



**Legislative Assembly** for the  
**Australian Capital Territory**

Select Committee on Financial  
Management and Government  
Procurement Legislative Compliance

# Submission cover sheet

## Inquiry into Financial Management and Government Procurement Legislative Compliance

Submission number: 02.1

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## 1. Data Sources reviewed.

1. ACT Government Procurement Act 2001 (ACT).
2. ACT Government Procurement Amendment Act 2026.
3. Commonwealth Procurement Rules 2026.
4. WA Procurement ACT 2020.
5. ACT Government Procurement Board Web Site.
6. NSW Government Procurement Board Web Site.

## 2. Executive Summary.

The ACT Government Procurement Act 2001 is principles-based but lacks enforceable mechanisms to ensure consistent, transparent and accountable procurement outcomes. While the Act requires value for money, probity and risk management, these obligations are not operationalised. As a result, key decisions can be justified without structured evaluation, consistent methodology or robust auditability.

This paper identifies four systemic weaknesses:

- Value For Money.
- Governance.
- Risk Management.
- Oversight.
- Subcontracting.

And proposes targeted legislative reforms to address them.

Area	Current State	Problem	Reform
Value for Money	Defined but vague	Not operationalised	Structured evaluation framework
Governance	Policy-based	No enforcement	Binding Board powers
Risk	Referenced only	No system	Mandatory risk framework
Oversight	Passive	No real accountability	Independent regulator
Subcontracting	Largely unmanaged below the head contractor level	Limited visibility of subcontracting chains, weak probity controls, margin stacking, hidden delivery risk, reduced accountability and increased fraud/corruption exposure	Mandatory subcontractor disclosure, subcontracting transparency register, probity requirements, audit rights across subcontract chains, approval for material subcontracting changes and performance reporting framework

### **Disclaimer**

*This paper has been prepared as a public policy and legislative reform discussion document. The observations and proposed reforms contained in this paper are directed toward systemic procurement governance, risk management and accountability issues within the legislative framework of the ACT Government Procurement Act 2001.*

References to procurement risks, integrity risks, governance weaknesses or oversight limitations are made in a general policy context and are not intended to allege misconduct, wrongdoing or legal liability by any individual, agency or organisation.  
Any examples or comparisons referenced are used solely for the purpose of legislative and governance analysis.

## 3. Value For Money – Key Gaps and Reforms

### **Current Position.**

The current act stipulates Value for money (VFM) as a core obligation, but it is broadly defined as:

**Section 8(1) stipulates:** *“For this Act, value for money, in relation to a procurement, means the best available outcome for the procurement that maximises the overall benefit to the Territory.”*

**Section 8(2) stipulates:** *“Any decisions made, or functions exercised in relation to the following must achieve value for money.”*

### **Key Weaknesses:**

- “best available outcome”: undefined, subjective.
- “overall benefit”: no criteria, no weighting, no methodology.
- “Must achieve”: no methodology, no requirement for evaluation models, scoring or comparison of options.

**Section 8(3) stipulates:** *“To achieve value for money, the responsible chief executive officer for a Territory entity must be satisfied that the decision or exercise of the function.”*

### **Key Weaknesses:**

*“must be satisfied...”*: Vague, subjective.

- entire obligation is based on subjective satisfaction.
- no requirement for:
  - objective evidence.
  - independent validation.
  - consistency across agencies.

In practice, value for money can be asserted rather than demonstrated. This allows decisions to be justified without structured evaluation, creating inconsistency and limiting auditability.

### **Comparison.**

Commonwealth Procurement Rules:

- mandates officials show how value for money was considered and achieved.
- requires consideration of financial and non-financial costs/benefits.
- whole of life costs must be considered.

## Suggested Reforms – Value for Money (VFM).

For high-value procurements, require a consistent, auditable evaluation structure, while allowing flexibility in the specifics.

## **Reform 1 - Multi-Criteria Evaluation Model.**

Every large procurement should use weighted evaluation criteria.

### **Core structure:**

- price / whole-of-life cost → e.g. 30–50%.
- non-price criteria → e.g. 50–70%.

Including:

- quality / technical solution.
- delivery capability.
- risk profile.
- sustainability / innovation.
- etc.

This is implied in Commonwealth Procurement Rules (CPR) 2025 but not standardised.

## **Reform 2 - Whole-of-Life Costing.**

Whole of life costing for a procurement should be mandatory and not just based on the initial purchase price It could include:

- acquisition cost.
- operating cost.
- maintenance.
- transition/exit cost.
- cost of additional features after initial procurement.
- consumable costs.
- decommissioning, remediation and disposal costs (including waste disposal).

This is explicitly required in CPRs.

## **Reform 3 - Risk-Adjusted Evaluation .**

Each bid should be:

- risk assessed.
- risk scored.
- risk reflected in evaluation.

This is missing in the ACT Procurement Act.

## **Reform 4 - Comparative Scoring Matrix .**

All bids should be:

- scored against the same criteria.
- using a documented scoring model.

This provides a structured assessment for each potential supplier.

