2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Workplace Safety and Industrial Relations)

Government Procurement (Secure Local Jobs) Amendment Bill 2018

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Schedule 1 Delayed amendment 26

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2018

THE LEGISLATIVE ASSEMBLY
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(As presented)

(Minister for Workplace Safety and Industrial Relations)

Government Procurement (Secure Local Jobs) Amendment Bill 2018

A Bill for

An Act to amend the *Government Procurement Act 2001*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

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1 Name of Act

This Act is the *Government Procurement (Secure Local Jobs) Amendment Act 2018*.

2 Commencement

(1) This Act (other than schedule 1) commences on 15 January 2019.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(2) Schedule 1 commences on a day fixed by the Minister by written notice.

Note A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

(3) If schedule 1 has not commenced within 12 months beginning on this Act's notification day, it automatically commences on the first day after that period.

(4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to schedule 1.

3 Legislation amended

This Act amends the *Government Procurement Act 2001*.

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4 New part 2B

insert

Part 2B Secure local jobs code

Division 2B.1 Application and definitions—pt 2B

22D Application—pt 2B

This part does not apply to a procurement by a territory entity with the Commonwealth or a State, or an entity of the Commonwealth or a State.

Example

a procurement of police services for the Territory from the Australian Federal Police

Note 1 ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

22E Definitions—pt 2B

In this part:

approved auditor—see section 22O.

audit guidelines means the guidelines made by the Minister under section 22U (1) (a).

code means the secure local jobs code.

council means the Secure Local Jobs Code Advisory Council established under section 22Z.

registrar means the secure local jobs code registrar appointed under section 22V.

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secure local jobs code—see section 22M.

secure local jobs code certificate means a certificate granted to an entity under section 22J.

secure local jobs code register—see section 22N.

tenderer, in relation to a procurement proposal, means an entity that submits a quote, tender or other response to the procurement proposal.

territory-funded work—see section 22F.

workplace standards, of an entity, means the obligations and practices of the entity associated with the entity's workplaces, including in relation to the following:

(a) collective bargaining;

(b) freedom of association;

(c) health and safety;

(d) human rights;

(e) inductions;

(f) leave;

(g) tax and superannuation;

(h) training;

(i) workers compensation;

(j) workplace delegates of unions.

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22F Meaning of *territory-funded work*—pt 2B

(1) In this part:

territory-funded work means services or works that are—

(a) for a territory entity; and

(b) primarily for any of the following:

(i) construction work within the meaning of the *Work Health and Safety Regulation 2011*, section 289;

(ii) building or other industrial cleaning services within the meaning of the ANZSIC, Class 7311;

(iii) traffic control services to redirect vehicles around a temporary disruption to a public road for the purpose of ensuring safety to workers or the public;

(iv) security services by a person who carries on a security activity within the meaning of the *Security Industry Act 2003*, section 7.

(2) The Legislation Act, section 47 (6) does not apply to the ANZSIC.

Note The ANZSIC does not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)). The ANZSIC is available free of charge at www.abs.gov.au.

(3) In this section:

ANZSIC means the Australian and New Zealand Standard Industrial Classification 2006 as in force from time to time.

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Division 2B.2 Requirements for procurement by territory entities

22G Requirements for procurement—secure local jobs code certificates etc

(1) A territory entity must not accept a response to a procurement proposal for territory-funded work from a tenderer unless the tenderer—

(a) holds a secure local jobs code certificate and any conditions on the certificate are appropriate for the procurement; and

(b) if the procurement proposal has a value of $25 000 or more or, if another value is prescribed by regulation, the prescribed value—submits a labour relations, training and workplace equity plan.

(2) A territory entity must consider a labour relations, training and workplace equity plan submitted by a tenderer under subsection (1) (b) when assessing responses to a procurement proposal.

(3) A territory entity must not enter into a contract for procurement for territory-funded work with another entity unless—

(a) the other entity holds a secure local jobs code certificate and any conditions on the certificate are appropriate for the procurement; and

(b) the contract includes terms that incorporate, as far as applicable, the substance of any model terms determined under subsection (4).

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(4) The Minister may determine model terms for incorporation into contracts for territory-funded work that relate to the requirements of this part or the code.

Examples—model terms

1 contractor must hold a secure local jobs code certificate for the duration of the contract

2 contractor must tell the Territory about any adverse ruling that is made against the contractor and that relates to the code

3 contractor must carry out staff inductions

4 contractor must allow registrar to enter workplaces to carry out educational activities regarding the code

5 contractor must allow approved auditors to enter workplaces to examine compliance with the code

6 contractor must provide contact details and working hours for workplaces

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(5) A determination under subsection (4) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(6) In this section:

labour relations, training and workplace equity plan means a plan made by a tenderer that—

(a) relates to the tenderer's, and any subcontractor's, workplaces in relation to workplace standards, diversity and equity; and

(b) complies with any requirements prescribed by regulation.

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22H Exemption from requirements—secure local jobs code certificates etc

(1) The responsible chief executive officer for a territory entity may exempt the entity from the requirements under section 22G for a procurement proposal or procurement—

(a) if it is for emergency works—

(i) to critical services that have been disrupted; or

(ii) to prevent an imminent danger to health and safety; and

(b) the requirements mentioned in section 22G cannot be complied with because of the emergency.

(2) The responsible chief executive officer must notify the registrar and the council of the exemption within 7 days after granting the exemption.

(3) The registrar may exempt a territory entity from 1 or more of the requirements under section 22G for a procurement proposal or procurement if the registrar considers there is no suitable entity available at a reasonable cost to tender for the proposal or contract for the procurement that would enable the requirements to be met.

