

DRAFT SECOND READING SPEECH

HON. ELISE ARCHER MP

Government Procurement Review (International Free Trade Agreements) Bill 2019

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Madam Speaker

I am pleased to introduce the Government Procurement Review (International Free Trade Agreements) Bill 2019.

The Comprehensive and Progressive Trans-Pacific Partnership Agreement, also known as TPP 11, came into force in Australia on 30 December 2018. TPP 11 requires that all states, territories and the Commonwealth introduce an independent review mechanism for government procurement. This Bill ensures Tasmania's compliance with that requirement.

The Bill designates the Tasmanian Supreme Court to receive and review local and international supplier complaints. It applies in relation to an alleged contravention of Tasmania's commitments under TPP 11 and other free trade agreements with which Tasmania complies.

The Bill expects suppliers and procuring entities to make a genuine attempt to resolve a complaint. A supplier can only make an application to the Supreme Court for a declaration in respect of conduct that has or would contravene an enforceable procurement provision if they have first made a complaint to the procuring entity.

Once a complaint is received by the procuring entity, the procurement must be suspended whilst an investigation is undertaken, except where the entity has issued a certificate stating that it is not in the public interest to suspend the procurement. The Bill preserves the supplier's ability to participate in procurements, whilst also recognising that some procurements are so important that government entities should be able to continue with the procurement whilst an investigation is being resolved.

The Bill imposes strict time limitations for an aggrieved supplier to make an application to the Supreme Court. However, the Supreme Court can allow an extended period if it considers appropriate to do so.

When considering whether to issue a declaration, the Supreme Court may grant an interlocutory or interim injunction restraining the relevant agency from engaging or proposing to engage in conduct that is or would contravene an enforceable procurement provision.

The Supreme Court is also to consider, where an application for compensation has been made, whether the issuing of a declaration or granting of an interlocutory or interim injunction would result in a significant delay to the procurement and whether compensation would be a more appropriate remedy.

An aggrieved supplier can apply to the Supreme Court for an order for payment of compensation in conjunction with, or independently of an application for a declaration.

Compensation is limited to expenditure reasonably incurred by the supplier in preparing a tender for the procurement, costs incurred in making the complaint, together with any costs incurred in attempting to resolve the complaint.

For completed procurements where a contract has been awarded, compensation is the only available remedy. The contravention of a procurement obligation does not affect the validity of an awarded contract.

The Bill ensures that complaints can be dealt with in a timely, effective and transparent manner.

The decision to vest jurisdiction on the Supreme Court was informed by consultation between the Solicitor General and Crown Solicitor. This approach is also in line with New South Wales' position.

The Bill demonstrates the Government's commitment towards its obligations under free trade agreements. The Bill also supports the Government's commitment to transparent and competitive procurement. It implements internationally agreed standards for the independent review of government procurements. Equally, it ensures that Tasmanian businesses have the opportunity to participate in procurements in nations participating in TPP 11.

I commend the Bill to the House.