## **Reform 5 - Documented VFM Statement**

Final output must include:

- why the winning bid represents VFM.
- why alternatives were rejected.
- how risk influenced the decision.

The following provisions illustrate how these reforms could be implemented legislatively.

**Example Legislative Provisions.**

**Structured Evaluation and Value for Money:**

**Application:**

1. *This Part applies to procurements above a prescribed value threshold (a high-value procurement).*
2. *The Procurement Board may determine additional classes of procurements to which this Part applies having regard to risk, complexity or strategic importance.*

**Requirement for structured evaluation:**

1. *A Territory entity must undertake a structured and documented evaluation process for each high-value procurement.*
2. *The evaluation process must:*
  - (a) *be evidence-based and auditable; and*
  - (b) *enable comparison of all feasible options; and*
  - (c) *demonstrate how value for money is achieved.*

**Multi-criteria evaluation:**

1. *A Territory entity must use a multi-criteria evaluation model for each high-value procurement.*
2. *The model must:*
  - (a) *include both price and non-price criteria; and*
  - (b) *assign weightings to each criterion; and*
  - (c) *reflect the relative importance of each criterion to the procurement.*
3. *Without limiting subsection (2), non-price criteria may include:*
  - (a) *quality or technical merit;*
  - (b) *delivery capability;*
  - (c) *supplier capacity and past performance;*
  - (d) *risk profile;*
  - (e) *sustainability, innovation or social benefit.*
4. *The Procurement Board may determine guidance on appropriate weighting ranges.*

**Whole-of-life cost assessment:**

1. *A Territory entity must assess the whole-of-life cost of each procurement.*
2. *Whole-of-life cost must include, to the extent reasonably practicable:*
  - (a) *acquisition costs; and*
  - (b) *operating and maintenance costs; and*
  - (c) *transition and exit costs; and*
  - (d) *costs associated with consumables or additional features; and*
  - (e) *decommissioning, remediation and disposal costs.*

3. *A Territory entity must not rely solely on initial purchase price in determining value for money.*

**Risk-adjusted evaluation:**

1. *A Territory entity must assess and account for procurement risk in evaluating submissions.*
2. *The evaluation must:*
  - (a) *identify risks associated with each submission;*
  - (b) *assess the likelihood and consequence of those risks;*
  - (c) *assign a risk rating;*
  - (d) *reflect the impact of risk in the evaluation outcome.*
3. *The Procurement Board may determine methods for incorporating risk into evaluation.*

**Comparative evaluation and scoring:**

1. *A Territory entity must evaluate all submissions using a consistent scoring model.*
2. *The scoring model must:*
  - (a) *apply the same criteria to all submissions;*
  - (b) *enable comparison between submissions;*
  - (c) *be documented and capable of independent review.*
3. *A Territory entity must maintain a record of scoring outcomes for each submission.*

**Value for money statement:**

1. *A Territory entity must prepare a written value for money statement for each high-value procurement.*
2. *The statement must include:*
  - (a) *the evaluation methodology used; and*
  - (b) *the criteria and weightings applied; and*
  - (c) *the outcome of the comparative evaluation; and*
  - (d) *the reasons why the selected submission represents value for money; and*
  - (e) *the reasons why other submissions were not selected; and*
  - (f) *how risk was considered and influenced the decision.*
3. *The statement must be sufficiently detailed to enable independent audit and review.*

**Flexibility in evaluation approach:**

1. *A Territory entity may adapt the evaluation methodology to suit the nature of the procurement.*
2. *Any adaptation must be documented and must not be inconsistent with the requirements of this Part.*

The issue is not that value for money is undefined, it is that it is not operationalised. A standardised evaluation framework would ensure consistency, comparability and auditability

across all high-value procurements. These reforms do not prescribe a single method, instead they require a consistent and auditable framework. That is what makes value for money real.

### 4. Governance - Key Gaps and Reforms

#### **Current Position.**

There are no specific provisions in the ACT Government Procurement Act 2001 that deal with Governance which is largely via:

- government procurement board (limited statutory strength).
- directions and policies.

The current Board contains valuable procurement and project expertise, but its independence is structurally limited. If the Board is to become a genuine statutory safeguard for value for money, probity and procurement integrity, it should have a majority of independent members, its own secretariat, transparent appointment processes, stronger conflict rules, and direct reporting obligations to the Legislative Assembly. Senior public servants from delivery agencies should provide technical input but should not dominate voting membership of a body expected to scrutinise the procurement system in which they operate.

#### **Key Weaknesses.**

- board lacks binding directive power.
- no statutory requirement for procurement capability standards.
- fragmented governance across agencies.

#### **Comparison.**

- New South Wales:
  - central procurement board can issue binding directions.
- Commonwealth:
  - strong framework under public governance, performance and accountability act 2013.
  - clear accountability of officials for decisions.

