

2018

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

GOVERNMENT PROCUREMENT (SECURE LOCAL JOBS) AMENDMENT BILL 2018

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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Introduction

This supplementary explanatory statement relates to minor amendments to the Government Procurement (Secure Local Jobs) Amendment Bill 2018 (the Bill), as presented to the Legislative Assembly on 2 August 2018.

This explanatory statement has been prepared to assist the reader of the Bill and to inform debate on it. It is to be read in conjunction with the Bill and the explanatory statement. It is not a comprehensive description of the Bill.

Purpose of amendment

These proposed amendments clarify and ensure the application of the new requirements is consistent with the objectives of the Bill.

The proposed amendments are minor or technical in nature, and are required to:

- a. clarify that certain kinds of professional services and works, that may otherwise fall within the definition of construction work, are not covered by the requirements introduced by the Bill as a result of being inadvertently captured by the definition of *territory-funded work*;
- b. clarify that the requirements introduced by the Bill apply to the entire procurement process rather than just the documentation stage, by changing the Bill's use of the terms procurement and procurement proposal; and
- c. clarify references to the Legislation Act.

Human Rights Considerations

The amendments do not engage the *Human Rights Act 2004*.

Detail

Amendments 1 to 3 **Proposed new section 22E, definition of *tenderer***

Amendments 1 to 3 change the language used in the Bill to clarify that the Bill applies to the whole procurement process, not just procurement proposals and contracts for procurement.

Amendment 4 **Proposed new section 22F(1)(b)(i)**

Amendment 4 ensures that not all construction work within the meaning of section 289 of the *Work Health and Safety Regulation 2011* is classified as *territory-funded work*. The Amendment does so by amending the language used in the definition of *territory-funded*

work relating to construction work to allow for the exclusion of certain kinds of services or works.

Amendment 5 and 6 **Proposed new section 22F(3), definition of ANZSIC, new note**

These amendments clarify a technical drafting matter identified by the Scrutiny Committee in Scrutiny Report 21 in relation to the use of section 47 of the *Legislation Act 2001*. While Scrutiny Committee did not require a response in relation to these comments, technical amendments have been made to correct the Bill and retain an explanation of where the instrument will be publicly available, a practice commended by the Scrutiny Committee.

Amendment 7 **Proposed new section 22F(3) , new definition of *excluded services or works***

Amendment 7 inserts a new definition of the term *excluded services or works*.

This amendment is one of the amendments necessary to ensure that not all construction work within the meaning of section 289 of the *Work Health and Safety Regulation 2011* is classified as *territory-funded work*. This section defines what will be *excluded services or works* from the definition of construction work, for example, professional services.

Amendments 8 to 10 **Proposed new section 22G(1)**

Amendments 8 to 10 are amendments to the language used in the Bill to clarify that the Bill applies to the whole procurement process, not just procurement proposals and contracts for procurement.

Amendment 11 **Proposed new section 22G(1)(b)**

The delayed amendment to section 22F, contained in Schedule 1 of the Bill, uses the term *value*. Amendment 11 amends section 22G(1)(b) so the term *estimated value* is used instead to ensure consistency of language relating to thresholds at which the requirements are to apply.

Amendments 12 to 21 **Proposed new sections 22G(2), 22H(1), 22H(3), 22ZD(2)(b), 103(1)(a), 103(1)(b), 103(2), new dictionary definition of *tenderer***

Amendments 12 to 21 are amendments to the language used in the Bill to clarify that the Bill applies to the whole procurement process, not just procurement proposals and contracts for procurement.

Amendment 22 **Schedule 1, proposed new section 22F(1)(a)(i)**

Amendment 22 is a minor amendment to the language used in the Bill which is required as a result of the use of the term *excluded services or works* which is defined by Amendment 25.

Amendment 23 **Schedule 1, proposed new section 22F(1)(b)(i)**

Amendment 23 amends the delayed amendment to section 22F, contained in Schedule 1 of the Bill, to ensure that not all construction work within the meaning of section 289 of the *Work Health and Safety Regulation 2011* is classified as *territory-funded work*, by clarifying that construction work does not include *excluded services or works*.

Amendment 24 **Schedule 1, proposed new section 22F(2)**

This amendment clarifies a technical drafting matter identified by the Scrutiny Committee in Scrutiny Report 21 in relation to the use of section 47 of the *Legislation Act 2001*. While the Scrutiny Committee did not require a response in relation to these comments, the provision has been corrected.

Amendment 25 **Schedule 1, proposed new section 22F(3), new definition of
*excluded services or works***

Amendment 25 inserts a definition for the term *excluded services or works*. Once schedule 1 commences, the Regulation will prescribe the services or works that are to be excluded from being captured within the meaning of *territory-funded work*.