**Preference to Australian Goods (Commonwealth Authorities) Act 1980**

**No. 113 of 1980**

**An Act to give preference, in the procurement of goods for Commonwealth authorities, to goods of Australian origin or having an Australian content**

[*Assented to 8 September 1980*]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**Short title**

**1.** This Act may be cited as the *Preference to Australian Goods* (*Commonwealth Authorities*) *Act* 1980.

**Commencement**

**2.** This Act shall come into operation on a date to be fixed by Proclamation.

**Interpretation**

**3.** **(1)** In this Act, unless the contrary intention appears—

“Commonwealth authority” means an authority or body (including a body corporate and a corporation sole) established for a public purpose by, or in accordance with the provisions of, a law of the Commonwealth or of the Australian Capital Territory, but does not include an intergovernmental body that is prescribed for the purposes of this definition;

“goods” includes ships, aircraft, vehicles, machinery and equipment;

“inter-governmental body” means a body corporate or an unincorporated body established by, or in accordance with the provisions of, an agreement between the Commonwealth and a State or States or between the Commonwealth and the Government of another country or the Governments of other countries;

“list of registered tenderers”, in relation to a Commonwealth authority, means a list maintained by the authority in accordance with section 6;

“procurement”, in relation to goods, includes identifying a requirement for the goods (including preparing any necessary specifications);

“tender price”, in relation to goods the subject of a tender or quotation, means—

(a) the duty-paid price of the goods included in the tender or quotation, as the case may be, in accordance with section 8; or

(b) if there is no such duty-paid price of the goods—the price at which, in accordance with the tender or quotation, as the case may be, the supplier is willing to supply the goods.

**(2)** Where a specification of a requirement for goods for a Commonwealth authority includes related services, this Act applies in relation to those goods and related services as if a reference in this Act to goods were a reference to goods and related services.

**Specification of requirement**

**4. (1)** A Commonwealth authority, in preparing a specification of a requirement for goods for the authority, shall ensure that the specification is not drawn up so as to exclude goods of Australian origin or goods having an Australian content, being, in either case, goods that are suitable, or reasonably capable of being adapted, for meeting that requirement.

**(2)** The Minister may, by instrument in writing, issue guidelines to assist Commonwealth authorities to comply with sub-section (1).

**Tenders or quotations to be invited**

**5.** **(1)** Subject to sub-section (2), where a Commonwealth authority has a requirement for goods, the authority shall publicly invite, or shall invite from a list of registered tenderers maintained by the authority, in such manner as is prescribed, tenders for the supply of those goods.

**(2)** Where a Commonwealth authority has a requirement for goods the estimated cost of which does not exceed such amount as is prescribed for the purposes of this sub-section, the authority, at its option, may—

(a) invite tenders, in accordance with sub-section (1), for the supply of those goods;

(b) obtain representative quotations, in such manner as is prescribed, for the supply of those goods; or

(c) if—

(i) the Commonwealth authority does not wish to invite tenders for the supply of those goods; and

(ii) it is not practicable to obtain representative quotations for the supply of those goods,

obtain those goods in such manner as the authority thinks appropriate.

**(3)** Where the Secretary certifies, in writing, that compliance with this section in respect of goods of a kind specified in the certificate is impracticable or inexpedient having regard to the nature of goods of that kind and to the established practices in a profession, business, trade or industry connected with the supply of goods of that kind, this section does not apply in relation to a requirement for goods of that kind.

**(4)** Where the Secretary certifies, in writing, with respect to a particular requirement for goods, that compliance with this section is impracticable or inexpedient—

(a) by reason of the urgency with which those goods are required;

(b) by reason of the sources from which those goods are to be obtained; or

(c) for any other reason,

this section does not apply in relation to that requirement.

**(5)** Where the Secretary certifies, in writing, that the law under which, or in accordance with which, a Commonwealth authority is established, or any regulations in force under that law, makes, or make, provision with respect to that authority that is analogous to the provision made by regulations in force under the *Audit Act* 1901 for inviting tenders or quotations for the supply of goods, this section does not apply in relation to any requirement for goods by that authority.

**(6)** The Secretary may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers under this section, other than this power of delegation.

