



Public-Private Partnership (Transparency and Accountability) Bill 2024



Queensland

Public-Private Partnership (Transparency and Accountability) Bill 2024

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2024

A Bill

for

**An Act to enhance the transparency and public accountability of
the decision-making processes for public-private partnerships**

[s 1]

The Parliament of Queensland enacts—	1
Part 1 Preliminary	2
Division 1 Introduction	3
1 Short title	4
This Act may be cited as the <i>Public-Private Partnership (Transparency and Accountability) Act 2024</i> .	5 6
2 Purpose	7
The purpose of this Act is to enhance the transparency and accountability of the decision-making processes for public sector entities that use a public-private partnership for the delivery of public infrastructure or a public service.	8 9 10 11
3 How purpose primarily achieved	12
The purpose of this Act is to be achieved primarily by—	13
(a) embedding the principle of value for money in the procurement of goods and services relating to the construction and maintenance of infrastructure in the State; and	14 15 16 17
(b) using transparent procedures for approving, awarding and implementing major projects by public-private partnerships; and	18 19 20
(c) ensuring that commercial activities carried out in the State by public-private partnerships are conducted in accordance with the principles of transparency, fairness, proper management, integrity, accountability and long-term sustainability.	21 22 23 24 25

4	Principle underlying this Act	1
(1)	The underlying principle of this Act is that a public sector entity that undertakes a major project as a public-private partnership should publish appropriate information about the project and the partnership, other than information classified as commercial-in-confidence, in a publicly accessible way as soon as practicable after the information becomes available.	2 3 4 5 6 7
	<i>Note—</i>	8
	A public sector entity is not required to publish information for which the public sector entity has provided justification that the information be classified as commercial-in-confidence. See section 14.	9 10 11
(2)	This Act must be administered in accordance with the underlying principle.	12 13
Division 2	Application and operation of Act	14
5	Act binds all persons	15
	This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.	16 17 18
6	Relationship with other Acts	19
	This Act is in addition to, and does not limit, any other Act.	20
Division 3	Interpretation	21
7	Definitions	22
	The dictionary in schedule 1 defines particular words used in this Act.	23 24

[s 8]

- 8 Private sector entities** 1
- A *private sector entity* is an entity that is not any of the 2
following— 3
- (a) a public sector entity; 4
 - (b) a local government; 5
 - (c) a corporation owned by a local government, or a 6
subsidiary of a corporation owned by a local 7
government; 8
 - (d) a government owned corporation; 9
 - (e) the government of a jurisdiction outside the State, or an 10
entity acting for, or controlled by, that government. 11
- 9 Major project** 12
- (1) A *major project* is a project that involves construction of 13
public works, or improvements to public works, that have a 14
projected total cost of at least \$10m. 15
 - (2) For subsection (1), the projected total cost for a project 16
includes each of the following costs, regardless of whether 17
any or all of the costs are included in the initial procurement 18
for the project— 19
 - (a) the cost of any renewals or extensions to the contract for 20
the proposed public works or improvements; 21
 - (b) the cost of any additions or modifications to the 22
proposed public works or improvements; 23
 - (c) if additional construction of public works relating to the 24
project are planned—the cost of the additional 25
construction; 26
 - (d) the cost of carrying out a risk analysis to calculate the 27
probability of significant increases in the costs of the 28
project, including, for example, increases in the costs of 29
transport and energy, increases because of disruptions to 30
supply chains and increases because labour to carry out 31
construction work is not readily available. 32

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- (3) The projected total cost of a project includes the projected total cost of any related project. 1
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- (4) For subsection (3), a project is a *related project* for the project if— 3
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- (a) the project and the related project involve the same public works, or related public works, at the same location; and 5
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- (b) the public sector entity that is undertaking, or proposing to undertake, the project is also undertaking, or proposing to undertake, the related project. 8
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10 Public-private partnership 11

