as being confidential. No grounds for confidentiality are mentioned in the contract as required by model clause N4.
01/18	Canberra Tourism and Events Corporation	Sponsorship agreement	1.1 & 25	The contract does not fully comply with model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes all information relating to 'the Event' and 'all other information treated by CTEC and confidential' as being confidential. No grounds for confidentiality are mentioned in the contract as required by model clause N4.
01/19	Canberra Tourism and Events Corporation	Design, Supply, erection, dismantling and maintenance of temporary corporate platforms at the GMC 400 Canberra 2001 V8 supercar event	8.6	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes 'drawings, specifications ...' and 'the terms of this contract' as being confidential. The grounds for confidentiality at sub-section 13(1) of the Act have been reproduced fully in the contract and some of the grounds mentioned may not apply to the confidential information in the contract.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/20	Canberra Tourism and Events Corporation	Sponsorship agreement	1.1 & 22	The contract does not follow the effect of the model confidentiality clause in the Act. The contract does not state that the Act applies to it. The kind of information to be kept confidential is described too broadly. The contract lists all of the grounds listed in section 13(1) of the Act that may make information confidential as the confidential information contained in the contract. No grounds for confidentiality are mentioned in the contract as required by model clause N4.
01/21	Canberra Tourism and Events Corporation	Sponsorship agreement	1.1 & 22	The contract does not follow the effect of the model confidentiality clause in the Act. The contract does not state that the Act applies to it. The kind of information to be kept confidential is described too broadly. The contract lists those grounds listed in section 13(1) of the Act that may make information confidential as the confidential information contained in the contract. No grounds for confidentiality are mentioned in the contract as required by model clause N4.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/22	ACT Community Care	Provision of a new ultrasound machine in the ACT BreastScreen Program	Not applicable	<p>The contract does not follow the effect of the model confidentiality clause in the Act. The contract does not list the kinds of information to be kept confidential. The contract does not include any reference to model clause N.1. That is, there is no reference to the principles of open and accountable government. The contract does not state that the Act applies to it. No grounds for confidentiality are mentioned in the contract as required by model clause N4.</p> <p>ACTCC was advised separately that the supplier would like the Trade In clause kept confidential for commercial competitiveness reasons.</p>
01/23	InTACT	Provision of human resource management and recruitment support services	Not applicable	<p>The contract does not follow the effect of the model confidentiality clause in the Act. The contract does not list the kinds of information to be kept confidential. The contract does not include any reference to model clause N.1. That is, there is no reference to the principles of open and accountable government. The contract does not state that the Act applies to it. No grounds for confidentiality are mentioned in the contract as required by model clause N4.</p>

