



New South Wales

Public Works and Procurement Amendment (Enforcement) Bill 2018

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 *Public Works and Procurement Act 1912* to provide for the enforcement of certain directions and policies of the New South Wales Procurement Board concerning procurements to which international procurement agreements may apply.

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.

Schedule 1 **Amendment of Public Works and Procurement Act 1912 No 45**

Schedule 1 [1] inserts definitions, including the following:

- (a) **Board direction or policy** is defined to mean a direction or policy issued by the New South Wales Procurement Board (the **Board**) under section 175 of the Act.
- (b) **Enforceable procurement provision** is defined to mean a provision of a Board direction or policy (or a provision of a document referred to in a Board direction or policy) that is expressed to be an enforceable procurement provision by the direction or policy.

- (c) **International procurement agreement** is defined to mean an international agreement that applies to procurements by Australian Governments and covers procurements by New South Wales.

Schedule 1 [3] enables the Board to issue policies as well as directions concerning the procurement of goods and services by and for government agencies. It also enables the Board to specify that provisions in a direction or policy (or provisions of a document referred to in a direction or policy) relating to an international procurement agreement are enforceable procurement provisions. **Schedule 1 [2], [4] and [5]** make consequential amendments.

Schedule 1 [6] inserts the following provisions in Part 11 of the Act concerning the enforcement of enforceable procurement provisions:

- (a) **Division 5** sets out a procedure for certain persons to make complaints about the conduct of government agencies where it is alleged that they have contravened or are proposing to contravene enforceable procurement provisions. Complaints are to be dealt with by the government agency head concerned and provision is made for the suspension of certain procurement processes when a complaint is made.
- (b) **Division 6** enables the Supreme Court to issue injunctions or to award compensation for contraventions or proposed contraventions of enforceable procurement provisions. The power of the Supreme Court to grant injunctions will be subject to certain procedural preconditions, including requiring a complaint to be made first under Division 5. Division 6 also enables a government agency head to issue a public interest certificate to prevent the suspension of a procurement while a complaint is being investigated or an application for an injunction is being considered.
- (c) **Division 7** includes a provision to make it clear that a contravention of an enforceable procurement provision does not affect the validity of any contract.

Schedule 1 [7] enables government agencies to delegate their complaint handling functions concerning enforceable procurement provisions to their staff members.

Schedule 1 [8] enables regulations to be made by the Governor for the purposes of provisions to be inserted by the proposed Act, including regulations with respect to:

- (a) complaints concerning the conduct of government agencies in connection with enforceable procurement provisions that apply to them, and
- (b) preconditions for the making or granting of applications under Division 6 that are additional to those specified in the Division.