



# Local Government (Tendering) Amendment Regulation 2003

under the

Local Government Act 1993

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

ANTHONY BERNARD KELLY, M.L.C.,  
Minister for Local Government

## **Explanatory note**

The object of this Regulation is to facilitate the use of electronic communication for local council tendering, in particular by requiring tenderers to use appropriate means to prevent their tenders being tampered with. The Regulation also clarifies the meaning of “formal tender document” for the purposes the *Local Government (Tendering) Regulation 1999*.

This Regulation is made under the *Local Government Act 1993*, including section 748 (the general power to make regulations) and section 55.

## **2003 No 706**

Clause 1            Local Government (Tendering) Amendment Regulation 2003

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# **Local Government (Tendering) Amendment Regulation 2003**

under the

Local Government Act 1993

### **1 Name of Regulation**

This Regulation is the *Local Government (Tendering) Amendment Regulation 2003*.

### **2 Amendment of Local Government (Tendering) Regulation 1999**

The *Local Government (Tendering) Regulation 1999* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 2)

### [1] Clause 4 Definitions

Insert in appropriate order in clause 4 (1):

*data storage device* has the same meaning as it has in the *Electronic Transactions Act 2000*.

*electronic means* includes electronic communication within the meaning of the *Electronic Transactions Act 2000*.

*formal tender document* means a standard form document issued by a council for completion by tenderers in connection with the submission of tenders to the council.

### [2] Clause 4

Insert at the end of the clause:

**Note.** Part 2 of the *Electronic Transactions Act 2000* facilitates the use of electronic communication as a means of effecting certain transactions, such as contracts.

### [3] Clause 11 Tender documents

Insert after clause 11 (1) (c):

, and

- (d) indicate whether formal tender documents must be submitted in relation to the tender and, if so, how they may be obtained.

### [4] Clause 14

Omit the clause. Insert instead:

#### 14 Submission of tenders

- (1) A tender must be submitted in writing, by facsimile transmission or (subject to subclause (2)) by electronic means.

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Schedule 1 Amendments

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- (2) A tender may not be submitted by electronic means:
  - (a) if guidelines are in force under section 23A of the Act with respect to the transmission of tenders by electronic means, unless its submission by electronic means is authorised by, and effected in accordance with, those guidelines, and
  - (b) in any other case, unless its submission by electronic means is effected in a secure form (such as an encrypted document) that ensures that it cannot subsequently be altered.
- (3) Unless sent by facsimile transmission or electronic means, a tender must be sent or delivered in a sealed envelope.
- (4) If a tender is sent by facsimile transmission or electronic means and printed out on receipt, an appropriate person must place the tender in a sealed envelope immediately after it is printed out.

### **[5] Clause 15 Custody of tenders after receipt**

Insert “(other than tenders that have submitted by facsimile transmission or electronic means but have not been printed out)” after “tenders” in clause 15 (1) (b) (i).

### **[6] Clause 15 (3)**

Insert after clause 15 (2):

- (3) Tenders received by facsimile transmission or electronic means and stored on a data storage device must be stored in such a manner (whether by means of password protection or otherwise) that they are accessible to nobody other than an appropriate person.

### **[7] Clause 16 Opening of tenders**

Omit “remove the envelopes containing the tenders from the council’s tender box and open them” from clause 16 (1).

Insert instead “open the tenders”.

### **[8] Clause 18 Consideration of tenders**

Insert “(being a tender that does not include formal tender documents)” after “that subclause” in clause 18 (4).

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**[9] Clause 20 Notification of acceptance of successful tender**

Omit “by post” from clause 20 (a).