

Section 10 *Public Sector Act 2009* (SA)

Direction by the Premier

1. On 8 / 7 2011 the South Australian Government and the Australian Competition and Consumer Commission ("ACCC") signed a Memorandum of Understanding Concerning Cooperation on Trade Practices Matters ("the MoU").
2. The South Australian Government's obligations under the MoU relate to the provision of information and assistance to the ACCC concerning possible cartel conduct that may relate to, or affect, SA Government procurement activities. Cartel conduct is aimed at achieving some or all of the following outcomes:
 - price-fixing;
 - restricting outputs in the production and supply chain;
 - market-sharing: allocating customers, suppliers or territories; and;
 - bid-rigging.
3. Pursuant to the MoU, the SA Government is obliged to
 - a. provide the ACCC with all relevant information if the SA Government has a reasonable suspicion that there may be cartel conduct;
 - b. Similarly, provide the ACCC with all relevant information if the ACCC informs the Government that it has a reasonable suspicion there may be cartel conduct related to a Government procurement process;
 - c. Make Government employees, contractors and agents available to be interviewed and give statements to the ACCC if required;
 - d. Ensure that all SA Government procurement processes have a clause that overrides confidentiality and allows cartel information to be provided to the ACCC;
 - e. Ensure that all SA Government procurement processes have a clause requiring a signed declaration by tenderers that their bid is independent and that there has not been any unlawful collusion with any other potential respondent to the procurement process.
 - f. Ensure that all SA Government procurement processes have a clause requiring tenderers to disclose sub-contracting arrangements relevant to the particular procurement process where the tenderer intends that a significant proportion of the value of the goods and/or services be provided by sub-contractors.
4. Therefore, pursuant to section 10 of the *Public Sector Act 2009* I hereby direct all public sector agencies to comply with the MoU, and further, ensure that any public sector agencies under their control or direction comply with the MoU.
5. All public sector agencies will ensure that their procurement processes - which include any Request for Tender, Request for Expressions of Interest, Request for Proposals, or any other method by which the Government approaches potential suppliers of goods or services (or goods and services) for the purpose of Government procurement or the carrying out of works - include the following clauses of the Bid Rules (in addition to any other clauses of the Bid Rules that they are obliged to adhere to by the State Procurement Board):

Clauses: 5, 12 and 17.6

6. The text of the State Procurement Board's Bid Rules is available at the Board's website at:

http://www.spb.sa.gov.au/site/policies_guides/procurement_process/standard_tender_and_contract_documents.aspx

The relevant clauses 5, 12 and 17.6 may change from time to time and public sector agencies are required to include the current version of the clauses that relate to compliance with the MoU, and to check with the Board's website to ascertain the current version prior to commencing a procurement process.

7. The contact points within Government for any cartel issue (or for any competition issue generally), and for any contact with the ACCC, are:

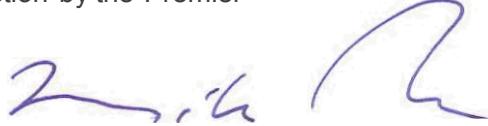
Director, National Reform Implementation,
Cabinet and Policy Coordination Division,
Department of Premier and Cabinet;

or

Assistant Crown Solicitor,
Advising Section,
Crown Solicitor's Office.

8. This Direction commences on the date that the MoU takes effect. A copy of the MoU is attached.

Direction by the Premier



Mike Rann MP

DATE 11/7/11