



Western Australia

Procurement Act 2020

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No. 24 of 2020

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Procurement Act 2020

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Western Australia

Procurement Act 2020

No. 24 of 2020

An Act to modernise the processes for Government procurement of goods, services and works.

[Assented to 19 June 2020]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Procurement Act 2020*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Objects of Act

The objects of this Act are as follows —

- (a) to promote best value for money in government procurement so as to deliver sustainable economic, social and environmental benefits to Western Australians;
- (b) to reduce barriers to the participation of small and medium businesses in government procurement by streamlining procurement procedures;
- (c) to strengthen integrity in government procurement and to promote ethical and accountable practices so as to provide confidence that government procurement is conducted fairly;
- (d) to enable coordinated government procurement strategy, governance and leadership and devolved accountability and decision-making;
- (e) to provide a legislative scheme that is responsive to changing community expectations and that supports innovation in the Western Australian economy.

4. Terms used

(1) In this Act —

authorised body means an entity (or an entity of a kind) that is declared to be an authorised body under section 6(1);

common use contractual arrangements means contractual arrangements established under section 25 by the Department CEO;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

Department CEO means the chief executive officer of the Department;

entity includes any corporation, unincorporated body, statutory officer or other person;

goods, services or works means goods, services or works of any kind, including the following —

- (a) community services;
- (b) information and communications technology;
- (c) construction work as defined in the *Construction Contracts Act 2004* section 3;
- (d) things of a kind prescribed by the regulations to be included in this definition;

procurement includes —

- (a) obtaining goods, services or works by purchase, lease, licence, public private partnerships or other means; and
- (b) disposing of goods or works;

procurement activities means decisions or other things done in the course of, or as a result of, a process to procure goods, services or works;

procurement direction means a general procurement direction or an agency specific procurement direction issued by the Minister under Part 4;

Procurement Executive Body means the body corporate of that name established by section 18(1);

State agency has the meaning given in section 5(1);

supplier means a person who directly or indirectly supplies, or proposes to directly or indirectly supply, goods, services or works to State agencies.

- (2) A reference in this Act to goods, services or works includes a reference to goods, services and works.
- (3) A reference in this Act to compliance with this Act includes a reference to compliance with regulations, procurement directions or other instruments under this Act.
- (4) A reference in this Act to the Department CEO, a State agency or an authorised body procuring goods, services or works on behalf of a State agency or authorised body includes a reference to —
 - (a) the Department CEO, agency or body acting as agent in connection with the procurement; or
 - (b) the Department CEO, agency or body acting as principal in connection with the procurement with a view to the goods, services or works being transferred to or used by the relevant agency or body.

5. State agencies

- (1) Subject to subsection (2), each of the following is a **State agency** for the purposes of this Act —
 - (a) an agency as defined in the *Financial Management Act 2006* section 3 other than a university listed in Schedule 1 to that Act;
 - (b) an entity controlled by a Minister, or by an agency referred to in paragraph (a), through which that Minister or agency procures goods, services or works for the performance of the functions of that Minister or agency;

- (c) an entity (or an entity of a kind) that is established for a public purpose or is funded by the State and that is prescribed by the regulations to be a State agency.
- (2) The following are not State agencies for the purposes of this Act —
 - (a) a body established by or under the *Electricity Corporations Act 2005* section 4, the *Port Authorities Act 1999* section 4, the *Water Corporations Act 1995* section 4 or the *Western Australian Land Authority Act 1992* section 5 or a subsidiary of any such body;
 - (b) an entity (or an entity of a kind) that is prescribed by the regulations not to be a State agency.

6. Authorised bodies

- (1) Subject to subsection (2), a procurement direction may —
 - (a) declare an entity (or an entity of a kind) specified in the direction to be an authorised body for the purposes of this Act; or
 - (b) provide that the Department CEO may, in accordance with the procurement direction, declare an entity (or an entity of a kind) to be an authorised body for the purposes of this Act.
- (2) The entities that may be declared to be authorised bodies are as follows —
 - (a) a body (whether incorporated or not), or the holder of an office, that is established or continued for a public purpose under a written law or a law of another State, a Territory or the Commonwealth;
 - (b) a local government or a regional local government or a similar local government authority of another State or a Territory;
 - (c) a university;
 - (d) a charitable body;

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- (e) an entity (or an entity of a kind) prescribed by the regulations.
- (3) In this section a reference to an entity is a reference to an entity other than a State agency.

7. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2 — Application of Act

8. Procurement to which Act applies

- (1) This Act applies to the procurement of goods, services or works by a State agency.
- (2) This section does not limit any express provisions of this Act that relate to procurement by authorised bodies.

