

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Note: This table relates only to the provisions of this instrument as originally made.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.