### Suggested Reforms – Governance

#### **Reform 6 - Strengthen Procurement Board Powers.**

The current governance structure may create perceptions of institutional dependency and reduced independence in oversight functions. It relies on Procurement ACT for secretariat functions, recruitment support and accreditation processes, creating institutional dependency and perceived conflicts of interest. Convert the Procurement Board into an **independent** statutory authority and separate it from Procurement ACT:

- separate legal identity.
- independent staffing and budget.
- independent secretariat.
- direct reporting obligations to the Legislative Assembly.
- statutory investigative and review powers.
- legislated independence provisions.

with power to issue binding directions to:

- mandate procurement methods.
- intervene in high-risk procurements.
- compel production of procurement records.
- require agencies to respond formally to recommendations.
- issue procurement compliance notices.
- initiate systemic procurement reviews.
- review high-risk procurement variations.
- conduct post-project value-for-money audits.
- refer matters to the Integrity Commission or Auditor-General.

## **Reform 7 – Require an Independent Majority Board.**

Legislate that:

- at least 70% of members must be independent non-public employees.
- the Chair must always be independent.
- public servants may comprise no more than two voting members.
- public service members must not come from agencies with major live procurements under review.

## **Reform 8 – Establish Strong Conflict-of-Interest Rules.**

Introduce mandatory:

- annual conflict declarations.
- meeting-specific conflict declarations.
- public register of interests.
- recusal requirements.
- cooling-off periods.

## **Suggested Cooling-Off Rules:**

<b>Category</b>	<b>Restriction</b>
Former Ministers	3 years
Ministerial advisers	2 years
Former procurement executives	2 years
Major ACT contractors/lobbyists	3 years
Consultants involved in ACT tenders	barred from related reviews

## **Reform 9 - Mandatory Review of High-Risk Procurements.**

Major projects often experience:

- scope creep.
- cost escalation.
- contract variations.
- weak value-for-money reassessment.

Require mandatory Board review for:

- procurements above a legislated threshold.
- limited tender procurements.

- major contract variations.
- emergency procurements.
- direct-source contracts.
- procurements involving repeated vendor use.
- high-risk ICT procurements.

## **Suggested Triggers:**

Trigger	Threshold
Construction projects	> \$25m
ICT projects	> \$10m
Contract variations	>15% value increase
Limited tenders	automatic review
Procurement exemptions	automatic review

## **Reform 10 - Public Transparency Reforms.**

The Board's work is relatively opaque.

Require publication of:

- annual work plans,
- systemic risk reports,
- de-identified lessons learned.
- procurement trend analysis.
- statistics on exemptions and limited tenders.
- major recommendation summaries.
- agency compliance responses.

Commercial confidentiality should not become a blanket excuse for secrecy.

## **Reform 11 - Parliamentary Oversight.**

Require:

- annual hearings before an Assembly committee.
- tabling of Board annual reports.
- mandatory government response to major Board recommendations within 90 days.
- Assembly power to request special procurement reviews.

This would create democratic accountability while maintaining operational independence.

## **Reform 12 - Introduce External Expert Panels.**

Create standing expert panels that can assist the Board on:

- major infrastructure.
- digital transformation.
- health procurement.
- Sustainability.
- social procurement.
- Indigenous procurement.
- defence-style complex acquisitions.

This avoids over-reliance on generalist procurement professionals.

**Reform 13 - Establish a Procurement Integrity & Analytics Function**

Create an independent analytics capability within the Board to monitor:

- repeated contractor success patterns.
- bid concentration.
- contract splitting (“salami slicing”).
- excessive variations.
- procurement exemptions.
- cost escalation trends.
- abnormal pricing behaviour.
- subcontracting chains.

This is essential for modern procurement integrity oversight.

**Reform 14 - Introduce Mandatory Post-Completion Reviews**

Government often measures procurement success at contract award rather than project outcome.

Require post-project reviews assessing:

- actual versus forecast costs.
- delivery delays.
- realised benefits.
- contract management performance.
- lessons learned.
- value-for-money outcomes.

Reports should be publicly released where possible.

**Reform 15 - Improve Skills Diversity**

The current Board is heavily weighted toward procurement practitioners and infrastructure delivery.

Require at least one member with expertise in:

- forensic auditing.
- corruption prevention.
- behavioural risk.
- public accountability.
- community governance.
- competition economics.

Procurement integrity is not just a sourcing exercise.

**Reform 16 - Mandatory Capability & Accreditation.**

Require:

- certification levels for procurement officers.
- minimum training standards.
- link authority to delegation thresholds.

**Reform 17 - Whole-of-Government Procurement Strategy**

Mandate:

- coordinated procurement (aggregation) to leverage buying power and reduce administration.
- use of panel contracts where appropriate.

(Aligns with Commonwealth cooperative procurement model improving value for money).  
The following provisions illustrate how these reforms could be implemented legislatively.

