

Explanatory Statement 10 of 2014

Amendment to Annex 15A (Government Procurement) of the *Australia-Chile Free Trade Agreement* [2014] ATNIF 19

Practical and legal effect

1. The proposed amendments would extend coverage of Chapter 15 (Government Procurement) of the *Australia-Chile Free Trade Agreement* (ACIFTA)¹ to the functions of 14 additional Commonwealth Government entities. Subject to the commitments in Chapter 15, the Australian Government would be legally bound to ensure that the covered government procurement tenders of these additional covered entities would be open to bids from Chilean firms. There is no practical effect from the change as the entities are already covered by the Commonwealth Procurement Rules.

Nature and timing of proposed treaty matter

2. Under Chapter 15 of ACIFTA, Australia is required to afford Chilean companies the opportunity to bid for Australian government contracts on the same terms as Australian firms (and vice versa), subject to certain exceptions. The obligations set out in Chapter 15 apply to procurements above a specified “threshold” value by the “procuring entities” of each Party, listed in Annex 15A.

3. The proposed amendment would extend coverage under Annex 15A, Section 1 (“central government entities”) to include: the Australian Commission for Law Enforcement Integrity; the Australian Institute of Family Studies; the Australian National Preventative Health Agency; the Australian Organ and Tissue Donation and Transplantation Authority; Cancer Australia; the Private Health Insurance Ombudsman; the National Health and Medical Research Council; the Australian Sports Anti-Doping Authority; the Australian Skills Quality Authority; the Tertiary Education Quality and Standards Agency; the National Water Commission; and the Fair Work Building and Construction Commission.

4. The proposed amendment would extend coverage under Annex 15A, Section 3 (“other covered entities”) to include the Murray-Darling Basin Authority and the Independent Hospital Pricing Authority.

5. In accordance with Article 15(9), the proposed amendment would take effect 30 days following formal notification to the Government of the Republic of Chile, provided Chile does not object to the proposed amendment within that time.

Reasons for Australia to take the proposed action relating to the treaty matter

6. The proposed amendment is part of an agreement reached with the Government of the Republic of Chile to change the thresholds for Commonwealth Government procurements covered under Chapter 15 of the ACIFTA to bring it into alignment with Australia’s more recent trade agreements. Chile has accepted that the addition of 14 entities would represent a *quid pro quo* for any market access opportunities foregone in the proposed change to the thresholds. It is proposed that

¹ [2009] ATS 6

the change in thresholds not take effect until other current trade negotiations including Chile are concluded.

Implementing legislation

7. No legislative changes are needed to implement the proposed treaty action. As noted above, Chilean firms are already able to compete for contracts with the additional entities under the Commonwealth Procurement Rules. The proposed amendments will simply “lock in” under ACIFTA current levels of access.

The Office of Trade Negotiations
Department of Foreign Affairs and Trade

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