

CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND SUBMISSION

▾ Government Procurement (Judicial Review) Bill 2017

Senate Finance and Public Administration Committees

July 2017

Introduction

1. The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide feedback to the Senate Finance and Public Administration Committee on the **Government Procurement (Judicial Review) Bill 2017** (the Bill).
2. The Bill will vest the Federal Circuit Court of Australia (FCC) with jurisdiction to grant an injunction and/or order payment of compensation in relation to a contravention of the relevant Commonwealth Procurement Rules (CPRs).
3. The Bill is aimed to meet international obligations via the WTO agreement on Government procurement (GPA). The obligation as stipulated requires the Commonwealth to establish or designate an impartial and independent body where suppliers can raise complaints about Government procurement processes and be awarded remedies and compensation.
4. The Bill is said to support regional suppliers and small and medium enterprises with access to justice to raise complaints about procurement processes and seek remedies without the need to attend major cities.
5. The Chamber of Commerce and Industry Queensland (CCIQ), together with the Australian Chamber of Commerce and Industry (ACCI), have reviewed the Bill and have the following comments and recommendations.

Summary of recommendations

6. Support is given for the creation of an independent body where suppliers can raise complaints regarding government procurement processes. However, CCIQ is of the view that the Bill provides limited access to raise complaints regarding unfair procurement processes.
7. There are concerns particularly in relation to *Section 11 Injunctions* including the 10-day limitation period. This is considered a very short timeframe for initiating court action for an injunction.
8. It is recommended that the 10-day period for initiating court action be extended as the prerequisite for seeking an injunction requires a complaint with the procuring entity in the first instance.
9. The initial complaints process lodged with the procuring entity will, in most cases, take substantially longer than 10 days in which case waivers from the FCC will be required. This leaves significant exercising powers to the FCC as they decide whether to grant the request for an injunction on a case-by-case basis.
10. CCIQ is of the view that the FCC is being granted substantial powers to determine the injunction and compensation process and that the preparation of necessary documentation will fall in favour of large suppliers with the legal capacity and/or funding over SMEs that may have limited funding and/or legal expertise.
11. For example Section 11 Part 5(b), regarding the powers granted to the FCC in undertaking their decision to progress an application beyond the 10-day limitation period, is only to be granted under "special circumstances".

12. This provides the FCC substantial power to decide and or interpret circumstances based on the quality of the application. Greater specificity is sought on this clause and what would constitute “special circumstances”.
13. There is also no indication on the estimated timeframe to be used by the FCC in determining the special circumstances of the applicant. This will limit the ability of SMEs who lack internal legal expertise the ability to raise and escalate concerns formally. To do so may require legal expertise at a high cost to the business owner.
14. Additionally, SME suppliers may require the assistance of an ombudsman and this should be considered as an alternative pathway outside of the legal system.

Further enquiries

15. We thank the Committee for the opportunity to provide comment and welcome any feedback you may have. Please contact Catherine Pham, Senior Policy Advisor, at for matters relating to this submission.