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/24	Canberra Tourism and Events Corporation	Sponsorship agreement	1.1 and 22	The contract does not fully comply with the model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. The contract lists those grounds listed in section 13(1) of the Act that may make information confidential as the confidential information contained in the contract. No grounds for confidentiality are mentioned in the contract as required by model clause N4.
01/25	Canberra Tourism and Events Corporation	Design, supply, erection, maintenance, dismantling and removal of temporary corporate hoekker, flooring and fitout at the GMC 400 Canberra 2001 V8 supercar event	8.6	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes 'drawings, specifications ...and the terms of this contract' as being confidential. In addition, the grounds for confidentiality at sub-section 13(1) of the Act have been reproduced fully in the contract and some of the grounds mentioned may not apply to the confidential information in the contract.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/26	Canberra Tourism and Events Corporation	Design, supply, erect and dismantle of temporary grandstand seating at the GMC 400 Canberra V8 supercar event	8.6	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes 'drawings, specifications ... and the terms of this contract' as being confidential. The grounds for confidentiality at sub-section 13(1) of the Act have been reproduced fully in the contract and some of the grounds mentioned may not apply to the confidential information in the contract.
01/27	Canberra Tourism and Events Corporation	Design, supply, installation and removal of temporary electrical reticulation, fitout and generators at the GMC 400 Canberra 2001 V8 supercar event	8.6	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. That is the contract describes 'drawings, specifications ...' and 'the terms of this contract' as being confidential. The grounds for confidentiality at sub-section 13(1) of the Act have been reproduced fully in the contract and some of the grounds mentioned may not apply to the confidential information in the contract.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/28	Canberra Tourism and Events Corporation	Supply of event services at the GMC 400 Canberra V8 supercar event	1.1 and 20	The contract does not follow the effect of the model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. The contract states that confidential information is information that 'is by its nature confidential, is designated by the principal as confidential, the contractor knows or ought to know is confidential ...'. The contract does not include any reference to model clause N.1. That is, there is no reference to the principles of open and accountable government. No grounds for confidentiality are mentioned in the contract as required by model clause N4.
01/29	Canberra Tourism and Events Corporation	Supply, installation and removal of temporary hoekers and fitout for Floriade 2001	8.6	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes 'drawings, specifications ... and the terms of this contract' as being confidential. The grounds for confidentiality at sub-section 13(1) of the Act have been reproduced fully in the contract and some of the grounds mentioned may not apply to the confidential information in the contract.
01/30	ACT Electoral Commission	Data entry of information contained on ballot papers	1.8	The contract fully complies with Act.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/31	ACT Electoral Commission	Printing of the 2001 ACT election ballot papers on behalf of ACT Electoral Commission	1.38	The contract does not fully comply with the model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. That is, the contracts describes 'the proposal selected from the evaluation of quotations ...' as being confidential.
01/32	Canberra Tourism and Events Corporation	Design, supply, installation, maintenance and removal of temporary plumbing works at the GMC 400 Canberra 2001 V8 supercar event	8.6	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes 'drawings, specifications ... and the terms of this contract' as being confidential. The grounds for confidentiality at sub-section 13(1) of the Act have been reproduced fully in the contract and some of the grounds mentioned may not apply to the confidential information in the contract..
01/33	ACT Community Care	Client Care Information Systems (CCIS)	30	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. That is, the contracts describes 'the contractor's tender', initial scope definition', and '4 July letter' as being confidential matters.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/34	Department of Treasury	Electricity Sale Agreement	9	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. The contract states that 'confidential information includes information marked as confidential, and information which by its nature is confidential, is known to be confidential or which the party ought to have known was confidential'.
01/35	Canberra Tourism and Events Corporation	Security Services Agreement	1.1 and 17	The contract does not follow the effect of the model confidentiality clause in the Act. The contract does not state that the Act applies to it. The kind of information to be kept confidential is described too broadly. The contract states that confidential information is information that 'is by its nature confidential, is designated by the principal as confidential, the contractor knows or ought to know is confidential ... 'No grounds for confidentiality are mentioned in the contract as required by model clause N4.
01/36	ACT Government Solicitor	Supply and Installation of Storage Area Network	20.4 and Contract Detail	The contract fully complies with Act.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/37	Canberra Tourism and Events Corporation	Sponsorship agreement	17	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. The contract lists all of those grounds listed in section 13(1) of the Act that may make information confidential as the confidential information contained in the contract. No grounds for confidentiality are mentioned in the contract as required by model clause N4.
01/38	Canberra Tourism and Events Corporation	Asphaltic concrete road resurfacing the GMC 400 Canberra 2001 V8 supercar event	8.6	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes 'drawings, specifications ... and the terms of this contract' as being confidential. The grounds for confidentiality at sub-section 13(1) of the Act have been reproduced fully in the contract and some of the grounds mentioned may not apply to the confidential information in the contract.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/39	Department of Health and Community Care	Electricity Sale Agreement	9	The contract does not fully comply with model confidentiality clause of the Act. The kind of information to be kept confidential is described too broadly. The contract states that 'confidential information includes information marked as confidential, and information which by its nature is confidential, is known to be confidential or which the party ought to have known was confidential'.
01/40	Canberra Tourism and Events Corporation	Supply and maintenance of two way radio equipment for the GMC400 V8 supercar event	1.1 and 19	The contract does not follow the effect of the model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes confidential information as information that 'the first party treats as confidential ...'. The contract does not make any reference to the spirit of model clause N.1. That is there is no reference to the principles of open and accountable government. The contract does not state that the Act applies to it. No grounds for confidentiality are mentioned in the contract as required by model clause N4.

OPERATION OF THE PUBLIC ACCESS TO GOVERNMENT CONTRACTS ACT

AGO Reference No.	Agency	Contract Title	Confidentially Clause	Comments
01/41	Canberra Tourism and Events Corporation	Provision of Horticultural Services for Floriade 2002, 2003 and 2004	1.1 and 19	The contract does not follow the effect of the model confidentiality clause in the Act. The kind of information to be kept confidential is described too broadly. That is, the contract describes information that ‘the first party treats as confidential ...’ as being confidential. The contract does not make any reference to the spirit of model clause N.1. That is there is no reference to the principles of open and accountable government. The contract does not state that the Act applies to it. No grounds for confidentiality are mentioned in the contract as required by model clause N4.

