



Queensland

Freedom of Information (Open Government—Disclosure of Contracts) Amendment Bill 2007



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Freedom of Information (Open Government—Disclosure of Contracts) Amendment Bill 2007

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2007

A Bill

for

**An Act to amend the *Freedom of Information Act 1992* to
require the publication of information concerning particular
government contracts**

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Bill 2007*

The Parliament of Queensland enacts—

1

Clause 1 Short title

2

This Act may be cited as the *Freedom of Information (Open
Government—Disclosure of Contracts) Amendment Act 2007*.

3

4

Clause 2 Act amended

5

This Act amends the *Freedom of Information Act 1992*.

6

Clause 3 Amendment of s 7 (Definitions)

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(1) Section 7, definition *agency*—

8

omit.

9

(2) Section 7—

10

insert—

11

‘agency—

12

(a) has the meaning given by section 8; but

13

(b) for part 2, division 2, see section 20A.

14

agency concerned, for part 2, division 2, see section 20A.

15

class 1 contract see section 20A.

16

class 2 contract see section 20A.

17

class 3 contract see section 20A.

18

commercial-in-confidence provisions, of a government
contract, for part 2, division 2 and section 45, see section 20A.

19

20

contractor, for a government contract, see section 20A.

21

government contract, for part 2, division 2 and section 45, see
section 20A.

22

23

private sector entity see section 20A.

24

publish, for part 2, division 2, see section 20E.’.

25

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Clause 4	Insertion of new pt 2, div 1 hdg	1
	Part 2, before section 18—	2
	<i>insert—</i>	3
‘Division 1	Information concerning affairs of agencies’.	4
		5
Clause 5	Insertion of new pt 2, div 2	6
	Part 2, after section 20—	7
	<i>insert—</i>	8
‘Division 2	Information concerning government contracts	9
		10
‘20A	Definitions for div 2	11
	‘In this division—	12
	<i>agency</i> does not include—	13
	(a) a GOC, or a subsidiary of a GOC within the meaning of	14
	the <i>Government Owned Corporations Act 1993</i> ; or	15
	(b) a local government.	16
	<i>agency concerned</i> , in relation to a government contract,	17
	means the agency that entered into the contract.	18
	<i>class 1 contract</i> means any government contract under	19
	which—	20
	(a) the total estimated value of the project; or	21
	(b) the total estimated value of the goods or services over	22
	the term of the contract; or	23
	(c) the value of the real property transferred; or	24
	(d) the rent for the term of the lease;	25
	is likely to be \$150000 or more.	26
	<i>class 2 contract</i> means a class 1 contract in relation to which	27
	any of the following paragraphs apply—	28

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- (a) there has not been a tender process, the proposed contract has not been made publicly available and the terms and conditions of the contract have been negotiated directly with the contractor;
- (b) the proposed contract, whether or not made publicly available, has been the subject of a tendering process and the terms and conditions of the contract have been substantially negotiated with the successful tenderer;
- (c) the obligations of 1 or more parties under the contract to maintain or operate infrastructure or assets could continue for 10 years or more;
- (d) the contract involves a privately financed project undertaken under the State's policy about public private partnerships;

Editor's note—

As at the commencement of this section, information on the policy is available at <www.coordinatorgeneral.qld.gov.au/pp_partnerships>.

- (e) the contract involves a transfer of a significant asset of the agency concerned to another party to the contract in exchange for the transfer of an asset to the agency.

class 3 contract means a class 2 contract under which—

- (a) the total estimated value of the project; or
- (b) the total estimated value of the goods or services over the term of the contract; or
- (c) the value of the real property transferred; or
- (d) the rent for the term of the lease;

is likely to be \$5m or more.

commercial-in-confidence provisions, of a government contract, means any provisions of the contract that disclose—

- (a) the contractor's financing arrangements; or
- (b) the contractor's cost structure or profit margins; or
- (c) the contractor's full base case financial model; or

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- (d) any intellectual property in which the contractor has an interest; or 1
2
- (e) any matter the disclosure of which would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future. 3
4
5
6
- contractor**, for a government contract, means the person with whom an agency has entered into the contract. 7
8
- government contract**— 9
- (a) means— 10
- (i) a contract entered into between an agency and a private sector entity under which the agency or private sector entity agrees— 11
12
13
- (A) to undertake a stated project; or 14
- Example*— 15
- a construction, infrastructure or property development project 16
17
- (B) to provide stated goods or services; or 18
- Example*— 19
- information technology services 20
- (C) to transfer real property to the other party to the contract; or 21
22
- (ii) a lease of real property entered into between an agency and a private sector entity; but 23
24
- (b) does not include a contract of employment. 25
- private sector entity** means an entity that is not an agency. 26

- ‘20B Publication of information concerning government contracts** 27
28
- ‘(1) Subject to section 20D, within 45 days after a government contract becomes effective, the agency concerned must comply with this section. 29
30
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- ‘(2) If it is a class 1 contract, the agency must publish each of the following particulars of the contract—
- (a) the contractor’s name and business address;
 - (b) particulars of—
 - (i) any related body corporate, within the meaning of the Corporations Act, of the contractor; or
 - (ii) any other private sector entity in which the contractor has an interest;
that is to be involved in carrying out any of the contractor’s obligations under the contract or is to receive a benefit under the contract;
 - (c) the date on which the contract became effective and the duration of the contract;
 - (d) particulars of the project to be undertaken, the goods or services to be provided or the real property to be transferred or leased under the contract;
 - (e) the estimated amount payable to the contractor under the contract;
 - (f) a description of any provisions under which the amount payable to the contractor may be varied;
 - (g) a description of any provisions about renegotiating the contract;
 - (h) if the contract resulted from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed;
 - (i) a description of any provisions under which it is agreed the contractor is to receive payment for providing operational or maintenance services.
- ‘(3) If it is a class 2 contract, the agency must publish each of the following particulars of the contract—
- (a) particulars required to be published for a class 1 contract under subsection (2);