**(7)** A power so delegated, when exercised by the delegate, shall, for the purposes of this section, be deemed to have been exercised by the Secretary.

**(8)** A delegation under sub-section (6) does not prevent the exercise of a power by the Secretary.

**(9)** In this section—

“Commonwealth authority” does not include an authority in relation to which the provisions of regulations in force under the *Audit Act* 1901 for inviting tenders or quotations for the supply of goods are applicable;

“Secretary” means the Secretary to the Department of Administrative Services.

**List of registered tenderers**

**6. (1)** A Commonwealth authority may, in such manner as is prescribed, issue a public invitation to persons who wish to be invited, from time to time, to furnish tenders for the supply of goods to the authority.

**(2)** Subject to sub-section (5), a Commonwealth authority shall maintain a list of names of persons who have responded to an invitation referred to in sub-section (1) and shall, in such manner as is, and at such times as are, prescribed, issue a public invitation to persons who wish to have their names added to that list.

**(3)** A person may, at any time, make application to a Commonwealth authority to have his name added to a list of registered tenderers maintained by that authority.

**(4)** A Commonwealth authority may, if it thinks it desirable to do so, remove the name of a person from a list of registered tenderers maintained by that authority.

**(5)** Where a Commonwealth authority wishes to cease to maintain a list of registered tenderers, the authority may serve by post on each person whose name is on the list a notice that the authority intends to cease to maintain the list on a date specified in the notice.

**Postponement or cessation of action on tenders**

**7.** Where a Commonwealth authority invites tenders for the supply of goods, the Minister, at any time after the issue of that invitation and before the acceptance of the successful tender, may, if he is satisfied that the circumstances of the case require it, by instrument in writing, direct the Commonwealth authority—

(a) to postpone any further action by it with respect to any tenders received in accordance with that invitation until the direction is revoked or a further direction is given under this section; or

(b) to withdraw the invitation for tenders or, if the date for lodgement of tenders has passed, to inform each of the tenderers that no tender will be accepted.

**Duty-paid price of goods**

**8.** **(1)** A person who furnishes to a Commonwealth authority a tender, or a quotation, for the supply of goods (in this section referred to as “goods to be supplied”) that consist of, or include, goods, or parts of goods, that, if the tender is accepted—

(a) are to be imported into Australia by the person on behalf of the authority for the purposes of the relevant contract; and

(b) by reason of having been so imported, will be exempt from duties of customs,

shall include in the tender or quotation, as the case may be, in addition to the price at which he is willing to supply the goods to be supplied, a duty-paid price for the goods to be supplied.

**(2)** Where a Commonwealth authority is satisfied that—

(a) a duty-paid price set out in a tender or quotation furnished to it is incorrect for any reason; or

(b) a duty-paid price set out in a tender or quotation furnished to it is no longer appropriate by reason of a change in the rate of the duty of customs applicable to the goods concerned,

the Commonwealth authority may, by notice in writing served on the person who furnished the tender or quotation, inform him of the fact that the duty-paid price is incorrect or is no longer appropriate, as the case may be, and request him to notify the authority, within a period specified in the notice—

(c) where the duty-paid price set out in the tender or quotation is incorrect—of the correct duty-paid price in relation to the goods concerned; or

(d) where the duty-paid price set out in the tender or quotation is no longer appropriate by reason of a change in the rate of the duty of customs applicable to the goods concerned—of the duty-paid price in relation to the goods concerned calculated on the assumption that the date on which the goods are to be imported into Australia is the date of the notice.

**(3)** Where a notice has been served on a person under sub-section (2), the Commonwealth authority concerned shall not accept any of the tenders or quotations received for the supply of the goods concerned until the expiration of the period specified in the notice and, after the expiration of that period, the Commonwealth authority shall exclude the tender or quotation to which the notice relates from any further consideration unless the person on whom the notice was served has complied with the notice.

**(4)** In this section, “duty-paid price”, in relation to goods to be supplied that consist of, or include, goods, or parts of goods, that are to be imported into Australia by the supplier on behalf of the Commonwealth authority concerned, means the price equal to the price at which the supplier is willing to supply the goods to be supplied plus an amount equal to the duty of customs that would be payable on the goods to be supplied, or on such of those goods, or such parts of those goods, as are to be so imported into Australia, if they were to be imported into Australia by, and on behalf of, the supplier at the time when the tender or quotation is furnished.