9. Procurement to which Act does not apply

- (1) In this section —

lease includes a licence;

relevant lease —

- (a) means —

- (i) the lease of an office or other space or facility for use by a State agency (including an arrangement for its construction by another party and lease back to a State agency); or
- (ii) the lease of an office or other space or facility of a State agency for use by another party;

but

- (b) does not include —

- (i) a lease for social housing purposes, for water supply purposes, for environment protection purposes or for other public purposes; or
- (ii) a lease of unimproved land; or
- (iii) a lease of Crown land under the *Land Administration Act 1997* granted by the Minister administering that Act; or
- (iv) a lease of any other kind prescribed by the regulations to be excluded from this definition.

- (2) This Act does not apply to the following —
- (a) the acquisition or disposal of land or of an interest in land, other than a relevant lease;
 - (b) the employment of staff of a State agency or the appointment of a person to a statutory or executive office;
 - (c) an investment, loan or other financial transaction;
 - (d) a grant of money;
 - (e) the acquisition by a State agency of a thing for resale;
 - (f) procurement between State agencies (other than for the purposes of cooperative arrangements under Part 5);
 - (g) any procurement (whether of specified things, of any specified kind or by any specified entity) prescribed by the regulations to be excluded from the application of this Act.

10. Procurement powers of State agencies to which Act applies

- (1) This Act applies to the procurement of goods, services or works by a State agency under the powers conferred by this Act or any other written law or under the executive power of the State.
- (2) A State agency that does not otherwise have power to procure goods, services or works is authorised by this subsection to procure goods, services or works under and subject to this Act in connection with the performance of its functions.

11. Relationship to other written laws relating to procurement

- (1) This Act applies to the procurement of goods, services or works by a State agency unless a written law specifically, or by necessary implication, excludes the procurement from the application of this Act.
- (2) The procurement of goods, services or works by a State agency is also subject to any obligations imposed on the State agency under the *Western Australian Jobs Act 2017*.

Part 3 — Procurement functions of Minister and Department CEO

12. Functional leadership for procurement by State agencies

- (1) This Act confers functions on the Minister and Department CEO to provide whole-of-government leadership in the procurement of goods, services or works by State agencies.
- (2) However, State agencies remain responsible and accountable for their procurement of goods, services or works.

13. Functions of Minister

The Minister has the following functions —

- (a) the issue of procurement directions under Part 4;
- (b) any other functions conferred on the Minister under this Act.

14. Functions of Department CEO

- (1) The Department CEO has the following functions —
 - (a) the general oversight of the procurement activities of State agencies to promote the objects of this Act;
 - (b) establishing common use contractual arrangements for use by State agencies and authorised bodies to obtain particular kinds of goods, services or works;
 - (c) approving cooperative arrangements under Part 5 relating to the procurement of goods, services or works by State agencies and authorised bodies;
 - (d) undertaking the procurement of goods, services or works on behalf of a State agency (or services in connection with any such procurement) if the Department CEO has agreed with the State agency to do so or if the Department CEO is required to do so by a procurement direction;

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- (e) managing the State's vehicle fleet and entering into supply, disposal or other arrangements in relation to the vehicles;
 - (f) providing advice to State agencies about their procurement of goods, services or works;
 - (g) enhancing the capabilities, knowledge and expertise of the professional staff of State agencies who undertake procurement activities;
 - (h) setting requirements for strategic planning by State agencies about their future procurement of goods, services or works and for periodic reporting on their procurement activities;
 - (i) collecting information relating to the procurement of goods, services or works by State agencies and using or publishing the information obtained;
 - (j) providing the Minister with information requested by the Minister relating to the administration of this Act or the procurement of goods, services or works by State agencies;
 - (k) conducting investigations and audits under Part 6;
 - (l) functions under Part 7 in relation to the debarment of suppliers;
 - (m) any other functions conferred on the Department CEO under this Act.
- (2) The Department CEO must, in connection with the management of the State's vehicle fleet under subsection (1)(e) —
- (a) minimise, so far as practicable, the net greenhouse gas emissions associated with the use of the vehicles in the fleet by maximising, so far as practicable, the fuel efficiency of those vehicles and offsetting the greenhouse gas emissions of those vehicles; and
 - (b) report annually on the greenhouse gas emissions associated with the use of the vehicles in the fleet.

- (3) The Department CEO may do anything necessary or convenient for the performance of the Department CEO's functions under this Act.

15. Delegation by Minister

- (1) The Minister may delegate to the Department CEO any power or duty of the Minister under Part 4.
- (2) The delegation must be in writing signed by the Minister.
- (3) The delegation may expressly authorise the Department CEO to further delegate the power or duty to a person to whom the Department CEO may delegate the powers or duties of the Department CEO under this Act.
- (4) A person exercising or performing a power or duty that has been delegated to the person under or as authorised under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

16. Delegation by Department CEO

- (1) In this section —
authorised person means any of the following —
- (a) an officer of the Department;
 - (b) a State agency or an officer of a State agency;
 - (c) a person prescribed by the regulations to be included in this definition.
- (2) The Department CEO may delegate to an authorised person any power or duty of the Department CEO under another provision of this Act.
- (3) The delegation must be in writing signed by the Department CEO.

