

First print



New South Wales

# Public Sector Employment and Management Amendment (Procurement of Goods and Services) Bill 2012

## Explanatory note

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

## Overview of Bill

The object of this Bill is to establish a new scheme for the procurement of goods and services by and for government agencies in New South Wales. The Bill abolishes the State Contracts Control Board and establishes the NSW Procurement Board (the *Board*). The Board will oversee procurement across all government agencies, which includes Government departments, statutory bodies and certain other public authorities. The new scheme applies to the procurement of goods and services by and for government agencies, including goods and services required by government agencies to exercise statutory functions, and also to procurement carried out pursuant to statutory powers of procurement. Under the new scheme, a government agency will, subject to accreditation by the Board and Board directions, be able to procure goods and services for the agency or for other agencies.

The Bill also repeals the *Public Sector Employment and Management (Goods and Services) Regulation 2010* and makes consequential amendments to the *Public Sector Employment and Management Regulation 2009* and other legislation.

## 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 Sector Employment and Management Act 2002 No 43**

**Schedule 1 [2]** omits Parts 7.1 and 7.2 of Chapter 7 of the *Public Sector Employment and Management Act 2002* (the *principal Act*) and inserts new Parts 7.1–7.4.

**Proposed Part 7.1** defines words and expressions used in proposed Chapter 7. A *government agency* is defined to mean any of the following:

- (a) a public sector agency (within the meaning of the principal Act),
- (b) a NSW Government agency,
- (c) any other public authority that is constituted by or under an Act or that exercises public functions (other than a State owned corporation),
- (d) any State owned corporation prescribed by the regulations.

**Procurement** of goods and services is defined to mean the process of acquiring goods and services by:

- (a) identifying the need to purchase goods and services, and
- (b) selecting suppliers for goods and services, and
- (c) contracting and placing orders for goods and services,

and includes the disposal of goods that are unserviceable or no longer required.

The proposed Chapter will apply to the procurement of goods and services by or for a government agency, which includes:

- (a) the procurement of goods and services required by a government agency to exercise its statutory functions, and
- (b) the procurement of goods and services by a government agency pursuant to the agency's specific powers of procurement.

The proposed Chapter will not apply to procurement by or for a local council or other local authority or the Parliament of New South Wales.

**Proposed Part 7.2** establishes the Board as a NSW Government agency. The Board will consist of the Director-General of the Department of Finance and Services (the Chairperson) and the Division Heads of at least 6 of the Divisions of the Government Service specified in Division 1 of Part 1 of Schedule 1 to the principal Act, being the Divisions determined by the Minister for Finance and Services (the *Minister*) from time to time. The Board will be subject to the direction and control of the Minister in the exercise of its functions and will be able to establish subcommittees and advisory groups to assist the Board. **Schedule 1 [4]** inserts provisions relating to the members and procedure of the Board.

**Proposed Part 7.3** sets out the objectives and functions of the Board. The objectives of the Board are as follows:

- (a) to develop and implement a Government-wide strategic approach to procurement,
- (b) to ensure best value for money in the procurement of goods and services by and for government agencies,
- (c) to improve competition and facilitate access to Government procurement business by the private sector, especially by small and medium enterprises and regional enterprises,
- (d) to reduce administrative costs for government agencies associated with procurement,
- (e) to simplify procurement processes while ensuring probity and fairness.

The Board will have the following functions:

- (a) to oversee the procurement of goods and services by and for government agencies,
- (b) to develop and implement procurement policies,
- (c) to issue directions to government agencies,
- (d) to monitor compliance by government agencies with the requirements of the proposed Chapter (including Board directions),
- (e) to investigate and deal with complaints about the procurement activities of government agencies,
- (f) to develop appropriate procurement and business intelligence systems for use by government agencies,
- (g) to collect, analyse and publish data and statistics in relation to the procurement of goods and services by and for government agencies,
- (h) such other functions as are conferred or imposed on the Board by or under the principal Act or any other Act.

**Proposed Part 7.4** sets out the new procurement scheme. The Board may establish a scheme under which government agencies accredited by the Board may procure goods and services for that agency or for other government agencies, subject to any terms and conditions of its accreditation. Government agencies may also be authorised by the Board to carry out specified procurement of goods and services without Board accreditation. The Board will be able to issue directions to government agencies regarding the procurement of goods and services by and for government agencies. Government agencies will be obliged to exercise procurement functions in accordance with any applicable Board policies and directions, the terms of any Board accreditation and the principles of probity and fairness.

**Schedule 1 [1]** substitutes the heading to Chapter 7 of the principal Act to reflect the new procurement scheme.

**Schedule 1 [3]** omits Part 7.3 (Competitive neutrality in tendering) and transfers the provisions of that Part to Schedule 1 to the *Public Sector Employment and Management Regulation 2009*.

**Schedule 1 [5]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [6]** contains savings and transitional provisions.

## **Schedule 2      Amendment of Public Sector Employment and Management Regulation 2009**

**Schedule 2 [1]** inserts provisions from the *Public Sector Employment and Management (Goods and Services) Regulation 2010* (which is repealed by Schedule 3.5 to the proposed Act) into the *Public Sector Employment and Management Regulation 2009*, including provisions that deal with the following matters:

- (a) the procurement of goods and services in emergencies,
- (b) the supply of goods and services by approved disability employment organisations,
- (c) agreements between the Board and public bodies (that are not government agencies and not covered by the procurement arrangements in proposed Chapter 7 of the principal Act) relating to the procurement of goods and services for or by those bodies.

**Schedule 2 [2]–[6]** are minor amendments consequent on the transfer of Part 7.3 (Competitive neutrality in tendering) of the principal Act to the *Public Sector Employment and Management Regulation 2009*.

## **Schedule 3      Consequential amendments to other legislation**

**Schedule 3.1–3.4** make amendments to the following legislation as a consequence of the abolition of the State Contracts Control Board and establishment of the NSW Procurement Board:

- (a) *Government Information (Public Access) Act 2009*,
- (b) *Government Information (Public Access) Regulation 2009*,
- (c) *Independent Pricing and Regulatory Tribunal Act 1992*,
- (d) *Local Government Act 1993*.

**Schedule 3.5** repeals the *Public Sector Employment and Management (Goods and Services) Regulation 2010*.