**Method of calculation of Australian content of goods**

**9.** **(1)** The regulations may make provision for the method of calculation of the value of the Australian content of goods.

**(2)** In this Act (other than this section), a reference to the Australian content of goods shall be read as a reference to the proportion (expressed as a percentage) that the value, calculated in accordance with the method prescribed in the regulations, of the Australian content of the goods bears to the tender price of the goods.

**Method of determination of origin of goods**

**10.** **(1)** The regulations may make provision for the determination of the origin (whether Australian origin or otherwise) of goods.

**(2)** Where the regulations make provision for the determination of the origin of goods of a particular kind, a reference in this Act (other than this section) to the origin of goods shall, in relation to goods of that kind, be read as a reference to the origin of the goods as determined in accordance with the regulations.

**Australian content of goods or the origin of goods to be set out in tenders or quotations**

**11.** **(1)** Where—

(a) a Commonwealth authority invites tenders for the supply of goods; and

(b) the estimated cost of the goods exceeds such amount as is prescribed,

the Commonwealth authority shall require that there be set out in the tender the Australian content of the goods.

**(2)** Subject to sub-section (1), where a Commonwealth authority requests tenders or representative quotations for the supply of goods, the Commonwealth authority shall, at its option—

(a) require that there be set out in the tender or quotation the Australian content of the goods; or

(b) require that there be set out in the tender or quotation the origin of the goods.

**(3)** The Commonwealth authority concerned may, by notice in writing served on a person who has furnished a tender or quotation to the authority, require that person to furnish to the authority, within a period specified in the notice, such further information (including copies or summaries of relevant books or accounts or other documents) as is specified in the notice, being information with respect to the Australian content, or the origin, of goods that is set out in the tender or quotation, and, if that notice is not complied with, the tender or quotation may be excluded from further consideration.

**(4)** The Minister may direct a Commonwealth authority to exercise its power under sub-section (3) in a particular case.

**Method of adjustment of tender price**

**12.** **(1)** Where a call for tenders or quotations requires that there be set out in each tender or quotation the Australian content of the goods, the tender price of goods the subject of a tender or quotation submitted in response to that call, being goods having an Australian content, shall be adjusted, for the purposes of section 13, by subtracting from that price an amount equal to 20%, or such other percentage as is prescribed, of the value of the Australian content of the goods, being that value calculated in accordance with the method prescribed in the regulations in force under sub-section 9(1).

**(2)** Where a call for tenders or quotations requires that there be set out in each tender or quotation the origin of the goods, the tender price of goods the subject of a tender or quotation submitted in response to that call, being goods the origin of which is a country other than Australia, shall be adjusted, for the purposes of section 13, by adding to that price an amount equal to 20%, or such other percentage as is prescribed, of that price.

**Acceptance of tenders or quotations**

**13. (1)** For the purposes of this section—

(a) tender prices shall be adjusted in accordance with the provisions of section 12; and

(b) where a tender price in relation to goods is so adjusted—that price, as so adjusted, shall be deemed to be the tender price of the goods as set out in the tender.

**(2)** Subject to this section, the lowest suitable tender of the tenders received for the supply of goods for a Commonwealth authority shall be accepted.

**(3)** A Commonwealth authority may refer to the Minister for his direction the question whether a tender should be treated as unsuitable for further consideration, and shall do so in any case where the regulations so provide.

**(4)** For the purpose of ascertaining the lowest tender of the suitable tenders received for the supply of goods for a Commonwealth authority, regard shall be had to the tender prices of the goods as set out in those tenders.

**(5)** A Commonwealth authority may refer to the Minister for his direction the tenders received for the supply of goods (being tenders in which the Australian content of the goods concerned is required to be set out) and shall

do so if—

(a) the tender price of the goods as set out in the lowest suitable tender equals or exceeds $100,000 or such other amount as is prescribed for the purposes of this sub-section; and

(b) the percentage figure representing the Australian content of goods set out in the lowest suitable tender is less than the percentage figure representing the Australian content of goods set out in any of the other suitable tenders.

