

## Local Government (Competitive Tendering) Bill

### EXPLANATORY MEMORANDUM

*Clause 1* sets out the purpose of the Act, which is to require Councils to use competitive tendering arrangements for a percentage of their total expenditure each year.

*Clause 2* provides commencement dates for the different sections of the Act. The section imposing general requirements on Councils to tender before entering into contracts worth \$50 000 or more is to come into effect on 1 October 1994, or earlier by proclamation. The sections on competitive tendering arrangements are to come into effect on 1 October 1994.

*Clause 3* inserts a new Division into the Act to provide for competitive tendering arrangements—

**208A.** Requires a Council to be a party to competitive arrangements valued at 50% or more of its total expenses for the year. For the phase-in period, the targets are 20% in 1994–95 and 30% in 1995–96.

**208B.** Defines what a “competitive arrangement” is. A “competitive arrangement” includes written contracts entered into by a Council after it has engaged in a competitive process, whether for the supply of goods or services, or the undertaking of works, either to or for a Council or by a Council. It also includes an in-house agreement, and any contract or in-house agreement approved by the Minister under section 208F. Employment contracts and other contracts and in-house agreements lasting longer than 5 years are not competitive arrangements.

**208C.** Identifies what a “competitive process” is. A competitive process in the awarding of a contract (or in-house agreement) is one in which tenders are submitted following public notice, all tenders considered, the contract (or in-house agreement) awarded to a tenderer and any other requirement in regulations observed.

**208D.** Defines what an “in-house agreement” is. It is an agreement entered into by a Council with a member or members of its staff, after a competitive process. The agreement is in writing, describes the staff obligations and sets out the annual cost and performance criteria relating to those obligations.

**208E.** Identifies how to assess the value of each type of competitive arrangement.

**208F.** Allows the Minister to approve as competitive arrangements contracts or in-house agreements which are entered into without the Council engaging directly in a competitive process, or which have or could have a life of more than 5 years.

**208G.** Requires a Council to prepare a competitive tendering statement, in accordance with regulations, and submit it to its auditor and to the Minister. If a Council has failed to comply with the percentage target required for the year, it must also give the Minister a written explanation for that failure.

*Clause 4* inserts a definition of “competitive tendering statement”.

*Clause 5* requires a Council to include the competitive tendering statement in its annual report, together with its explanation for any failure to comply with the percentage

target required for that year, and the auditor's report on the competitive tendering statement.

The clause also requires a Council's auditor to report on the competitive tendering statement, in the form and containing the details required by regulations. The auditor must submit a copy of the report to the Minister and the Council as soon as practicable.

*Clause 6* substitutes a new section dealing with the power of a Council to enter into contracts over a certain value. Before a Council enters into a contract for the purchase of goods or services, or for the carrying out of works, valued at \$50 000 or more, it must—

- (a) invite tenders by public notice; or
- (b) invite expressions of interest by public notice, before inviting tenders from all or some of those whose expressions of interest have been registered by the Council.

A Council is not obliged to accept the lowest or any tender.

Certain contracts, for example those entered into because of an emergency, are not affected by this section. Contracts with public bodies, including other Councils, or which are for professional services, are affected.

*Clause 7* provides for the Governor in Council to make regulations in relation to competitive tendering arrangements and tendering for contracts.