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- (4) The delegation may expressly authorise the delegate to further delegate the power or duty to an authorised person.
- (5) A person exercising or performing a power or duty that has been delegated to the person under or as authorised under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) This section does not authorise the Department CEO to delegate a power or duty under Part 6 —
 - (a) to a person who is deemed to be the chief executive officer of a department of the Public Service by or under the *Public Sector Management Act 1994* section 4; or
 - (b) to any other officer of that department of the Public Service.
- (7) Nothing in this section limits the ability of the Department CEO to perform a function through an officer or agent.

17. Reallocation of investigative and audit functions of Department CEO

- (1) In this section —

relevant State agency means any State agency other than —

 - (a) the Department; or
 - (b) a department of the Public Service whose chief executive officer is a person who is deemed to be the chief executive officer of that department by or under the *Public Sector Management Act 1994* section 4.
- (2) The Minister may assign the performance of specified functions of the Department CEO under Part 6, or the performance of any such function in a particular matter, to a relevant State agency.
- (3) The Minister may do so —
 - (a) for the purpose of enhancing the independent performance of investigative and audit functions; or

- (b) for the purpose of dealing with a conflict of interest in a particular matter; or
 - (c) for any other reason the Minister considers appropriate for the effective administration of this Act.
- (4) Before assigning the performance of a function under this section, the Minister must obtain the concurrence of the Minister responsible for the relevant State agency to which the assignment is to be made.
- (5) If the performance of a function is assigned under this section, a reference in this Act or an instrument under this Act to the Department CEO is, in connection with the performance of the function, taken to be a reference to the relevant State agency to whom the performance of the function is assigned.
- (6) Subsection (5) extends to a reference to the Department CEO in section 16.
- (7) The Minister may revoke an assignment under this section at any time.
- (8) The Minister must publish notice of an assignment under this section, or the revocation of any such assignment, in the *Gazette*.

18. Corporate agency for performance of Department CEO's functions: Procurement Executive Body

- (1) The Procurement Executive Body is established.
- (2) The Procurement Executive Body —
 - (a) is a body corporate with perpetual succession; and
 - (b) is to be governed by the Department CEO; and
 - (c) is an agent of the State and has the status, immunities and privileges of the State.

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- (3) The Procurement Executive Body is established to provide a body corporate through which the Department CEO can perform any of the Department CEO's functions under this Act that can be more conveniently performed by a body corporate than an individual.
- (4) Any acts or things done through the Procurement Executive Body as described in subsection (3) are to be regarded as —
 - (a) services under the control of the Department for the purposes of the *Financial Management Act 2006* section 52; and
 - (b) operations of the Department for the purposes of Part 5 of that Act.
- (5) Proceedings may be taken by or against the Procurement Executive Body in its corporate name.

19. Execution of documents by Procurement Executive Body

- (1) The Procurement Executive Body is to have a common seal.
- (2) A document is duly executed by the Procurement Executive Body if —
 - (a) the common seal of the Procurement Executive Body is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Procurement Executive Body by the Department CEO or by another person authorised under subsection (5).
- (3) The common seal of the Procurement Executive Body is not to be affixed to a document except as authorised by the Procurement Executive Body.
- (4) The common seal of the Procurement Executive Body is to be affixed to a document in the presence of the Department CEO, and the Department CEO is to sign the document to attest that the common seal was so affixed.

- (5) The Procurement Executive Body may, by writing under its seal, authorise a person to execute deeds or other documents on behalf of the Procurement Executive Body, either generally or subject to any conditions or restrictions specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the seal of the Procurement Executive Body, it is to be presumed that the seal is the common seal of the Procurement Executive Body until the contrary is shown.

20. Power of Department CEO to borrow money

- (1) The Department CEO may, if the Treasurer approves, borrow sums of money from the Western Australian Treasury Corporation, or as otherwise approved by the Treasurer, for the purposes of this Act.
- (2) All sums borrowed under subsection (1) are to be credited to an operating account of the Department (being an agency special purpose account established for the purposes of the operations of the Department under the *Financial Management Act 2006* section 16(1)(a)).

Part 4 — Procurement directions

21. General procurement directions

- (1) The Minister may issue general procurement directions relating to the procurement of goods, services or works by State agencies.
- (2) A general procurement direction may (without limitation) —
 - (a) set whole-of-government rules and policies; and
 - (b) implement any decision made by the Minister or Department CEO in the administration of and performance of functions under this Act; and
 - (c) deal with any matter relating to procurement activities under this Act, including the following —
 - (i) the method of procurement;
 - (ii) the coordination of procurement;
 - (iii) contracts for goods, services or works and their management and administration;
 - (iv) the role of the Department CEO in undertaking procurement activities on behalf of State agencies;
 - (v) investigation and complaint handling relating to procurement;
 - (vi) approvals of cooperative arrangements by the Department CEO under Part 5;
 - (vii) functions under Part 7 and matters relating to the suitability of suppliers.