A *public-private partnership* (or *PPP*) is a contractual arrangement between a public sector entity and private sector entity for the carrying out of a major project under which the private sector entity assumes responsibility for all, or substantially all, of at least 2 of the following aspects of the project— 12
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- (a) design; 18
- (b) construction; 19
- (c) long-term financing of the construction; 20
- (d) activities relating to the long-term operation or maintenance of the public works the subject of the project on completion of its construction; 21
22
23
- (e) contracting with another entity to carry out public services relating to the public works the subject of the project. 24
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[s 11]

Part 2	Preliminary matters	1
11	Assessment of major project for PPP	2
(1)	Before carrying out a major project, a public sector entity must assess under this section whether the project should be undertaken as a PPP.	3 4 5
(2)	In assessing whether the major project should be undertaken as a PPP, the public sector entity must consider—	6 7
(a)	the feasibility and affordability of the project; and	8
(b)	whether undertaking the project as a PPP—	9
(i)	would provide the State with reasonable value for money; and	10 11
(ii)	would be more beneficial financially to the State than not undertaking the project as a PPP; and	12 13
(iii)	would better mitigate or manage the risk to the State; and	14 15
(iv)	would affect the State’s ability to provide the public with transparent governance arrangements that can be readily measured and audited; and	16 17 18
(c)	the necessity and socio-economic benefits of the project, including whether the project should take precedence over other major projects being considered by the State.	19 20 21
(3)	The public sector entity must prepare a report that summarises the matters considered when assessing whether the major project should be undertaken as a PPP and the outcome of the assessment.	22 23 24 25
(4)	If the public sector entity decides to undertake the major project as a PPP, the procurement of goods and services, and construction carried out, as part of the project must be in accordance with this Act.	26 27 28 29

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- 12 Public consultation** 1
- (1) Before a public sector entity enters into a PPP for a major project, the public sector entity must— 2
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- (a) make information about the project and the report prepared under section 11(3) available on a government website; and 4
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- (b) liaise with stakeholders and other relevant entities about possible factors that may affect whether undertaking the project as a PPP would provide the State with reasonable value for money. 7
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- (2) However, subsection (1)(a) does not apply to information, including information contained in the report, if making it available on a website could jeopardise the public sector entity’s ability to achieve the best value for money for the project through a competitive tender process. 11
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Part 3 Obligations for public sector entities 16 17

- 13 General obligations for public sector entity** 18
- (1) This section sets out the general obligations applying to a public sector entity if the public sector entity decides to undertake a major project as a PPP. 19
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- (2) Before undertaking the major project as a PPP, the public sector entity must— 22
23
- (a) develop a public sector comparator for the project; and 24
- (b) analyse the viability and the expected risks, cost and benefits of the proposed PPP, taking into account the following matters— 25
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27
- (i) an assessment of the business case for the project, taking into account the public sector comparator; 28
29
- (ii) a detailed consideration of the social benefits for the State; 30
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[s 13]

- (iii) an evaluation of the qualifications, experience and financial capacity of the private sector entity that will be carrying out the project to confirm whether the entity has the ability to deliver the project on time and within budget;
 - (iv) an assessment of the project’s compatibility with the local government’s LGIP under the *Planning Act 2016* for the area in which the project is located;
 - (v) a detailed analysis of the project’s potential impact on local communities in the area in which the project is located and on relevant stakeholders; and
 - (c) prepare a report on the public sector comparator and the analysis mentioned in paragraph (b), including a statement of the expected results; and
 - (d) use a conventional and systematic process that includes considering the public sector comparator to assess whether the project is likely to achieve value for money, measured against value for money achieved by other projects carried out by public sector entities; and
 - (e) publish on a government website the public sector comparator and the process used under paragraph (d), including the data compiled and the methodology used, and the results of the assessment; and
 - (f) develop a protocol for publishing information relating to the major project, and the period within which the information must be published.
- (3) When assessing whether the project is likely to achieve value for money under subsection (2)(d), the public sector entity must consider for each step in the project—
 - (a) the priority of the step; and
 - (b) alternative ways of achieving the step; and
 - (c) the costs and benefits of alternative approaches.