**(6)** For the purposes of sub-section (5), where the percentage figure representing the Australian content of goods set out in a tender is less by not more than 10 than the percentage figure representing the Australian content of goods set out in another tender, the 2 percentage figures shall be deemed to be equal.

**(7)** A reference under sub-section (3) or (5) shall be supported by such related documents as are prescribed.

**(8)** A Commonwealth authority shall furnish to the Minister such further information relating to a reference under sub-section (3) or (5) as the Minister requires.

**(9)** In considering a reference under sub-section (5), the Minister shall take into account all the circumstances of the case and may have regard to the national interest and may, by instrument in writing—

(a) direct the acceptance of that one of the tenders received for the supply of the goods that, in his view, is the appropriate tender;

(b) direct the Commonwealth authority concerned to inform each of the tenderers that no tender will be accepted; or

(c) where in the call for tenders the Commonwealth reserves the right to accept separate tenders for each or any item, or any part of an item, to which the call relates—direct the acceptance of 2 or more tenders that, in his view, are the appropriate tenders.

**(10)** Where a reference of a question is made to the Minister under sub-section (3) or (5), the question shall be resolved in accordance with the direction, in writing, of the Minister.

**(11)** In this section, “tender” includes any quotation for the supply of goods.

**Section 13 not to apply in relation to certain tenders**

**14.** **(1)** Unless the Minister otherwise directs in a particular case, section 13 does not apply in relation to tenders received for the supply of goods for a Commonwealth authority if the tenders set out the Australian content of the goods concerned and—

(a) all the percentage figures representing Australian content of goods that are set out in such of those tenders as are suitable tenders are equal; or

(b) the lowest of those percentage figures is less by not more than 10 than the highest of those percentage figures.

**(2)** A Commonwealth authority may refer to the Minister for his direction the question whether a tender should be treated as unsuitable for further consideration, and shall do so in any case where the regulations so provide.

**(3)** In this section, “tender” includes any quotation for the supply of goods.

**Commonwealth authority not to form company**

**15.** Except with the approval of the Minister, a Commonwealth authority shall not—

(a) form, or participate with another person in the formation of, a company; or

(b) acquire a controlling interest in a company,

with the object (whether the principal object or a subsidiary object) of empowering the company to engage in the procurement, or in any step in the procurement, of goods for the authority.

**Publication of Australian content of goods**

**16.** **(1)** Where a tender for the supply of goods for a Commonwealth authority has been accepted, the Australian content of the goods, if set out in the tender, may be published to such persons, and in such circumstances, as are prescribed.

**(2)** In this section, “tender” includes any quotation for the supply of goods.

**Exemption**

**17.** **(1)** Where the Minister is satisfied that the application of this Act to a Commonwealth authority would have the effect of affecting adversely—

(a) the commercial viability of any business carried on by the authority; or

(b) the ability of the authority to perform its functions or to comply with any financial requirement applicable to it,

the Minister shall, by instrument in writing, declare that this Act does not apply to that authority.

**(2)** Where the Minister is satisfied that the application of this Act to the procurement for a Commonwealth authority of—

(a) particular goods;

(b) goods of a particular kind or particular kinds; or

(c) goods other than goods of a particular kind or particular kinds,

would have the effect of affecting adversely—

(d) the commercial viability of any business carried on by the authority; or

(e) the ability of the authority to perform its functions or to comply with any financial requirement applicable to it,

the Minister shall, by instrument in writing, declare that this Act does not apply to that procurement.

**(3)** This Act does not apply to the procurement ofgoods for a Commonwealth authority that is to be, or is, carried out, on behalf of the authority, by a Department of State of the Commonwealth or of a State.

**(4)** The regulations may provide that this Act does not apply in relation to a procurement of goods that is included in a prescribed kind of procurement.

**Delegation by Minister**

**18.** **(1)** The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers under this Act, other than this power of delegation.

**(2)** A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

**(3)** A delegation under this section does not prevent the exercise of a power by the Minister.

**Information to be furnished to Minister**

**19.** A Commonwealth authority shall furnish to the Minister such information relating to the procurement of goods for the authority as the Minister requires for the purposes of this Act.

**Regulations**

**20.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, requiring Commonwealth authorities to furnish returns or information to the Minister for the purposes of this Act.