Purpose

To give legislative effect to the Commonwealth Government's policy of requiring Commonwealth departments and authorities to give preference to Australian made goods in Commonwealth purchases.

Background

Since 1976 it has been the policy of the Government that producers of Australian goods should be given preference when bidding for contracts arranged by Commonwealth departments and authorities. In its initial stages, the policy was based on providing selective assistance in special circumstances. When it became apparent, in 1977, that the policy was not sufficiently effective, Government departments and authorities were instructed to give preference to 'goods of Australian origin or of relatively greater Australian content unless there were substantial reasons to the contrary; and to draw up tender specifications so as not to exclude Australian goods.

However, as explained in the Minister's Second Reading Speech, there is still 'some unevenness in compliance by the various Commonwealth authorities'. This has arisen because of the enabling legislation of some authorities.

The Government has therefore decided to legislate to override certain provisions of the legislation governing some statutory authorities which inhibit the ability of those authorities to carry out the Government's preference policy. The new legislation represents a marked shift of emphasis from the 1976 policy in that it will require compliance as a general rule, with specific exemptions to be granted where compliance is impracticable or inexpedient.
Main Provisions

Clause 3 defines 'Commonwealth authority' so as to ensure that all Commonwealth authorities are subject to the Government's policy of preference to Australian-made goods.

Sub-clause 4(1) stipulates that a specification of a requirement for goods for an authority shall not be drawn up in such a way as to exclude goods of Australian origin or having an Australian content. Sub-clause 4(2) gives the Minister power to issue guidelines to Commonwealth authorities to assist them to comply with the preference requirement.

Clause 5 requires that tendering and quotation procedures similar to those applicable to departments and authorities within the Public Account under the Finance Regulations of the Audit Act be adopted. The intent here is to allow open opportunity to tender and thereby to ensure that Australian-made goods can be offered to meet the requirements of authorities. However, in order to give some flexibility to the system of purchasing, sub-clauses (3) and (4) provide for exceptions to the general public tender rule.

Further provision for flexibility in purchasing arrangements is made in Clause 6 which permits an authority to maintain a list of tenderers for its requirements. This will enable an authority to invite tenders only from suppliers registered on its lists. However, Clause 7 gives the Minister power to order postponement of consideration of tenders pending investigation of a particular procurement to ascertain whether it has been conducted in accordance with the provisions of this legislation.

To ensure that Australian producers receive the same protection against imports in sales to the Government as they enjoy under the Customs Tariff in relation to commercial transactions, Clause 8 requires departments and authorities to evaluate tenders on a duty paid basis, despite the fact that Commonwealth departments and some Commonwealth authorities are not required to pay customs duty.

Clauses 9 and 10 respectively enable regulations to be made to establish the Australian content and determine the origin of goods to be purchased. Clause 11 requires the Australian content or the origin of goods to be set out in tenders.
Clause 12 provides for regulations to be made for a method of adjustment to tender prices on account of Australian content or origin. The quotation or tender for goods of Australian origin or content will be adjusted by a general Australian-made preference factor. In his Second Reading Speech, the Minister gave notice of intention to amend the Bill in the Budget session to specify a 20 per cent margin of preference. In the case of purchases costing $5,000 or more, 20 per cent of the value of the Australian content of each tender will be subtracted from each tender price. In the case of smaller purchases (i.e. less than $5,000), a loading of 20 per cent will be added to the duty paid prices of all offers identified as of imported origin.

Clause 13 provides for the method to be used in selecting the quotation or tender to be accepted. In general, selection will be made on the basis of the lowest suitable tender. But in the case of tenders of substantial value ($50,000 or more) a suitable tender of higher Australian content may not be passed over in favour of one of lower Australian content, even where the latter is the lowest suitable tender without the approval of the Minister.

Clause 15 provides for publication of the level of Australian content of successful tenders. This is in line with maintaining a fair and open public tender system.

Clause 16 provides for exemption from the Act to be granted by the Minister in circumstances where the commercial viability of business carried on by the authority, or its ability to perform functions or comply with financial requirements may be affected adversely.

Further details are contained in the Minister's Second Reading Speech and in an explanatory memorandum accompanying the Bill.