



Australian Government
Department of Finance

**David Tune PSM
Secretary**

Our Ref: SEC0010111

Ms Lyn Beverley
Committee Secretary
Senate Finance and Public Administration
Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Beverley

I am writing to make a submission for the Department of Finance to the Senate Finance and Public Administration Legislation Committee inquiry into the Flags Amendment Bill 2014 (the Bill). I understand that the Bill seeks to amend the *Flags Act 1953* to require that all Australian flags flown, used or supplied by the Commonwealth are manufactured in Australia from materials manufactured in Australia.

As the Bill relates to the procurement of Australian flags by Commonwealth entities, it needs to be considered in the context of the Commonwealth procurement framework and Australia's international procurement obligations.

The Commonwealth Procurement Rules (CPRs) is a legislative instrument that sets down the rules for Commonwealth procurement activities and articulates the requirements for officials performing duties in relation to procurement. A key aspect of the CPRs is non-discrimination. The CPRs stipulate that potential suppliers to government must, subject to the CPRs, be treated equitably based on their commercial, legal, technical and financial abilities and not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their goods and services.

The CPRs incorporate Australia's government procurement commitments from international agreements, such as the Australia United States Free Trade Agreement, Australia Chile Free Trade Agreement, and Australia and New Zealand Government Procurement Agreement. These agreements place obligations on the Commonwealth Government to provide access for the suppliers, goods and services of the other countries to our procurement market.

As the Bill seeks to discriminate between suppliers on the basis of their location and origin of their goods, it may be inconsistent with the CPRs and Australia's international obligations.

There is limited scope to exclude specific procurements from the non-discrimination requirements of the CPRs, and this is only possible when there are appropriate exemptions in our international agreements. An example of such an exemption is the procurement of motor vehicles by the Commonwealth Government.

There is no specific exemption relating to flags, or textiles more generally, in the CPRs or Australia's international agreements. Detailed consideration would be needed into whether general exemptions in Australia's international agreements could be used to allow the proposed requirements in the Bill to be incorporated into the Commonwealth procurement framework. The Department of Foreign Affairs and Trade has overarching responsibility for Australia's international agreements.

I note that the Senate Finance and Public Administration References Committee is currently conducting an inquiry into Commonwealth procurement procedures. This inquiry is looking more broadly at the non-discrimination requirements of the CPRs and Australia's international obligations, and may be relevant to the inquiry into the Bill.

Yours sincerely

David Tune
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