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- (4) The public sector entity must also reduce costs at each level of operations for the project by ensuring the most cost-effective options are used. 1
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- (5) In this section— 4
- public sector comparator* means the public sector comparator described in the document called ‘Project Assessment Framework—Queensland PPP supporting guidelines’ prepared by Queensland Treasury and dated July 2015. 5
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- Note—* 9
- A copy of the document is available on the treasury department’s website. 10
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- 14 Obligations relating to commercial-in-confidence information** 12
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- (1) This section contains obligations relating to information classified by the parties to a PPP as commercial-in-confidence for a major project the subject of the PPP. 14
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- (2) The public sector entity undertaking the project as a PPP must prepare a report that— 17
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- (a) justifies any decision that information be classified as commercial-in-confidence; and 19
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- (b) identifies the party for the PPP that asks for information to be classified as commercial-in-confidence and gives an explanation as to why that party’s commercial interests may be harmed by disclosure of the information; and 21
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- (c) if the public sector entity asks for information to be classified as commercial-in-confidence— 26
27
- (i) explains how the public interest is served by the classification of information as commercial-in-confidence; and 28
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- (ii) identifies alternative mechanisms that will hold the public sector entity accountable; and 31
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- (d) states the period for which information is classified as commercial-in-confidence and the reasons for choosing that period. 1
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- (3) The public sector entity must, when justifying any decision that information be classified as commercial-in-confidence and not be disclosed, have regard to the guidelines issued by the information commissioner under section 22(c). 4
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- (4) The public sector entity must publish the report prepared under subsection (2) on a government website. 8
9
- (5) The public sector entity must ensure the contract for the PPP states the period for which information is to remain classified as commercial-in-confidence. 10
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- 15 General reporting obligations for public sector entity 13**
- (1) This section sets out the general reporting obligations applying to a public sector entity that undertakes a major project as a PPP. 14
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- (2) The public sector entity must ensure all records and other information relating to the PPP and the major project are given to each of the following entities in a timely way to facilitate the entity's auditing or other responsibilities under this or another Act— 17
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- (a) the auditor-general; 22
- (b) the information commissioner; 23
- (c) the Crime and Corruption Commission; 24
- (d) the Queensland Integrity Commissioner under the *Integrity Act 2009*; 25
26
- (e) the Treasurer. 27

Part 4	Role of auditor-general	1
16	Reporting to auditor-general	2
(1)	A public sector entity that undertakes a major project as a PPP must prepare a report on the progress or results of the project—	3 4 5
(a)	at least once every 4 years during the term, including any renewals, of the PPP; and	6 7
(b)	as soon as reasonably practicable after construction relating to the project is completed, but no later than 2 years after the completion; and	8 9 10
(c)	within 6 months after the end of the PPP.	11
(2)	Each report must be given to the auditor-general as soon as practicable after the report is prepared.	12 13
(3)	Subsection (2) does not limit section 15(2)(a).	14
17	Review by auditor-general	15
(1)	The auditor-general must conduct a review into all relevant matters relating to a major project as soon as practicable after receiving a report about the project under section 16(2).	16 17 18
(2)	The chief executive of the public sector entity must give the auditor-general the help the auditor-general reasonably requires to conduct the review.	19 20 21
(3)	The auditor-general may ask the public sector entity, or another entity, for information or a document that may be relevant to the review.	22 23 24
(4)	The auditor-general must give the public sector entity a report about the review.	25 26
(5)	The auditor-general must give the public sector entity at least 14 days to consider the report and an opportunity to comment on it.	27 28 29

[s 18]

(6)	After considering any comments made by the public sector entity, the auditor-general may amend the report.	1 2
(7)	The report or, if the report is amended, the amended report is the <i>review report</i> .	3 4
18	Recommendations by auditor-general	5
	If the auditor-general makes a recommendation in a review report, the public sector entity must—	6 7
(a)	consider the recommendation; and	8
(b)	decide whether to implement the recommendation, in whole or in part; and	9 10
(c)	if the decision under paragraph (b) is to implement the recommendation, decide on a time frame for the implementation.	11 12 13
19	Publication of documents relating to review	14
	If the auditor-general conducts a review under section 17, the public sector entity must publish each of the following documents on a government website—	15 16 17
(a)	each report given to the auditor-general under section 16(2);	18 19
(b)	the review report;	20
(c)	any recommendations made by the auditor-general under section 18;	21 22
(d)	for each recommendation that the public sector entity has indicated it will implement—	23 24
(i)	whether the public sector entity has indicated it will implement the recommendation in whole or in part; and	25 26 27
(ii)	the timeframe for the implementation.	28