**Example Legislative Provisions:**

**Establishment of Board:**

1. *A new ACT Government Procurement Board will be established (AGPB).*
2. *The Board:*
  - a) *is a body corporate; and*
  - b) *has perpetual succession; and*
  - c) *may sue and be sued in its corporate name.*
3. *The Board represents the Territory.*
4. *The Board is independent in the exercise of its functions under this Act.*

**Board Independence:**

1. *The Board is not subject to direction by the Minister in relation to:*
  - a) *a procurement review.*
  - b) *an investigation.*
  - c) *a compliance notice.*
  - d) *a recommendation made under this Act, or*
  - e) *a referral to another oversight entity.*

*Subsection (1) does not prevent the Minister issuing general policy directions of a non-operational nature.*
2. *Any direction issued under subsection (2) must:*
  - a) *be in writing.*
  - b) *be tabled in the Legislative Assembly within 5 sitting days.*

**Board Functions:**

*The functions of the Board are to:*

- a) *oversee the integrity, effectiveness and value for money of Territory procurement.*
- b) *review high-risk, high-value or prescribed procurements.*
- c) *monitor systemic procurement risks.*
- d) *conduct procurement compliance audits and reviews.*
- e) *issue compliance notices and directions under this Act.*
- f) *monitor procurement market concentration and supplier dependency risks.*
- g) *conduct post-completion procurement reviews.*
- h) *provide advice and recommendations to Territory entities and the Minister.*
- i) *report to the Legislative Assembly on procurement integrity and systemic procurement risks.*
- j) *exercise any other function given under this Act or another Territory law.*

**Board Powers:**

1. *For the purposes of exercising its functions, the Board may:*

- a) *require a Territory entity to provide procurement records, documents or information.*
  - b) *require written responses to Board recommendations.*
  - c) *review procurement practices and procedures.*
  - d) *issue procurement compliance notices.*
  - e) *conduct investigations into procurement practices.*
  - f) *undertake systemic procurement reviews.*
  - g) *review procurement variations and exemptions.*
  - h) *conduct post-project value for money audits.*
  - i) *refer matters to:*
    - 1) *the Integrity Commission.*
    - 2) *(ii) the Auditor-General.*
    - 3) *(iii) a law enforcement agency.*
    - 4) *(iv) another prescribed entity.*
2. *A Territory entity must comply with a requirement under subsection (1).*
  3. *The Board may report non-compliance to the Minister and the Legislative Assembly.*

**Board Membership – Board Composition:**

1. *The Board consists of 9 members appointed by the Minister.*
2. *At least 70% of members must be persons who are not public employees.*
3. *The Chair must not be a public employee.*
4. *No more than 2 voting members may be public employees.*
5. *A public employee is not eligible for appointment if the employee is employed in a Territory entity subject to a procurement review being conducted by the Board.*

**Board Membership – Board Expertise:**

1. *The Minister must ensure the Board collectively possesses expertise in:*
  - a) *Procurement.*
  - b) *commercial law.*
  - c) *infrastructure delivery.*
  - d) *forensic auditing.*
  - e) *corruption prevention.*
  - f) *public finance.*
  - g) *behavioural risk.*
  - h) *competition economics.*
  - i) *public accountability.*
  - j) *ICT procurement.*
  - k) *community governance.*
2. *At least 1 member must possess substantial expertise in forensic auditing or corruption prevention.*

**Conflicts of Interest – Disclosure of Interests:**

1. *A Board member must disclose:*

- a) *any direct or indirect financial interest.*
- b) *any actual, potential or perceived conflict of interest.*
2. *Disclosures must be made:*
  - a) *annually.*
  - b) *before consideration of any relevant matter.*
3. *The Board must maintain a public register of interests.*

**Conflicts of Interest – Recusal:**

4. *A member who has a material conflict of interest in a matter must:*
  - a) *not participate in deliberations relating to the matter.*
  - b) *not vote on the matter.*
5. *The recusal and reasons for recusal must be recorded in Board minutes.*

**Conflicts of Interest – Cooling-Off Restrictions:**

1. *A person is not eligible for appointment to the Board if, within the previous:*
  - a. *3 years, the person was:*
    - i. *a Minister.*
    - ii. *employed by a major Territory contractor.*
    - iii. *engaged in lobbying relating to Territory procurement.*
  - b. *2 years, the person was:*
    - i. *a ministerial adviser; or*
    - ii. *employed in a senior Territory procurement role.*
2. *A Board member must not participate in a review involving a procurement in which the member has had substantial prior involvement.*
3. *A former Board member must not, within 2 years after ceasing office, engage in lobbying or advisory activity relating to a procurement matter considered by the Board during the member's term.*

**Mandatory Procurement Reviews:**

1. *The following procurements must be reviewed by the Board:*
  - a. *construction procurements exceeding \$25 million.*
  - b. *ICT procurements exceeding \$10 million.*
  - c. *procurements involving limited tender processes.*
  - d. *emergency procurements.*
  - e. *direct-source procurements.*
  - f. *prescribed high-risk procurements.*
  - g. *procurement exemptions.*
  - h. *contract variations increasing contract value by more than 15%.*
2. *The regulations may prescribe additional review thresholds or procurement classes.*

**Transparency:**

1. *The Board must publish:*
  - a. *annual work plans.*
  - b. *systemic risk reports.*
  - c. *procurement trend analysis.*
  - d. *statistics relating to procurement exemptions and limited tenders.*
  - e. *de-identified lessons learned reports.*
  - f. *summaries of major recommendations.*
  - g. *agency responses to Board recommendations.*
2. *Information may only be withheld where reasonably necessary to protect:*
  - a. *genuinely commercially sensitive information.*
  - b. *legal privilege.*
  - c. *public safety.*
  - d. *an active investigation.*
3. *Commercial confidentiality alone does not justify blanket non-disclosure.*