22. Agency specific procurement directions

- (1) The Minister may issue an agency specific procurement direction to a State agency relating to the procurement of goods, services or works by that State agency.

- (2) An agency specific procurement direction may (without limitation) —
- (a) vary the general procurement directions in their application to the State agency, including by modifying, supplementing or excluding any obligations under a general procurement direction; and
 - (b) impose additional obligations on the State agency in connection with its procurement activities; and
 - (c) modify or exclude obligations of the State agency (or of any of its sub-agencies) in connection with procurement activities carried out on its behalf by another State agency (or by other parts of the State agency) or by an authorised body; and
 - (d) provide for a greater or lesser role for the Department CEO in undertaking procurement activities on behalf of the State agency.
- (3) If a provision of a general procurement direction conflicts or is inconsistent with a provision of an agency specific procurement direction, the provision of the agency specific procurement direction prevails to the extent to which the provisions conflict or are inconsistent.

23. Provisions relating to procurement directions

- (1) A general procurement direction may be —
- (a) issued to all State agencies or to any specified kind of State agency; and
 - (b) issued in respect of all procurement activities of the agencies or any specified kind of procurement activity of the agencies.
- (2) An agency specific procurement direction may —
- (a) only be issued to a specified State agency; and
 - (b) be issued in respect of all procurement activities of the agency, any specified kind of procurement activity of

the agency or any specified procurement activity of the agency.

- (3) A procurement direction cannot be inconsistent with this Act.
- (4) A procurement direction may be —
 - (a) issued to all State agencies or a specified kind of State agency by the publication of the direction in the manner approved by the Minister; and
 - (b) issued to a specified State agency by notification in writing to the agency.
- (5) A procurement direction may be —
 - (a) amended by a further procurement direction; or
 - (b) revoked by a further procurement direction or by a notice of revocation issued by the Minister in the same manner as a procurement direction may be issued.
- (6) A procurement direction is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (7) The *Interpretation Act 1984* sections 43 (other than subsection (6)) and 44 and Part VIII apply to a procurement direction as if it were subsidiary legislation.

24. Compliance with procurement directions

- (1) A State agency and its officers are required to comply with applicable procurement directions in connection with the procurement of goods, services or works by the State agency.
- (2) However, a decision made, or a contract entered into, in respect of the procurement of goods, services or works by a State agency (or on its behalf) is not invalid only because a State agency or any other person has contravened a procurement direction.
- (3) A reference in this section to a State agency extends to the Department CEO in relation to the procurement of goods,

services or works by the Department CEO or the establishment of common use contractual arrangements.

- (4) Subsections (2) and (3) do not affect any disciplinary proceedings against a person for non-compliance with a procurement direction.

Part 5 — Coordination of procurement arrangements

25. Common use contractual arrangements

- (1) The Department CEO may enter into common use contractual arrangements, being contractual arrangements established with suppliers of particular kinds of goods, services or works, that may be used by State agencies for their procurement of those kinds of goods, services or works.
- (2) Common use contractual arrangements may be established for use by all State agencies or any specified kind of State agency.
- (3) Common use contractual arrangements may authorise the use of those arrangements by specified authorised bodies or by all or any specified kinds of authorised bodies for their procurement of goods, services or works.

26. Cooperative arrangements: use of procurement arrangements with suppliers established by others

- (1) A State agency may enter into a cooperative arrangement with another State agency or an authorised body under which one of them uses an arrangement with suppliers established by the other to procure particular kinds of goods, services or works.
- (2) A State agency must obtain the approval of the Department CEO to enter into a cooperative arrangement under this section unless the agency is authorised to do so by a procurement direction or another written law.

27. Cooperative arrangements: procurement on behalf of others

- (1) State agencies may enter into cooperative arrangements with other State agencies under which goods, services or works are procured by one of them on behalf of the others.
- (2) State agencies may enter into cooperative arrangements with authorised bodies under which goods, services or works are procured by one of them on behalf of the others.

- (3) A State agency must obtain the approval of the Department CEO to enter into a cooperative arrangement with an authorised body under subsection (2) unless the agency is authorised to do so by a procurement direction or another written law.

Part 6 — Investigation and audit

28. Investigation and audit of procurement

- (1) The Department CEO has the function of investigating the procurement of goods, services or works by State agencies and auditing their compliance with this Act.
- (2) The Department CEO must establish a programme for routine investigations and audit under this Part for the purpose of maintaining the integrity of, and public confidence in, the procurement activities of State agencies.
- (3) Investigations and audit are to be conducted under this Part by the Department CEO as follows —
 - (a) in accordance with the programme of investigations and audit;
 - (b) in particular cases the Department CEO considers appropriate;
 - (c) whenever directed by the Minister.

