



LEGISLATURE

## Local Government Act Amendments

After having councils and Local Government Procurement (LGP) push for many years to gain procurement reform through changes to legislation, to her credit the new Local Government Minister, Ms Shelley Hancock, has delivered long-awaited reforms with unprecedented speed.

For those who are not aware, under the *Local Government Act 1993* (section 55) the tender threshold has been lifted to \$250,000, from \$150,000. There are also new allowances for councils to access contracts established by prescribed organisations (such as LGP) and others, where rates are not specified. Councils are now also able to procure from disability employment organisations without the need to tender.

The legislation has now been amended and can be reviewed online. In early June, LGP had the opportunity to discuss the initially proposed Legislation Amendments with the Office of Local Government (OLG) and to make suggestions. Since that time the legislation has now been amended, to date there has been no official advice or guidance provided by the OLG to councils as to how these changes are to be applied. Going forward, councils will need to regularly refer to Part 7 of the *Local Government (General) Regulation 2005*, this should serve as an ongoing guide for councils until such time that the OLG either provides specific communication or makes changes to the Regulation.

In the meantime, LGP has analysed the changes closely. While we await further communication from the OLG as to how these amendments might be applied day-to-day, we have developed some key observations to help councils consider the impacts of the changes. These are concepts we will continue to share through our daily council engagement and 2019 events program.

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If you are across the procurement issues outlined in the most recent Audit Office of NSW Report on Local Government, and you agree with me, that responsible procurement practice is under-pinned by effective risk management..... along with the benefits of these changes, here are some things councils should consider along with the new legislation.

In relation to the increased tendering threshold to \$250k (section 55 (3)(n)), I think we all agree this is a welcome reform. Councils will benefit with having to conduct and manage fewer tenders each year, and allows councils to engage the supplier market much faster. It also allows greater delegation from management to procurement professionals and buyers across council. There are some things to consider with this new sourcing flexibility:

1. Councils will need to decide if they make changes to their financial delegations to address how to manage spend between \$150k and \$250k. With many councils operating a decentralised, or aspirational centre-led procurement model, we could see a growing prevalence of 'rogue purchasing' within council due to uncontrolled spending under the new threshold.
2. Similarly, Councils should review procurement policies and all associated documents, then decide what changes will or will not be required to support the new tendering threshold.
3. It is possible, and in line with the Audit Office Report being less than glowing of our procurement and contract management practices, some Councillors may challenge council's readiness for the new delegation. Councillors may still want stricter processes, ongoing visibility and influence on council spend over \$150k.
4. Council buyers may need further guidance and procurement training to make sure appropriate practice is being applied to higher value purchases that no longer require a tender process.

With regard to the change that allows certain contracts to be entered into, (section 55 (3)(a) and (g)) without the need for a rate being collected during the tender process, our understanding is that this change allows councils to access pre-qualification panels that have been created by stated organisations (prescribed organisations, NSW Procurement Board, Commonwealth Department of Administrative Services), without the need to gather a price. Again, there are some risks we need to consider:

1. Removing the need to specify a rate or price could see council staff conduct only the most basic of due diligence processes to engage suppliers. This lack of due diligence might see councils having to resolve a greater volume of supplier performance issues, or failing to demonstrate strong value for money outcomes.

Further, by using panels that have been created without a formal tender process, councils will instead need to conduct all the due diligence that is normally undertaken through an RFT process – such as that due diligence conducted by LGP on our panels.

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2. Under some of these panels, councils can arguably spend in excess of \$250k on one supplier, without conducting a competitive go-to-market exercise. This may limit market opportunity for other suppliers, and again challenge the ability to demonstrate value for money to key stakeholders.
3. This change, due to increased flexibility, may weaken the ability for procurement professionals in council to positively guide decentralised buyers across their organisations. Council staff may use the amendment to avoid tasks supporting appropriate governance in procurement activity.

Finally, with the ability to engage disability employment providers without the need to go to tender (section 55 (3)(q)), this supports councils sustainable procurement strategy by achieving social procurement outcomes. We would suggest council procurement policies are applied, and that there is a due diligence selection process to avoid stakeholder criticism by engaging organisations without a tendering process. Councils will still need to be able to demonstrate value for money when engaging disability employment organisations.

There is no question procurement reform is welcome in NSW local government. In our June conversation with the OLG, we advised the OLG that the LGP Customer Reference Group (CRG) had commenced their own comprehensive review of the legislation and regulations. The OLG advised that they expect further reforms, and welcomed receiving the LGP CRG findings to assist with their process.

NSW Councils now have new flexibility in how they source goods and services. LGP contracts are developed to help protect councils from procurement risk exposure and provide great value. Our contract spend with NSW councils is growing in excess of \$100m per year. LGP contracts can be used for any spend value, even below the \$150k and now \$250k tendering thresholds. With these changes, we encourage councils to:

1. Continue assessing LGP contracts, and maximising commercial value and risk mitigation with a transparent and rigorous selection process, for the responsible management of public funds;
2. Review council procurement policy and guidelines to understand the impact of the new legislation changes; and
3. Contact your LGP Business Development Manager to better understand the implication of the new legislative changes, stay on top of any new shifts and see if/where LGP can help in your council's adjustment.

In the meantime, we will keep communicating with the OLG to find out what else might be coming in the way of more reform, and encouraging OLG with communication to help guide councils. As we learn more, we will do our best to share with you.

Thank you!

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