

Local Government Amendment (National Competition Policy Review) Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Local Government Act 1993 (the Principal Act)* as follows, in connection with national competition policy reform:

- (a) to enable persons prescribed by the regulations to specify contracts for the purchase of goods, materials or services that will be exempt from the tendering provisions of the Principal Act,
- (b) to remove the requirement that a person operating an undertaker's business or a mortuary must hold a council approval,
- (c) to remove the restrictions on councils on their use of rents and other proceeds derived from community land,
- (d) to allow certain deductions (in the nature of a return on capital invested payments (dividend)) to be made from money required to be used only for restricted purposes and to allow those deductions to be applied towards any purpose allowed for the expenditure of money by councils by the Principal Act or any other Act,
- (e) to provide for a more flexible procedure for the setting of fees for the services of a council that relate to certain business activities,
- (f) to amend the definition of **domestic waste** in the Principal Act to make it clear that domestic waste includes waste that may be recycled, but does not include sewage.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

Schedule 1 Amendments

Amendments relating to tendering

Schedule 1 [1] creates an additional exemption from the requirement on councils to tender before entering certain contracts. Currently, councils are not required to tender before entering a number of specified contracts, including contracts for the purchase of goods, materials or services that have been specified by the State Contracts Control Board or the Commonwealth Department of Administrative Services. This amendment also exempts certain contracts for the purchase of goods, materials or services specified by a person prescribed by the regulations made with another person so specified. **Schedule 1 [14]** makes a related amendment to enable regulations to be made for or with respect to the contracts specified by those prescribed persons. Such regulations could relate to the general obligations of prescribed persons, reporting requirements of prescribed persons, probity requirements relating to prescribed persons or the provision of information by prescribed persons to the Department of Local Government.

Amendment relating to council approvals

Schedule 1 [3] removes the requirement for a person operating an undertaker's business or a mortuary to obtain a council approval.

Amendments relating to restricted use of council funds

Schedule 1 [5] and [6] provide that money that has been received by a council as rents, profits or other proceeds from a lease, licence or other estate granted in respect of community land

need not be expended on community land acquisition and community land management requirements (as is currently the case), but may be used for any purpose allowed by the Principal Act or any other Act.

Schedule 1 [7] provides that a council may deduct from money currently required to be used only for the specific purpose of water supply or sewerage services an amount in the nature of a return on capital invested payment (dividend). Any amount so deducted may be applied towards any purpose allowed for the expenditure of money by councils by the Principal Act or any other Act. A council may only make such a deduction if it complies with certain guidelines published by the Minister for Land and Water Conservation with the concurrence of the Minister for Local Government.

The Minister for Land and Water Conservation may, with the concurrence of the Minister for Local Government, direct a council to comply with any aspect of the guidelines before making a further deduction if of the opinion that the council has failed to substantially comply with the guidelines.

Amendments relating to the setting of fees for services

Schedule 1 [8]–[11] provide for a more flexible procedure for the setting of fees for the services that a council provides as part of a business activity. Currently, under section 612 of the Principal Act, the proposed amount of a fee must be set out in a council's draft management plan for the year in which the fee is to be made.

Schedule 1 [10] inserts proposed Division 2 into Part 10 of Chapter 15 of the Principal Act. The proposed Division applies to a fee charged by a council for any service relating to the following business activities:

- (a) the operation of an abattoir,
- (b) the operation of a gas production or reticulation service,
- (c) the carrying out of certain water supply or sewerage services,
- (d) the carrying out of work under section 67 (Private works) of the Principal Act,
- (e) the carrying out of graffiti removal work under section 67A of the Principal Act,
- (f) any other activity prescribed by the regulations.

The proposed Division does not apply to a fee charged by a council for a service relating to the following activities:

- (a) the issuing of a certificate under Part 4A of the *Environmental Planning and Assessment Act 1979*,
- (b) an activity prescribed by the regulations.

A council may determine a fee to which the proposed Division applies only in accordance with a pricing methodology adopted by the council in its plan of management. However, a council may at any time determine a fee otherwise than in accordance with its adopted pricing methodology, but only if the determination is made by a resolution at an open meeting of the council.

All other fees for services will continue to be set in accordance with the current fee setting procedure (see proposed Division 3 of Part 10 of Chapter 15 of the Principal Act).

Schedule 1 [2], [4], [12], [13] and [16] make consequential amendments.

Amendment relating to the definition of “domestic waste”

Schedule 1 [17] replaces the definition of **domestic waste** in the Dictionary to the Principal Act. The new definition makes it clear that domestic waste includes waste that may be recycled, but does not include sewage.

Savings and transitional provisions

Schedule 1 [15] enables regulations to be made of a savings and transitional nature consequent on the enactment of the proposed Act.