29. Supplier complaints about procurement

- (1) A supplier of goods, services or works to a State agency may make a written complaint to the Department CEO about a failure of the State agency to comply with this Act that affects the business of the supplier.
- (2) The Department CEO may conduct an investigation under this Part into any such written complaint made by a supplier.
- (3) The Department CEO may refer the complaint to the State agency if satisfied that —
 - (a) the State agency has not had a reasonable opportunity to resolve the matter itself; or
 - (b) the complaint does not affect the integrity of, or public confidence in, the procurement activities of the State agency.

- (4) An investigation into a complaint must be carried out by —
 - (a) an officer of the Department appointed by the Department CEO; or
 - (b) if the Department CEO is of the opinion that the complaint raises a conflict of interest for officers of the Department — a person appointed by the Department CEO who is not an officer of the Department.
- (5) A supplier who makes a complaint may withdraw the complaint at any time.
- (6) The withdrawal of a complaint does not prevent the Department CEO continuing to investigate the matter under this Part.
- (7) At the request of a supplier who makes a complaint, the Department CEO may, subject to any requirement of a written law, refuse to disclose in the course of an investigation or in a published report information that —
 - (a) identifies the supplier as a person who has made a complaint; or
 - (b) might enable the identity of the supplier to be ascertained.

30. State agencies to provide Department CEO with information and assistance

- (1) A State agency must, on request, give the Department CEO any information or assistance the Department CEO requires for the purposes of an investigation or audit under this Part.
- (2) For the purposes of providing that information or assistance, the Department CEO may require officers of a State agency to attend before the Department CEO (or a delegate of the Department CEO) to answer questions relating to the procurement activities of the State agency.

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- (3) When information is given to the Department CEO, a State agency may —
 - (a) identify information that the State agency considers should not be included in a public report made by the Minister or Department CEO; and
 - (b) request that the identified information not be included in any such report for the reasons set out in the request.
- (4) The Minister or Department CEO may, but is not required to, comply with a request of the State agency under subsection (3)(b).

31. Regulatory action following investigation or audit or judicial or investigative proceedings

- (1) This section applies if the Department CEO is satisfied that a State agency has not complied with this Act following —
 - (a) an investigation or audit under this Part; or
 - (b) the proceedings of any court, tribunal or investigative body.
- (2) The Department CEO may take any one or more of the following actions —
 - (a) give the State agency written notice of its failure to comply with this Act, detailing the measures required for compliance and the period within which those measures are required to be taken;
 - (b) publish in the annual report of the accountable authority of the Department under the *Financial Management Act 2006* Part 5 the name of the State agency and the manner in which the State agency has failed to comply with this Act;

- (c) take action available to the Department CEO under this Act (or recommend that the Minister take action available to the Minister) to —
 - (i) further regulate the procurement activities of the State agency; or
 - (ii) require any of those procurement activities to be undertaken by the Department CEO or other person or body on behalf of the State agency;
 - (d) refer the matter (and information about the matter) to a relevant body or officer.
- (3) This section does not limit —
- (a) action that may be taken under this Act or any other written law for any non-compliance; or
 - (b) the preparation or publication of any report on compliance or non-compliance by the Department CEO under this Act or any other written law.

Part 7 — Debarment of suppliers

32. Terms used

In this Part —

affiliate, of a debarred supplier, means a person or body prescribed by the regulations under this Part to be an affiliate of the debarred supplier because of a specified connection or relationship between the debarred supplier and that person or body;

conduct includes any act or omission, whether in this State or elsewhere within or outside Australia;

debarred supplier means a supplier who is debarred by the Department CEO under this Part from supplying goods, services or works to State agencies;

supplier includes an affiliate of a debarred supplier;

this Part includes the regulations under this Part.

33. Regulations relating to debarment of suppliers

- (1) The regulations may provide for the debarment of suppliers from supplying goods, services or works to State agencies.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following —
 - (a) specifying the conduct for which a supplier may be debarred (whether or not that conduct relates to the supply of goods, services or works to State agencies);
 - (b) authorising the Department CEO to debar a supplier —
 - (i) because of any such conduct of the supplier; or
 - (ii) because the supplier is an affiliate of a supplier who was debarred for any such conduct; or
 - (iii) because the supplier failed to comply with requirements of this Part relating to an investigation of the supplier by the Department CEO;

