



Public Governance, Performance and Accountability (Procurement) Instrument 2016

I, Mathias Cormann, Minister for Finance, make the following instrument.

Dated 5 May 2016

Mathias Cormann
Minister for Finance

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1 Name

This is the *Public Governance, Performance and Accountability (Procurement) Instrument 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	11 May 2016

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 105B of the *Public Governance, Performance and Accountability Act 2013*.

4 Definitions

In this instrument:

Act means the *Public Governance, Performance and Accountability Act 2013*.

Building Code has the same meaning as in the *Fair Work (Building Industry) Act 2012*.

building contractor has the same meaning as in the *Fair Work (Building Industry) Act 2012*.

building industry participant has the same meaning as in the *Fair Work (Building Industry) Act 2012*.

building work has the same meaning as in the *Fair Work (Building Industry) Act 2012*.

Commonwealth-funded building work: see section 5.

constitutional corporation has the same meaning as in the *Fair Work (Building Industry) Act 2012*.

corresponding WHS law has the same meaning as in the *Work Health and Safety Act 2011*.

covers, in relation to an enterprise agreement, has the same meaning as in the *Fair Work Act 2009*.

designated building law has the same meaning as in the *Fair Work (Building Industry) Act 2012*.

enterprise agreement has the same meaning as in the *Fair Work Act 2009*.

5 Meaning of Commonwealth-funded building work

Building work is **Commonwealth-funded building work** if the work is described in any of items 1 to 8 of Schedule 1 to the Building Code.

6 Procurement of Commonwealth-funded building work

- (1) A non-corporate Commonwealth entity must not enter into a contract with a person under which the person agrees to carry out Commonwealth-funded building work, or to arrange for such work to be carried out, for or on behalf of the non-corporate Commonwealth entity if:
 - (a) either:
 - (i) the person is a building contractor that is a constitutional corporation; or
 - (ii) the person is a building industry participant and the work is to be carried out in a Territory or Commonwealth place; and
 - (b) any of subsections (2) to (5) apply.
- (2) This subsection applies if there are reasonable grounds to believe that the person is a party to an agreement of a kind described in subsection 10(1) of the Building Code.
- (3) This subsection applies if there are reasonable grounds to believe that the person is covered by an enterprise agreement that is inconsistent with the Building Code.
- (4) This subsection applies if an exclusion sanction, within the meaning of the *Building Code 2013 - Supporting Guidelines*, as in force at the time this instrument commences, applies to the person.

Note: The *Building Code 2013 – Supporting Guidelines* could in 2016 be viewed on the Department of Employment’s website (<http://www.employment.gov.au>).

- (5) This subsection applies if:
 - (a) an adverse decision, direction or order of a court or tribunal has been made in relation to the person and a contravention of any of the following in respect of building work:
 - (i) a designated building law;
 - (ii) the *Work Health and Safety Act 2011* or a corresponding WHS law;
 - (iii) the *Competition and Consumer Act 2010*; and

- (b) there are reasonable grounds to believe that the person has failed to comply with the decision, direction or order.

7 Repeal of this instrument

This instrument is repealed at the end of the day that is 24 months after the day the *Fair Work (Building Industry) Act 2012* is repealed.