

Department of Finance

Response to Question on Notice

SENATE FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Inquiry into Public Governance, Performance and Accountability Amendment (Tax Transparency in Procurement and Grants) Bill 2019

Hearing of Wednesday, 5 August 2020

Question on Notice 1 (Proof Hansard Page 13)

Senator PATRICK: In some sense, the case doesn't matter. It really comes down to: at what point—and maybe you can take this on notice to get a comprehensive answer—does the Department of Finance require due diligence to be carried out by the Australian Government Solicitor or through another alternative? And, in carrying out that due diligence, what are the minimum standards that are placed upon the Australian Government Solicitor?

Dr Helgeby: We can't talk about the Australian Government Solicitor and the obligations on them which presumably fit under other frameworks. What we would say is that, in each case, the accountable authority—or the decision-maker—is the one who has to satisfy themselves about the legal status of the decision they're making. In those sorts of circumstances, sometimes they go to in-house councils, sometimes they go to the AGS and potentially they go to others as well, but the fundamental test is for the decision-maker to satisfy themselves of the appropriateness of the decision they're making. In terms of how the AGS works at a level of detail, that's not anything we can answer.

Senator PATRICK: In actual fact, the AGS are just instructed by the Commonwealth. So I'm trying to understand what the Commonwealth's instructions to the AGS are, because the AGS won't simply carry out work as it sees fit; it will be instructed in some way to do so. Are there any specific guidelines that Finance places on departments, noting that you are the central policymaker for procurement across government in respect of due diligence? Is there something written down somewhere that guides each of the departments on the minimum standards?

Dr Helgeby: The Commonwealth Procurement Rules are fairly extensive, and they go to a range of obligations which really take into account not just the size of the procurement but also the international obligations that Australia works under. I might ask Mr Danks if he wants to go into a bit more detail about how specifically the procurement framework would apply in the case of a decision-maker.

Senator PATRICK: Can I just say that the CPRs are pretty high level. I'm looking for a lower level of detail—perhaps on notice, just because I'm going to be time constrained by the chair.

Response

The Department of Finance provides guidance on its website (<https://www.finance.gov.au/government/procurement/buying-australian-government>) to assist procurement officials to engage in sound procurement practices and promote the proper use and management of public resources.

In relation to due diligence, Commonwealth agencies must act ethically when conducting procurements, and not seek to benefit from supplier practices that may be dishonest, unethical or unsafe. This includes not entering into contracts with tenderers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order.

In addition, the Procurement Connected Policy *Black Economy – increasing the integrity of government procurement* requires, from 1 July 2019, that businesses seeking to tender for Australian Government procurement contracts over \$4 million (including GST) to provide a statement from the Australian Taxation Office showing they have a satisfactory tax record. Tenderers who do not provide evidence that they have at least sought the statement from the ATO would be removed from the tender process. All non-corporate Commonwealth entities must comply with the policy.

Apart from tied work under the *Legal Services Direction 2017*, there is no requirement for the Australian Government Solicitor to be used to undertake any work in relation to a procurement. Decisions on due diligence requirements, and external support that may be needed to undertake due diligence, are made by the appropriate accountable authority under the devolved policy framework.