- (c) investigations by the Department CEO into whether a supplier should be debarred;
 - (d) the procedures to be followed by the Department CEO before a supplier is debarred (including giving a supplier an opportunity to show cause why the supplier should not be debarred);
 - (e) authorising the Department CEO to suspend a supplier who is under investigation by the Department CEO from supplying goods, services or works to State agencies pending a determination on whether the supplier should be debarred;
 - (f) specifying the maximum period for which a supplier may be debarred or suspended;
 - (g) requiring State agencies to comply with a decision of the Department CEO to debar or suspend a supplier except in the case of any special circumstances authorised by the regulations;
 - (h) the giving of undertakings about future conduct by a supplier who is under investigation by the Department CEO or who seeks the revocation of a decision to debar or suspend the supplier;
 - (i) enabling authorised bodies to rely on the debarment or suspension of a supplier to exclude the supplier from their procurement of goods, services or works;
 - (j) dealing with any other matter relating to the debarment or suspension of a supplier.
- (3) The regulations may provide that the debarment or suspension of a supplier from supplying goods, services or works to State agencies extends (without limitation) to the supplier —
- (a) seeking or being awarded a contract for any such supply; and
 - (b) seeking or being awarded a subcontract with a head or other contractor for any such supply; and

- (c) being the agent or representative of the supplier in relation to any such supply.
- (4) The regulations may provide that the debarment or suspension of a supplier applies to —
 - (a) all goods, services or works or to particular kinds of goods, services or works; and
 - (b) new contracts, the extension of supply options in existing contracts or the extension of the scope of existing contracts.

34. Review by SAT of decisions under this Part

A supplier who is aggrieved by any of the following decisions of the Department CEO under this Part may apply to the State Administrative Tribunal for a review of the decision —

- (a) a decision to debar the supplier;
- (b) any other decision prescribed by the regulations under this Part.

35. Termination of contracts with debarred suppliers

- (1) A State agency may terminate a contract with a debarred supplier for the procurement of goods, services or works by the State agency from the supplier (whether the supplier was debarred before or after the contract was entered into).
- (2) A contract may be terminated under this section by notice in writing to the supplier.
- (3) If a contract is terminated under this section, the termination does not affect —
 - (a) the supply of any goods, services or works before the termination; or
 - (b) any right, obligation or liability acquired, accrued or incurred before the termination.

- (4) This section is subject to any express provision of a contract in the event of the termination of the contract because the supplier becomes a debarred supplier.
- (5) The regulations may make provision for or with respect to the termination of contracts under this section.

36. Miscellaneous provisions relating to debarment of suppliers

- (1) The Department CEO must maintain a public register in accordance with the regulations of suppliers who are debarred under this Part.
- (2) The Department CEO must notify State agencies of suppliers who are suspended under this Part.
- (3) The Department CEO may suspend a supplier without any notice to the supplier of the proposed suspension or opportunity to show cause why they should not be suspended.
- (4) The debarment or suspension of a supplier under this Part and any failure to comply with this Part in relation to any such debarment or suspension does not affect the validity of a contract entered into with the supplier before or after the debarment or suspension.
- (5) Subsection (4) does not affect the power of a State agency to terminate the contract under section 35.
- (6) A State agency or an authorised body may disclose to the Department CEO information about the conduct of a supplier of goods, services or works to the agency or body that the agency or body considers may warrant investigation under this Part.
- (7) If information so disclosed to the Department CEO is confidential, the Department CEO is subject to the same duty of confidentiality as the agency or body that disclosed the information to the Department CEO.
- (8) Damages are not payable, and no civil liability is incurred, by or on behalf of the State (including a Minister, the Department

CEO, a State agency, an authorised body and an officer or agent of the State, a State agency or an authorised body) because of the debarment or suspension, or purported debarment or suspension, in good faith of a supplier under this Part or for the consequence of any such debarment or suspension.

- (9) A supplier may be debarred or suspended under this Part because of conduct that occurred before the commencement of this Part.

Part 8 — Miscellaneous

37. Functions conferred or imposed on departments

To the extent that this Act (or a regulation, procurement direction or other instrument under this Act) confers or imposes a function on a State agency that is a department of the Public Service, the function is conferred or imposed on the chief executive officer of the department.

38. Regulations

The Governor may make regulations prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for giving effect to this Act.

39. Review of Act

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review, as soon as practicable after the 5th anniversary of the day on which this section comes into operation.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary.

Part 9 — Repeal and transitional provisions

40. Terms used

In this Part —

assets —

- (a) means any legal or equitable estates or interests (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description; and
- (b) includes money, securities, choses in action and documents;

former Act means the *State Supply Commission Act 1991* as in force immediately before transition day;

liabilities means any liabilities, duties or obligations, whether actual, contingent or prospective, liquidated or unliquidated or whether owed alone or jointly or jointly and severally with any other persons;

operating account means an agency special purpose account established under the *Financial Management Act 2006* section 16;

relevant official means —

- (a) the Registrar of Titles; or
- (b) the Registrar of Deeds and Transfers; or
- (c) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property;

rights means any rights, powers, privileges or immunities, whether actual, contingent or prospective;

State Supply Commission means the State Supply Commission established by the former Act;

transition day means the day on which section 41 comes into operation.

41. Act repealed

The *State Supply Commission Act 1991* is repealed.

42. Regulations repealed

The *State Supply Commission Regulations 1991* are repealed.

