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The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Financial Management and
Accountability (Anti-Restrictive
Software Practices) Amendment Bill
2003**

No. , 2003

(Senator Greig)

**A Bill for an Act to amend the *Financial
Management and Accountability Act 1997* to
encourage the procurement by public agencies of
open source computer software, and for related
purposes**

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1 **A Bill for an Act to amend the *Financial***
2 ***Management and Accountability Act 1997* to**
3 **encourage the procurement by public agencies of**
4 **open source computer software, and for related**
5 **purposes**

6 **Preamble**

7 Acknowledging that the Australian Public Service relies heavily on computer
8 software as an aid to delivering a wide range of goods and services to the
9 Australian community.

10

11 Concerned that a small number of software manufacturers have a
12 disproportionate and restrictive hold on the supply, use and development of
13 software.

14

1 Recognising that the removal of certain restrictive software practices would
2 encourage greater diversity and application of software and lower costs to
3 consumers.

4
5 This Act gives effect to certain measures intended to encourage the use by
6 Australian Public Service Agencies of open source software.

7 **The Parliament of Australia enacts:**

8 **1 Short title**

9 This Act may be cited as the *Financial Management and*
10 *Accountability (Anti-Restrictive Software Practices) Amendment*
11 *Act 2003*.

12 **2 Commencement**

13 This Act commences on the day on which it receives the Royal
14 Assent.

15 **3 Object of Act**

16 The object of this Act is, wherever practicable, to require all
17 agencies covered by this Act to procure and use open source
18 software or software using proprietary formats in preference to
19 proprietary software.

20 **4 Interpretation**

21 In this Act:

22 *open source software* has the meaning given in section 43A of the
23 *Financial Management and Accountability Act 1997*.

24 **5 Schedule(s)**

25 Each Act that is specified in a Schedule to this Act is amended or
26 repealed as set out in the applicable items in the Schedule
27 concerned, and any other item in a Schedule to this Act has effect
28 according to its terms.

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Schedule 1—Amendment of the Financial Management and Accountability Act 1997

1 After Part 6

Insert:

Part 6A—Special provisions relating to procurement operations of Agencies

43A Principle applying to the procurement of computer software

- (1) An Agency, in making a decision about the procurement of computer software for its operations, must have regard to the principle that, wherever practicable, an Agency is to use open source software in preference to proprietary software.
- (2) Where a vendor of computer software wishes to participate in a government software procurement program, the vendor must:
 - (a) contract to ensure that its software products follow industry-wide accepted standards that are open to all vendors and display an open format;
 - (b) contract to ensure all computer data which is to be derived, generated or transferred as part of the procurement will be kept at all times in a format that is completely documented in public.
- (3) Where an Agency, contrary to the principles specified in subsections (1) and (2), takes a decision to procure proprietary software, or software which uses proprietary formats, the Agency must include in its annual report:
 - (a) a list of all occasions on which it procured proprietary software or software which uses proprietary formats; and
 - (b) a statement in relation to each occasion mentioned in paragraph (a) explaining:
 - (i) the specific purpose for which the proprietary software or software using propriety formats was procured;

- 1 (ii) what proprietary software or software which uses
- 2 proprietary formats was procured;
- 3 (iii) why it was not practicable to use open source software
- 4 or software which uses proprietary formats;
- 5 (iv) what specific features of the procured proprietary
- 6 software or software which uses proprietary formats
- 7 were not available in open source software;
- 8 (v) on whose advice the decision to procure the proprietary
- 9 software or software which uses proprietary formats was
- 10 taken.

11 (4) In this section:

12 **distribute** means distribute for free or on payment of the reasonable

13 costs of distribution.

14 **open format** in relation to computer software, means that

15 specifications for data representations used by the computer

16 software (including but not limited to, file formats for data storage,

17 transmission and network protocols) are completely and accurately

18 documented and available to the public for use, application or

19 review without restriction.

20 **open source software** means computer software the subject of a

21 licence granting a person a right:

- 22 (a) without any limitation or restriction, to use the software for
- 23 any purpose; and
- 24 (b) without any limitation or restriction, to make copies of the
- 25 software for any purpose; and
- 26 (c) without any limitation or restriction, to access or modify the
- 27 source code of the software for any purpose; and
- 28 (d) without payment of a royalty or other fee, to distribute copies
- 29 of:
 - 30 (i) the software (including as a component of an aggregate
 - 31 distribution containing computer software from several
 - 32 different sources); or
 - 33 (ii) a derived or modified form of software (whether in
 - 34 compiled form or in the form of source code), under the
 - 35 same terms as the licence applying to the software.

1 ***proprietary format***, in relation to computer software, means that
2 specifications for data representations used by the computer
3 software (including but not limited to, file formats for data storage,
4 transmission and network protocols) are the proprietary property of
5 a company or companies and as such are open to limitations,
6 restrictions and usage and licensing costs as determined by the
7 proprietary owners.

8 ***proprietary software*** means computer software that is not open
9 source software.