20	Tabling of review report	1
(1)	The auditor-general must give the review report to the Minister.	2 3
(2)	The Minister must table the review report in the Legislative Assembly within 10 business days after receiving it.	4 5
Part 5	Role of the Treasurer	6
21	Publication requirements for Treasurer	7
(1)	The Treasurer must publish on the treasury department's website—	8 9
(a)	for each major project for which a PPP is proposed—details of the stages reached in the scrutiny and approval of the proposed PPP; and	10 11 12
(b)	for each major project undertaken as a PPP—updates on the status and progress of the project.	13 14
(2)	After the end of each financial year the Treasurer must prepare a statement containing information, including financial information, about each major project undertaken as a PPP during the financial year.	15 16 17 18
(3)	The financial information for the statement prepared under subsection (2) must include an analysis of the effect of all the major projects for which a PPP is proposed or undertaken as a PPP on the total amount of State debt that is likely to be incurred as stated in the budget for the current financial year and the next 4 financial years.	19 20 21 22 23 24
(4)	As soon as practicable after preparing the statement for a financial year, the Treasurer must make the statement publicly available.	25 26 27
	<i>Example of making the statement publicly available—</i>	28
	publishing the statement on the treasury department's website	29

[s 22]

Part 6	Role of information commissioner	1 2
22	Functions of information commissioner	3
	The information commissioner has the following functions under this Act—	4 5
	(a) to promote public awareness of the purpose of this Act, including the underlying principle of this Act under section 4;	6 7 8
	(b) to provide information, advice and assistance to public sector entities and the public on any matters relevant to this Act;	9 10 11
	(c) to issue guidelines, consistent with this Act, for dealing with the disclosure of information relating to major projects undertaken by public sector entities as PPPs;	12 13 14
	(d) to audit public sector entities in the performance of their functions, and for compliance with this Act, relating to major projects undertaken by the public sector entities as PPPs and to prepare reports on the audits to be given to the Treasurer;	15 16 17 18 19
	(e) to identify and provide recommendations to the Treasurer about legislative or administrative changes that would further the purpose of this Act.	20 21 22
Part 7	Miscellaneous	23
23	Publication of information relating to contracts	24
	A public sector entity that undertakes a major project as a PPP must publish all the information in the contract for the PPP, other than information classified as commercial-in-confidence, on a government website.	25 26 27 28

24	Reporting after completion of major project	1
	When a major project undertaken by a public sector entity as a PPP is completed, the public sector entity must publish on a government website details about—	2 3 4
	(a) whether, and to what extent, the project achieved value for money; and	5 6
	(b) the value for money achieved for the project measured against value for money achieved by other projects carried out by public sector entities.	7 8 9

Schedule 1	Dictionary	1
	section 7	2
<i>auditor-general</i>	means the Queensland Auditor-General under the <i>Auditor-General Act 2009</i> .	3 4
<i>information commissioner</i>	means the information commissioner under the <i>Right to Information Act 2009</i> .	5 6
<i>major project</i>	see section 9.	7
<i>PPP</i>	see section 10.	8
<i>private sector entity</i>	see section 8.	9
<i>public-private partnership</i>	see section 10.	10
<i>public sector entity</i>	see the <i>Public Sector Act 2022</i> , section 8.	11
<i>public works</i>	means the construction or maintenance of any of the following for a public purpose by or on behalf of a public sector entity or for the purposes of a public sector entity—	12 13 14
(a)	a building or other structure;	15
(b)	a road, railway or bridge;	16
(c)	a well, or bore, for obtaining water;	17
(d)	any major earthworks;	18
(e)	any other infrastructure.	19
<i>review report</i>	see section 17(7).	20
<i>value for money</i>	, for a project, means the project represents good value for the State in terms of economy, efficiency and effectiveness.	21 22 23