43. Abolition of State Supply Commission

On transition day, the State Supply Commission is abolished and its members cease to hold office as members of the Commission.

44. Transfer of assets, rights and liabilities of State Supply Commission

- (1) On transition day —
 - (a) the assets and rights of the State Supply Commission are assigned to and become the assets and rights of the Procurement Executive Body; and
 - (b) the liabilities of the State Supply Commission are assigned to and become the liabilities of the Procurement Executive Body.
- (2) On and after transition day, any proceedings or remedy that might have been commenced by or against, or might have been available to or against, the State Supply Commission in relation to the assets, rights and liabilities assigned by subsection (1) may be commenced by or against, or are available to or against, the Procurement Executive Body.
- (3) On and after transition day, an act done or omitted to be done in relation to the assets, rights and liabilities assigned by subsection (1) before the assignment, by, to or in respect of the State Supply Commission is, to the extent that the act or omission has any effect, taken to have been done or omitted to be done by, to or in respect of the Procurement Executive Body.

- (4) Despite the abolition of the State Supply Commission, if the Commission had the benefit of any immunity in respect of an act, matter or thing done or omitted to be done before transition day, that immunity continues on and after transition day for the benefit of the Procurement Executive Body.

45. Registration of documents

The relevant officials must —

- (a) take notice of this Part; and
- (b) record and register in the appropriate manner the documents necessary to show the effect of this Part.

46. State Supply Commission to complete necessary transactions

- (1) If an asset, right or liability of the State Supply Commission cannot be properly assigned to the Procurement Executive Body by the operation of this Part (whether because the matter is governed otherwise than by the law of the State or for any other reason) —
- (a) the State Supply Commission is taken to continue to hold that asset or right or be liable for that liability until it is effectively assigned to the Procurement Executive Body in accordance with this Part; and
 - (b) the State Supply Commission must take all practicable steps for the purpose of ensuring that the asset, right or liability is effectively assigned to the Procurement Executive Body in accordance with this Part.
- (2) The fact that subsection (1)(a) applies to an asset, right or liability that is to be assigned to the Procurement Executive Body under this Part does not affect the duty of the accountable authority of the Department under the *Financial Management Act 2006*.

- (3) Despite section 43, the State Supply Commission continues in existence for the purpose of performing the functions described in subsection (1).
- (4) The State Supply Commission must perform those functions through the Department CEO.
- (5) The State Supply Commission as continued by this section has the powers that are necessary or convenient for the purposes of this section.

47. Exemption from State tax

- (1) In this section —
State tax includes —
 - (a) duty chargeable under the *Duties Act 2008*; and
 - (b) any other tax, duty, fee, levy or charge under a law of the State.
- (2) State tax is not payable in relation to —
 - (a) anything that occurs by operation of this Part; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (3) The Department CEO may certify in writing that —
 - (a) a specified thing occurred by operation of this Part; or
 - (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is sufficient evidence of the matters it certifies unless the contrary is shown.

48. Operating accounts of State Supply Commission

- (1) In this section —
former accounts means —
 - (a) the State Supply Commission Account referred to in section 30 of the former Act; and
 - (b) any other operating accounts of the State Supply Commission.
- (2) On transition day, any money standing to the credit of the former accounts must be credited to an operating account of the Department and the former accounts must then be closed.
- (3) Money referred to in subsection (2) may be applied —
 - (a) in the payment of any liabilities of the former accounts arising before transition day; and
 - (b) for the purposes of this Act.
- (4) The operating account referred to in subsection (2) must be credited with any money payable to the former accounts before transition day that is paid on or after that day.
- (5) On and after transition day, any agreement, instrument or other document that contains a reference to any of the former accounts has effect as if the reference were to the operating account referred to in subsection (2).

49. Completion of things done

Anything commenced to be done by the State Supply Commission before transition day may be continued on and after transition day by the Procurement Executive Body.

50. Continuing effect of things done

- (1) This section applies in relation to an act done or omitted to be done before transition day by, to or in respect of the State Supply Commission to the extent that the act or omission —
 - (a) has force or significance; and

(b) is not governed by another provision of this Part.

- (2) On and after transition day, the act or omission is taken to have been done or omitted to be done by, to or in respect of the Procurement Executive Body.

51. Agreements, instruments, proceedings and remedies generally

On and after transition day, any agreement or instrument that contains a reference to the State Supply Commission has effect as if the reference were to the Procurement Executive Body, unless the context otherwise requires.

52. Transitional regulations

- (1) In this section —

publication day, for regulations made under subsection (2), means the day on which those regulations are published in the *Gazette*;

specified means specified or described in regulations made under subsection (2);

transitional matter —

- (a) means a matter of a transitional nature that arises as a result of the enactment of this Act; and
- (b) includes a saving or application matter.
- (2) If there is no sufficient provision in this Part for dealing with a transitional matter, the Governor may make regulations prescribing matters —
- (a) required to be prescribed for the purpose of dealing with the transitional matter; or
- (b) necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.