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- (b) particulars of future transfers of significant assets to the State at no or nominal cost to the State, including the date of their proposed transfer;
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- (c) particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer;
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- (d) the results of any cost-benefit analysis of the contract conducted by the agency;
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7
- (e) the components and quantum of the public sector comparator, if used;
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9
- (f) if relevant, a summary of information used in the contractor's full base case financial model;
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11
- Example—*
12
- the pricing formula for tolls or usage charges
13
- (g) if relevant, particulars of how risk, during the construction and operational phases of the contract, is to be apportioned between the parties, quantified, if practicable, in net present-value terms and stating the major assumptions involved;
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15
16
17
18
- (h) particulars of any significant guarantees or undertakings between the parties, including any guarantees or undertakings about loan agreements entered into or proposed to be entered into;
19
20
21
22
- (i) particulars of any other key elements of the contract.
23
- ‘(4) If it is a class 3 contract, the agency must publish—
24
- (a) each of the particulars of the contract required to be published for a class 2 contract under subsection (3); and
25
26
27
- (b) a copy of the contract.
28
- ‘(5) If an agency does not publish a copy of the class 3 contract as required under subsection (4) or publishes only some of the provisions of the contract under subsection 20D, the agency must publish—
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30
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- (a) the reasons why a copy of the contract or the unpublished provisions have not been published; and
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(b)	a statement as to whether it is intended a copy of the contract or the unpublished provisions will be published at a later date and, if so, the likely publication date; and	1 2 3
(c)	if some but not all of the provisions of the contract have been published, a general description of the types of provisions that have not been published.	4 5 6
‘(6)	For this section, a government contract becomes effective—	7
(a)	unless paragraph (b) applies—when the contract is entered into by or for the agency concerned; or	8 9
(b)	if the contract contains a provision to the effect that 1 or more conditions are to be met before the obligations of the parties under the contract are enforceable—when the condition or conditions have been met.	10 11 12 13
‘20C	Publication of information concerning material variations of government contracts	14 15
‘(1)	Subject to section 20D, if a material variation is made to a government contract that would affect the particulars that are required to be published under section 20B in relation to the contract, the agency concerned must amend the published particulars to reflect the variation within 45 days after the variation becomes effective.	16 17 18 19 20 21
‘(2)	Also, subject to section 20D, if a material variation is made to a class 3 contract a copy of which is required to be published under section 20B(4), the agency concerned must publish the variation, or the varied provisions of the contract, within 45 days after the variation becomes effective.	22 23 24 25 26
‘(3)	For this section, a material variation becomes effective—	27
(a)	unless paragraph (b) applies—when the variation of the contract is entered into by or for the agency concerned; or	28 29 30
(b)	if the variation of the contract contains a provision to the effect that 1 or more conditions are to be met before the obligations of the parties under the variation of the	31 32 33

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contract are enforceable—when the condition or
conditions have been met. 1
2

‘20D Limitations on publication requirement 3

- ‘(1) Sections 20B and 20C do not require an agency to publish any
of the following or particulars about any of the following— 4
5
- (a) commercial-in-confidence provisions of a government 6
contract; 7
 - (b) details of any unsuccessful tender relating to a 8
government contract; 9
 - (c) anything that could reasonably be expected to affect 10
public safety or security; 11
 - (d) a copy of a contract, a provision of a contract or any 12
other information in relation to a contract, that is of a 13
nature that its inclusion in a document would cause the 14
document to be an exempt document. 15
- ‘(2) Sections 20B and 20C do not apply to a government contract 16
entered into by or for an agency before the commencement of 17
section 20B. 18
- ‘(3) An agency is required to publish information under section 19
20B or 20C only to the extent the agency has the information 20
or it is reasonably practical for the agency to obtain the 21
information. 22

‘20E Where information must be published 23

- ‘(1) Information concerning a government contract required to be 24
published under section 20B or 20C must be published on the 25
website authorised by the Premier for the purpose. 26
- ‘(2) The information must be kept on the website mentioned in 27
subsection (1) for the longer of the following periods— 28
- (a) 45 days; 29
 - (b) the period ending when— 30

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|-------|--|----|
| (i) | the project the subject of the contract is complete; | 1 |
| | or | 2 |
| (ii) | the goods or services the subject of the contract are | 3 |
| | provided under the contract; or | 4 |
| (iii) | the real property the subject of the contract is | 5 |
| | transferred; or | 6 |
| (iv) | the term of the lease the subject of the contract | 7 |
| | expires. | 8 |
| ‘(3) | Subsection (1) does not prevent the Minister responsible for | 9 |
| | the agency concerned from approving additional publication | 10 |
| | of the information in another way.’. | 11 |

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|-----------------|--|----------|
| Clause 6 | Amendment of s 45 (Matter relating to trade secrets,
business affairs and research) | 12
13 |
| (1) | Section 45(1)— | 14 |
| | <i>insert—</i> | 15 |
| | ‘(aa) its disclosure would disclose commercial-in-confidence | 16 |
| | provisions of a government contract; or’. | 17 |
| (2) | Section 45(1)(b)(i), after ‘trade secrets’— | 18 |
| | <i>insert—</i> | 19 |
| | ‘or commercial-in-confidence provisions of a government | 20 |
| | contract’. | 21 |
| (3) | Section 45(1)(c)(i), after ‘trade secrets’— | 22 |
| | <i>insert—</i> | 23 |
| | ‘, commercial-in-confidence provisions of a government | 24 |
| | contract’. | 25 |