**Parliamentary Oversight:**

1. *The Board must provide an annual report to the Legislative Assembly.*
2. *The Chair must appear before a relevant Assembly committee at least once annually.*
3. *The Government must respond to major Board recommendations within 90 days after tabling.*
4. *An Assembly committee may request the Board conduct a special procurement review.*

**Expert Panels:**

1. *The Board may establish expert advisory panels.*
2. *Panels may provide specialist advice relating to:*
  - a. *infrastructure.*
  - b. *digital transformation.*
  - c. *health procurement.*
  - d. *sustainability.*
  - e. *Indigenous procurement.*
  - f. *social procurement.*
  - g. *complex acquisitions.*
3. *Advisory panels are consultative only unless otherwise prescribed.*

**Procurement Integrity & Analytics:**

1. *The Board must establish a procurement integrity and analytics function.*
2. *The function must monitor:*
  - a. *repeated contractor success patterns.*
  - b. *bid concentration.*
  - c. *contract splitting practices.*
  - d. *excessive contract variations.*

- e. *procurement exemptions.*
  - f. *abnormal pricing patterns.*
  - g. *subcontracting chains.*
  - h. *supplier concentration risks.*
  - i. *cost escalation trends.*
3. *The Board may require Territory entities to provide procurement data for analytics purposes.*

**Post-Completion Reviews:**

1. *A Territory entity must conduct a post-completion review for prescribed procurements.*
2. *The review must assess:*
  - a. *actual versus forecast costs.*
  - b. *delivery delays.*
  - c. *realised benefits.*
  - d. *contract management performance.*
  - e. *lessons learned.*
  - f. *value for money outcomes.*
3. *Reviews must be provided to the Board within 6 months after project completion.*
4. *The Board may publish review summaries.*

**Capability & Accreditation:**

1. *The Minister may determine minimum procurement capability standards.*
2. *Procurement authority levels must be linked to:*
  - a. *certification level.*
  - b. *training completion.*
  - c. *procurement experience.*
3. *A Territory entity must ensure procurement officers satisfy prescribed capability requirements.*

**Whole-of-Government Procurement Strategy:**

1. *The Territory must promote coordinated procurement arrangements where reasonably practicable.*
2. *Territory entities must consider:*
  - a. *aggregation opportunities.*
  - b. *panel arrangements.*
  - c. *cooperative procurement mechanisms.*
  - d. *administrative efficiency measures.*
3. *The Board may issue guidance relating to coordinated procurement strategies.*

The current ACT framework relies on guidance rather than enforceable authority. These amendments introduce binding governance mechanisms.

## 5. Risk Management - Key Gaps and Reforms.

### **Current Position.**

Risk is referenced in the ACT Procurement Act 2001 but not deeply prescribed.

### **Key Weaknesses.**

- no mandatory risk assessment framework.
- no escalation thresholds for high-risk procurements.
- no requirement for independent assurance (probity advisors, etc).

### **Comparison.**

- Commonwealth:
  - explicit requirements to engage with procurement risk (section 8, page 22).
- best practice (e.g. Victoria):
  - probity and risk scale with value/complexity .

## Suggested Reforms – Risk Management.

### **Reform 18 - Mandatory Risk Classification System.**

Introduce tiered procurement risk categories (low / Medium / High) and for each tier require increased governance controls per tier.

### **Reform 19 - Independent Assurance Requirements.**

For high value/high-risk procurements mandate:

- the appointment of a probity advisor.
- independent evaluation panel members.
- gateway reviews.

### **Reform 20 - Contract Performance Monitoring.**

For high value/high-risk procurements mandate:

- embed KPIs in contracts.
- ongoing performance reporting.
- termination triggers for underperformance.

The following provisions illustrate how these reforms could be implemented legislatively.

## Example Legislative Provisions:

### ***Risk classification of procurements:***

- 1. A Territory entity must classify each procurement as:*
  - a. low risk.*
  - b. medium risk, or*
  - c. high risk.*
- 2. In classifying a procurement, a Territory entity must have regard to:*
  - a. the estimated value of the procurement.*
  - b. the complexity of the procurement.*
  - c. the level of risk to the Territory, including financial, operational, reputational and legal risks.*
  - d. market capability and supply risks.*

- e. any other matter prescribed by regulation.
3. The Procurement Board may determine criteria or guidelines for risk classification.
4. A Territory entity must comply with criteria or guidelines determined under subsection (3).

**Mandatory risk assessment:**

1. A Territory entity must undertake a documented risk assessment for each procurement.
2. The risk assessment must:
  - a. identify risks associated with the procurement.
  - b. assess the likelihood and consequence of each risk.
  - c. assign a risk rating.
  - d. identify risk mitigation strategies and controls.
3. The risk assessment must be proportionate to the risk classification of the procurement.
4. A Territory entity must maintain a risk register for each medium-risk and high-risk procurement.
5. The risk register must be reviewed and updated throughout the procurement lifecycle.

