

FACT SHEET

Government Procurement Review (International Free Trade Agreements) Bill

The purpose of the Bill is to give effect to Tasmania's commitment to comply with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11) and the Singapore-Australia Free Trade Agreement (SAFTA).

The TPP-11 is a free trade agreement between Australia and ten other countries. The TPP-11 was ratified by the Australian Government on 31 October 2018 and subsequently came into force in Australia on 30 December 2018. It includes a Government Procurement Chapter which sets out obligations and rules to be applied in the conduct of covered government procurements.

In order to comply with its commitment to the Australian Government, the Tasmanian Government is required to establish a domestic review mechanism.

As a minimum, there must be access to an independent administrative or judicial authority to receive complaints, take interim measures and award remedies. The authority does not need to be a new or separate body but is required to have the right jurisdiction and constitutional power to conduct reviews and provide the remedies required under the domestic review process.

The Bill:

- gives jurisdiction to the Supreme Court of Tasmania to hear procurement complaints, for relevant procurements;
- enables the Supreme Court to grant compensation or issue a declaration for a breach of an enforceable procurement provision. Compensation is limited to the reasonable costs incurred in tendering, making a complaint and incurred in attempting to resolve a complaint;
- enables the Supreme Court to grant an interlocutory or interim injunction before determining an application by an aggrieved supplier; and
- provides that an aggrieved supplier must make a complaint to the accountable authority of a relevant government agency before it can make an application to the Supreme Court for a declaration. Where a complaint is received, the complaint must be investigated and the procurement suspended, unless there is no public interest certificate in force. A public interest certificate may be issued by an accountable authority if it considers that it is not in the public interest to suspend the procurement.