PREVIOUS AUDIT REPORTS⁶

Reports Published in 1996

1. **Legislative Assembly Members – Superannuation Payments/Members’ Staff – Allowances and Severance Payments**
2. **1995 Taxi Plates Auction**
3. **VMO Contracts**
4. **Land Joint Ventures**
5. **Management of Former Sheep Dip Sites**
6. **Collection of Court Fines**
7. **Annual Management Report For Year Ended 30 June 1996**
8. **Australian International Hotel School**
9. **ACT Cultural Development Funding Program**
10. **Implementation of 1994 Housing Review**
11. **Financial Audits with Years Ending to 30 June 1996**

Reports Published in 1997

1. **Contracting Pool and Leisure Centres**
2. **Road and Streetlight Maintenance**
3. **1995-96 Territory Operating Loss**
4. **ACT Public Hospitals - Same Day Admissions
Non Government Organisation - Audit of Potential Conflict of Interest**
5. **Management of Leave Liabilities**
6. **The Canberra Hospital Management’s Salaried Specialists Private Practice**
7. **ACT Community Care - Disability Program and Community Nursing**
8. **Salaried Specialists’ Use of Private Practice Privileges**
9. **Fleet Leasing Arrangements**
10. **Public Interest Disclosures - Lease Variation Charges and Corrective Services**
11. **Annual Management Report for Year Ended 30 June 1997**
12. **Financial Audits with Years Ending to 30 June 1997**
13. **Management of Nursing Services**

⁶ 46 Reports were issued prior to 1996. Details can be obtained from the ACT Auditor-General’s Office or the ACT Auditor-General’s homepage: <http://www.audit.act.gov.au>.

Reports Published in 1998

- 1 Management of Preschool Education**
- 2 Lease Variation Charges - Follow-up Review**
- 3 Major IT Projects - Follow-up Review**
- 4 Annual Management Report for Year Ended 30 June 1998**
- 5 Management of Housing Assistance**
- 6 Assembly Members' Superannuation and Severance Payments to Former Members' Staffers**
- 7 Magistrates Court Bail Processes**
- 8 Territory Operating Losses and Financial Position**
- 9 Financial Audits with Years Ending To 30 June 1998**
- 10 Management of Schools Repairs and Maintenance**
- 11 Overtime Payment To A Former Legislative Assembly Member's Staffer**

Reports Published in 1999

- 1 Stamp Duty on Motor Vehicle Registrations**
- 2 The Management of Year 2000 Risks**
- 3 Annual Management Report for Year Ended 30 June 1999**
- 4 Financial Audits With Years Ending to 30 June 1999**

Reports Published in 2000

- 1 Bruce Stadium Redevelopment — Summary Report**
- 2 Bruce Stadium Redevelopment — Value for Money**
- 3 Bruce Stadium Redevelopment — Costs and Benefits**
- 4 Bruce Stadium Redevelopment — Decision to Redevelop the Stadium**
- 5 Bruce Stadium Redevelopment — Selection of the Project Manager**
- 6 Bruce Stadium Redevelopment — Financing Arrangements**
- 7 Bruce Stadium Redevelopment — Stadium Financial Model**
- 8 Bruce Stadium Redevelopment — Actual Costs and Cost Estimates**
- 9 Bruce Stadium Redevelopment — Market Research and Marketing**

- 10 Bruce Stadium Redevelopment — Stadium Hiring Agreements**
- 11 Bruce Stadium Redevelopment — Lawfulness of Expenditure**
- 12 Bruce Stadium Redevelopment — Governance and Management**
- 13 Annual Management Report for the Year Ended 30 June 2000**

Reports Published in 2001

- 1. Financial Audits with Years Ending to 30 June 2000**
- 2. Enhancing Professionalism and Accountability**
- 3. Market Research and Marketing (Second Report)**
- 4. Peer-Based Drug Support Services Tender – 1998**
- 5. The Administration of Payroll Tax**
- 6. Annual Management Report for the Year Ended 30 June 2001**
- 7. Managing Canberra Urban Parks and Open Spaces**
- 8. Canberra Tourism and Events Corporation – Relocation to Brindabella Business Park**
- 9. Agents Board – Financial Administration of Training Grant Program**
- 10. Corrective Services – Review of Certain Allegations**
- 11. Financial Audits with Years Ending to 30 June 2001**
- 12. The Freedom of Information Act**

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