**Escalation and governance requirements:**

1. A Territory entity must apply governance and oversight measures proportionate to the risk classification of the procurement.
2. Without limiting subsection (1):
  - a. low-risk procurements must comply with standard procurement processes.
  - b. medium-risk procurements must include enhanced oversight and review processes.
  - c. high-risk procurements must comply with additional requirements under this Part.
3. A Territory entity must escalate a procurement to high-risk status if:
  - a. the value increases beyond a prescribed threshold; or
  - b. the risk profile materially changes.

Introduces dynamic risk escalation, preventing procurements from remaining classified as low risk when conditions change.

**Independent assurance for high-risk procurements:**

1. A Territory entity must ensure that independent assurance is undertaken for each high-risk procurement.
  2. Independent assurance must include:
    - (a) the appointment of an independent probity advisor;
    - (b) the inclusion of at least one independent member on evaluation panels;
    - (c) the conduct of gateway reviews at key stages of the procurement.
  3. The Procurement Board may determine requirements for independent assurance, including the timing and scope of gateway reviews.
  4. A Territory entity must comply with requirements determined under subsection (3).
- These clauses directly address probity failures, poor evaluation practices and lack of independent oversight.

**Contract performance monitoring:**

1. A Territory entity must ensure that contracts for medium-risk and high-risk procurements include measurable performance indicators.

2. *For high-risk procurements, a Territory entity must:*
  - a. *establish key performance indicators (KPIs).*
  - b. *monitor supplier performance against those KPIs.*
  - c. *maintain records of performance outcomes.*
3. *A Territory entity must undertake regular performance reviews for high-risk procurements.*
4. *A contract for a high-risk procurement must include provisions that:*
  - a. *allow for corrective action in the event of underperformance.*
  - b. *provide for termination where performance falls below acceptable standards.*

## 6. Oversight and Accountability – If changes to the Procurement Board are not adopted.

### **Current Position.**

Currently Transparency is via publication of notifiable contracts. Oversight is therefore largely passive.

### **Key Weaknesses.**

- no independent procurement review body.
- no formal complaints mechanism with enforcement power.
- limited real-time transparency.
- weak audit triggers.

### **Comparison**

- Commonwealth: procurement coordinator monitors and reports.
- NSW: enforceable procurement provisions.
- international best practice: real-time procurement transparency portals.

## Suggested Reforms – Oversight and Accountability.

### **Reform 21 - Independent Procurement Regulator.**

Require publication of:

- evaluation summaries.
- contract variations (with justification).
- supplier performance reports.

### **Reform 22 - Challenge & Review Mechanism.**

Introduce:

- supplier right to challenge procurement decisions.
- time-bound review process.

The following provisions illustrate how these reforms could be implemented legislatively.

## Example Legislative Provisions.

### ***Establishment of a Procurement Commissioner:***

*An office of the ACT Procurement Commissioner is to be established. The Commissioner is an independent statutory office holder and is not subject to direction by a Territory entity in relation to the exercise of the Commissioner's functions.*

1. *Functions of Commissioner are to:*
  - a. *monitor compliance with the Act and procurement directions.*
  - b. *conduct audits and reviews of procurements.*
  - c. *investigate complaints about procurement processes.*
  - d. *provide advice and recommendations to the Minister.*
  - e. *promote transparency and accountability in procurement.*
2. *Powers of Commissioner. The Commissioner may:*
  - a. *require a Territory entity to provide information or documents.*
  - b. *conduct audits of procurement activities.*
  - c. *make findings and recommendations.*
  - d. *publish reports on procurement practices.*
3. *A Territory entity must comply with a requirement under subsection (2).*

### **Publication of procurement information:**

1. *A Territory entity must publish, for procurements above a prescribed threshold:*
  - a. *a summary of the evaluation process, including the basis on which value for money was determined.*
  - b. *details of contract variations, including reasons for each variation.*
  - c. *supplier performance summaries for high-risk procurements.*
2. *Information must be published within a prescribed period after the relevant event.*
3. *The Procurement Commissioner may determine the form and content of information to be published.*

### **Procurement transparency portal:**

1. *The Procurement Board must establish and maintain a publicly accessible procurement transparency portal.*
2. *The portal must provide access to:*
  - a. *procurement plans.*
  - b. *contract awards.*
  - c. *contract variations.*
  - d. *performance reporting information.*
3. *A Territory entity must ensure that required information is provided for publication on the portal.*

### **Challenge & Review Mechanism:**

#### Right to challenge procurement decisions:

1. *A supplier may apply to the Procurement Commissioner for a review of a procurement process if the supplier reasonably believes that:*
  - a. *the procurement process did not comply with this Act; or*
  - b. *the process was affected by bias, error or procedural unfairness.*
2. *An application must be made within a prescribed period.*

#### Review process:

1. *The Commissioner must conduct a review in a timely manner and may:*
  - a. *request information from the Territory entity.*
  - b. *seek submissions from relevant parties.*
  - c. *assess compliance with this Act.*
2. *The Commissioner must provide a written determination.*