- (3) Regulations made under subsection (2) may provide that specified provisions of this Act —
 - (a) do not apply to or in relation to a specified matter; or
 - (b) apply with specified modifications to or in relation to a specified matter.
- (4) If regulations made under subsection (2) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and after a day that is earlier than publication day for those regulations but not earlier than the day on which this section comes into operation, the regulations have effect according to their terms.
- (5) If regulations made under subsection (2) contain a provision referred to in subsection (4), the provision does not operate so as to —
 - (a) affect in a manner prejudicial to a person (other than the State or an authority of the State) the rights of that person existing before publication day for those regulations; or
 - (b) impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or omission made before publication day for those regulations.

53. Effect on other instruments, rights and obligations

The operation of this Part must not be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any

instrument, because of a change in the beneficial or legal ownership of any assets, rights or liabilities; or

- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

54. *Interpretation Act 1984* not affected

Except to the extent this Part expressly provides differently, the *Interpretation Act 1984* applies in relation to the repeals in sections 41 and 42.

Part 10 — Consequential amendments to other Acts

Division 1 — *Constitution Acts Amendment Act 1899* amended

55. Act amended

This Division amends the *Constitution Acts Amendment Act 1899*.

56. Schedule V Part 3 amended

In Schedule V Part 3 delete “The State Supply Commission established under the *State Supply Commission Act 1991*.”.

Division 2 — *Disability Services Act 1993* amended

57. Act amended

This Division amends the *Disability Services Act 1993*.

58. Section 12A amended

In section 12A(1) delete “*State Supply Commission Act 1991*” and insert:

Procurement Act 2020

59. Section 26A amended

- (1) In section 26A delete the definition of *supply policies*.
- (2) In section 26A in the definition of *disability service* delete “carer;” and insert:

carer.

60. Section 26B amended

- (1) In section 26B(2)(a) delete “tender conducted in accordance with supply policies relating to tenders; or” and insert:

tender; or

- (2) After section 26B(2) insert:

- (2A) Any such tender, expression of interest or negotiation must be conducted in accordance with the *Procurement Act 2020* and the procurement directions under that Act.

Division 3 — *Financial Management Act 2006* amended

61. Act amended

This Division amends the *Financial Management Act 2006*.

62. Schedule 1 amended

In Schedule 1 delete “State Supply Commission”.

Division 4 — *Health Services Act 2016* amended

63. Act amended

This Division amends the *Health Services Act 2016*.

64. Section 20 amended

- (1) In section 20(1)(g) delete “subject to subsection (3),”.

Procurement Act 2020

Part 10 Consequential amendments to other Acts

Division 5 Public Sector Management Act 1994 amended

s. 65

- (2) In section 20(2) delete “*State Supply Commission Act 1991* and the *Public Works Act 1902*.” and insert:

Procurement Act 2020.

- (3) Delete section 20(3) to (7).

65. Section 34 amended

In section 34(2)(1) delete “*State Supply Commission Act 1991*,” and insert:

Procurement Act 2020,

Division 5 — *Public Sector Management Act 1994* amended

66. Act amended

This Division amends the *Public Sector Management Act 1994*.

67. Schedule 2 amended

In Schedule 2 delete item 47A.

Division 6 — *Vocational Education and Training Act 1996* amended

68. Act amended

This Division amends the *Vocational Education and Training Act 1996*.

69. Section 9 amended

In section 9(3) delete “*State Supply Commission Act 1991.*” and insert:

Procurement Act 2020.

70. Section 37 amended

In section 37(4) delete “*State Supply Commission Act 1991.*” and insert:

Procurement Act 2020.

Division 7 — Western Australian Jobs Act 2017 amended

71. Act amended

This Division amends the *Western Australian Jobs Act 2017*.

72. Section 3 amended

In section 3(1) in the definition of *goods or services* delete paragraph (a) and insert:

- (a) goods, services or works as defined in the *Procurement Act 2020* section 4(1);

73. Section 9 amended

Delete section 9(a) and insert:

- (a) the *Procurement Act 2020* and procurement directions under that Act;



Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
affiliate	32
assets	40
authorised body	4(1)
authorised person	16(1)
common use contractual arrangements	4(1)
conduct	32
debarred supplier	32
Department	4(1)
Department CEO	4(1)
entity	4(1)
former accounts	48(1)
former Act	40
goods, services or works	4(1)
lease	9(1)
liabilities	40
operating account	40
procurement	4(1)
procurement activities	4(1)
procurement direction	4(1)
Procurement Executive Body	4(1)
publication day	52(1)
relevant lease	9(1)
relevant official	40
relevant State agency	17(1)
rights	40
specified	52(1)
State agency	4(1), 5(1)
State Supply Commission	40
State tax	47(1)
supplier	4(1), 32
this Part	32
transition day	40
transitional matter	52(1)

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