Outcomes of review:

1. *Following a review, the Commissioner may:*
  - a. *make recommendations to the Territory entity.*
  - b. *require corrective action.*
  - c. *direct that a procurement process be reconsidered.*
  - d. *report the matter to the Minister.*
2. *A Territory entity must comply with a direction under this section.*

**Mandatory audit triggers:**

1. *A Territory entity must notify the Procurement Commissioner if:*
  - a. *a procurement exceeds a prescribed cost threshold.*
  - b. *a contract variation exceeds a prescribed percentage of the original contract value.*
  - c. *a procurement is classified as high risk.*
  - d. *any significant issue arises that may affect value for money.*
2. *The Commissioner must consider whether to conduct an audit or review.*

The current system relies on passive disclosure. These reforms shift the framework from passive disclosure to active oversight and real-time accountability.

7. Subcontracting



## Suggested Reforms – Subcontracting.

### **Current Position.**

The Government Procurement Act 2001 (ACT) largely regulates the relationship between the Territory and the head contractor but contains very limited provisions dealing with subcontracting arrangements beneath the primary contract.

For major infrastructure and high-value procurements, substantial portions of delivery may occur through complex subcontracting chains involving multiple tiers of subcontractors.

### **Key Weaknesses.**

- No mandatory disclosure of key subcontractors.
- No visibility of subcontracting chains below the head contractor.
- No approval requirement for material subcontracting changes after contract award.
- No subcontractor probity or conflict-of-interest requirements.
- No audit rights extending through subcontracting chains.
- No controls on excessive subcontracting or “pass-through” contracting.
- No subcontractor performance reporting requirements.
- Increased risk of:
  - Fraud.
  - related-party arrangements.
  - hidden commissions.
  - invoice inflation.
  - capability dilution.
  - margin stacking.
  - poor delivery outcomes.

### **Comparison.**

Modern procurement frameworks increasingly recognise that procurement risk extends beyond the prime contractor and into the subcontracting chain, particularly for:

- infrastructure.
- Construction.
- ICT.
- complex service delivery.

Best practice internationally includes:

- subcontractor transparency.
- supply chain probity checks.
- audit rights across delivery chains.
- mandatory disclosure of key delivery partners.

### **Reform 23 - Mandatory Disclosure of Key Subcontractors.**

Require disclosure of:

- key subcontractors.
- categories of subcontracted work.
- estimated subcontract values.

for:

- high-value procurements.
- high-risk procurements.

**Improves:**

- transparency.
- capability assessment.
- value for money analysis.
- delivery accountability.

**Reform 24 - Approval of Material Subcontracting Changes.**

Require Territory approval where:

- substantial work is transferred to new subcontractors.
- delivery models materially change.
- subcontracting materially increases procurement risk.

**Prevents:**

- “bid one thing, deliver another”.
- capability substitution after contract award.
- uncontrolled subcontracting escalation.

**Reform 25 - Subcontractor Probity and Conflict Controls.**

Require:

- probity declarations for key subcontractors.
- disclosure of related-party arrangements.
- conflict-of-interest declarations.
- integrity and compliance checks.

**Reduces:**

- corruption risk.
- hidden relationships.
- fraud exposure.
- unethical procurement practices.

**Reform 26 - Subcontracting Transparency Register.**

Require publication of:

- major subcontractors.
- significant subcontracting changes.
- subcontracting variations.
- related-party subcontracting arrangements.

**Moves subcontracting transparency from:**

- hidden contractual arrangements to,
- visible public accountability

**Reform 27 - Audit Rights Across Subcontracting Chains**

Require procurement contracts to provide audit rights extending through subcontracting chains.

Audit rights should include access to:

- subcontract agreements.
- performance information.
- financial records relevant to public expenditure.

**Improves:**

- fraud detection.
- Accountability.
- verification of value for money.
- oversight capability.

## **Reform 28 - Controls on Excessive Subcontracting.**

Require:

- approval where subcontracting exceeds prescribed thresholds.
- minimum direct delivery obligations for head contractors where appropriate.

Reduces:

- margin stacking.
- pass-through contracting.
- capability dilution.
- hidden delivery risk.

## **Reform 29 - Subcontractor Performance Reporting.**

Require contractors on high-risk procurements to:

- monitor subcontractor performance.
- report major delivery issues.
- report significant disputes or failures.

Improves:

- delivery accountability.
- early identification of project failure risks.
- contract management capability.

## **Key Reform Principle.**

These reforms do not prohibit subcontracting. Rather, they ensure that subcontracting arrangements are:

- transparent.
- auditable.
- proportionate to procurement risk.
- subject to appropriate probity and oversight controls.

## **Example Legislative Provisions.**

### ***Disclosure of subcontracting arrangements:***

- 1. A Territory entity must require a tenderer for a high-value procurement or high-risk procurement to disclose:*
  - a. proposed key subcontractors.*
  - b. the categories of work to be subcontracted.*
  - c. the estimated value or proportion of work to be subcontracted.*
- 2. A Territory entity must consider subcontracting arrangements in assessing:*
  - a. value for money.*
  - b. procurement risk.*
  - c. supplier capability.*
- 3. A tenderer must notify the Territory entity of any material change to subcontracting arrangements before contract award.*

**Approval of material subcontracting changes:**

1. A contractor must not materially alter subcontracting arrangements for a high-risk procurement without prior written approval from the Territory entity.
2. A subcontracting change is material if it:
  - a. substantially changes the delivery model for the procurement.
  - b. transfers a significant portion of the contracted work to another entity.
  - c. materially increases procurement risk.
  - d. affects the capability on which the procurement decision was based.
3. In deciding whether to approve a material subcontracting change, the Territory entity must consider:
  - a. value for money.
  - b. delivery capability.
  - c. procurement risk.
  - d. probity considerations.

**Probity requirements for subcontractors:**

1. A contractor must ensure that key subcontractors comply with probity requirements prescribed by regulation or procurement direction.
2. Without limiting subsection (1), probity requirements may include:
  - a. conflict-of-interest declarations.
  - b. disclosure of related-party arrangements.
  - c. integrity and compliance checks.
  - d. disclosure of prior findings of fraud, corruption or significant regulatory non-compliance.
3. A contractor must notify the Territory entity of any actual, potential or perceived conflict of interest involving a key subcontractor as soon as practicable after becoming aware of it.

**Publication of subcontracting information:**

1. A Territory entity must publish prescribed subcontracting information for high-value procurements and high-risk procurements.
2. Published information may include:
  - a. names of key subcontractors.
  - b. categories of subcontracted work.
  - c. substantial subcontracting variations.
  - d. related-party subcontracting arrangements.
  - e. any other information prescribed by regulation.
3. Information published under this section must be made available through the procurement transparency portal established under this Act.
4. A Territory entity may withhold information where publication would:

- a. *prejudice security.*
- b. *disclose commercially sensitive information contrary to the public interest.*

**Audit rights relating to subcontractors:**

1. *A procurement contract for a high-value procurement or high-risk procurement must include provisions enabling the Territory to audit subcontracting arrangements relating to the contract.*
2. *Audit rights under subsection (1) may include access to:*
  - a. *subcontract agreements.*
  - b. *financial records relating to subcontracted work.*
  - c. *performance information.*
  - d. *records relating to value for money assessments.*
  - e. *records relevant to compliance with this Act.*
3. *A contractor must ensure that subcontract agreements contain provisions necessary to enable compliance with this section.*
4. *A subcontractor must provide reasonable assistance in relation to an audit conducted under this section.*

**Excessive subcontracting:**

1. *A contractor must not subcontract more than a prescribed proportion of contracted work without prior written approval from the Territory entity.*
2. *In determining whether to grant approval under subsection (1), the Territory entity must consider:*
  - a. *value for money.*
  - b. *delivery capability.*
  - c. *procurement risk.*
  - d. *whether the subcontracting arrangement materially differs from the arrangement evaluated during the procurement process.*
3. *The Procurement Board may determine guidance relating to acceptable subcontracting thresholds for classes of procurements.*

**Subcontractor performance reporting**

1. *A contractor for a high-risk procurement must monitor and report on the performance of key subcontractors.*
2. *Reports under subsection (1) must include:*
  - a. *significant delivery issues.*
  - b. *material disputes affecting delivery.*
  - c. *significant non-compliance issues.*
  - d. *subcontractor performance against key performance indicators.*
  - e. *any other matter prescribed by regulation or procurement direction.*
3. *Reports must be provided at intervals determined by the Procurement Board or specified in the procurement contract.*

4. *A Territory entity may require corrective action where subcontractor performance materially affects delivery outcomes.*

**Anti-avoidance provision (optional):**

1. *A contractor must not enter into subcontracting arrangements for the purpose of avoiding obligations under this Act.*
2. *Without limiting subsection (1), avoidance arrangements may include:*
  - a. *artificial subcontracting structures.*
  - b. *sham contracting arrangements.*
  - c. *undisclosed related-party arrangements.*
  - d. *arrangements intended to avoid transparency or audit obligations.*
3. *The Procurement Board (or Commissioner) may investigate suspected avoidance arrangements.*

**Key Legislative Effect**

These provisions would:

<b>Current Position</b>	<b>Proposed Reform</b>
Visibility stops at head contractor	Full subcontracting transparency
No subcontractor probity controls	Mandatory integrity requirements
No subcontract audit rights	Auditability through delivery chain
No control of excessive subcontracting	Risk-based approval framework
Limited fraud visibility	Stronger anti-avoidance controls
Weak delivery visibility	Performance reporting obligations

These reforms extend procurement accountability beyond the head contract and into the full delivery chain where significant value-for-money, integrity and fraud risks frequently arise.

**8. Conclusion – Legislative Reform Imperative**

The current framework relies on principles without enforceable mechanisms. These reforms introduce structured evaluation, enforceable governance, systematic risk management and active oversight. These reforms align the ACT with contemporary procurement frameworks adopted in other jurisdictions.

**End of Document**