(4) The registrar must notify the council of the exemption within 7 days after granting the exemption.

(5) An exemption under this section must be in writing.

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Division 2B.3 Secure local jobs code certificates and code

22I Application for secure local jobs code certificate

(1) An entity may apply to the registrar for a secure local jobs code certificate.

(2) The application must—

(a) include a current report from an approved auditor stating that the entity meets the requirements mentioned in the code; and

(b) comply with any requirements prescribed by regulation.

(3) A report mentioned in subsection (2) (a) must be in accordance with the audit guidelines.

22J Decision on application

(1) The registrar may grant a secure local jobs code certificate to an applicant if satisfied that the applicant—

(a) is not prohibited from applying for a certificate under section 22T; and

(b) meets the requirements mentioned in the code.

(2) The registrar may grant a certificate under subsection (1) for up to 30 months.

22K Conditions on secure local jobs code certificate

(1) A secure local jobs code certificate is subject to any conditions—

(a) prescribed by regulation; or

(b) imposed by the registrar.

(2) The registrar may amend or remove any conditions imposed under subsection (1) (b).

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22L Surrender of secure local jobs code certificate

(1) An entity that holds a secure local jobs code certificate may surrender the entity's certificate to the registrar by notifying the registrar in writing.

(2) However, an entity may surrender a certificate only if it is not required to hold the certificate under a contract with a territory entity.

(3) The registrar may request information from a territory entity to enable the registrar to decide whether the entity that holds a secure local jobs code certificate is required to do so under a contract with the territory entity.

(4) A territory entity must give the registrar the information requested under subsection (3).

22M Secure local jobs code

(1) The Minister may make a code (the ***secure local jobs code***) that sets out workplace standards and related requirements and that applies to an entity that holds a secure local jobs code certificate.

(2) The code may include—

(a) requirements for the entity to give a territory entity and the registrar—

(i) the names of each of the entity's subcontractors; and

(ii) physical addresses, working hours, and contact details of a contact person for each of the entity's work sites, and its subcontractor's work sites; and

(b) requirements for the entity to ensure that its subcontractors comply with the requirements of the code for territory-funded work as if the subcontractors were the entity; and

(c) any other relevant matters.

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(3) The code may also include requirements for the registrar—

(a) to keep records of the details mentioned in subsection (2) (a); and

(b) to grant access to those records on request by an entity for the purpose of allowing the entity to exercise any right of entry the entity has under a law in force in the ACT.

(4) The standards and requirements in the code must not be inconsistent with the *Fair Work Act 2009* (Cwlth) or any other Commonwealth law.

(5) The code is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

22N Secure local jobs code register

(1) The registrar must keep a register (the ***secure local jobs code register***) that lists the following:

(a) the names of entities that hold secure local jobs code certificates and any conditions or exemptions on the certificates;

(b) any action taken by the registrar under section 22T;

(c) any other details prescribed by regulation.

(2) The register must be accessible and searchable by the public.

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22O Approved auditors

(1) The registrar may approve an entity to be an auditor for this part (an ***approved auditor***).

(2) The registrar must not approve an entity under subsection (1) unless satisfied that—

(a) the entity has appropriate qualifications and experience to enable the entity to exercise the functions of an approved auditor under this part, including to conduct audits to check compliance with the requirements in the code; and

(b) the approval is in accordance with the audit guidelines.

(3) The registrar must revoke the approval of an auditor if satisfied that the auditor no longer meets the requirements under subsection (2).

(4) The registrar must prepare and maintain a publicly-available list of approved auditors.

22P Exemption from code

The registrar may, on application by an entity, exempt the entity from a requirement of the code if the entity satisfies the registrar that complying with the requirement would result in the entity not complying with a Commonwealth law.

Division 2B.4 Noncompliance with code

22Q Complaints

(1) Anyone who believes on reasonable grounds that an entity that holds a secure local jobs code certificate has failed to comply with the code may make a complaint about the entity to the registrar.

(2) A complaint must—

(a) be in writing; and

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(b) comply with any guidelines made under section 22U (1) (b).

(3) If a complaint also concerns a failure to comply with a law other than this Act, the registrar may—

(a) tell the person who made the complaint that they may make the complaint to the authority responsible for administering the law; or

(b) refer the complaint to that authority.

(4) The registrar must not take further action on a complaint if satisfied that the complaint—

(a) lacks substance; or

(b) is frivolous, vexatious or was not made in good faith; or

(c) has been adequately dealt with.

22R Audits

(1) The registrar may appoint an approved auditor to conduct an audit of an entity that holds a secure local jobs code certificate if—

(a) a complaint about the entity has been made under section 22Q; or

(b) the registrar has reasonable grounds to suspect the entity has failed to comply with the code.

(2) The approved auditor must conduct an audit and give a report about whether the entity meets the requirements under the code to the registrar.

(3) The audit and report must be in accordance with the audit guidelines.

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22S Requests for information

(1) The registrar may make a written request for relevant information from an entity that holds a secure local jobs code certificate in any of the following circumstances:

(a) the registrar is considering imposing a condition under section 22K on the entity's certificate;

(b) the registrar has received a complaint under section 22Q about the entity;

(c) the registrar has appointed an auditor under section 22R (1) to audit the entity;

(d) the registrar is considering a notification the registrar has received under section 22L;

(e) the registrar has reasonable grounds to suspect the entity has failed to comply with the code.

(2) The request must be in accordance with any guidelines made by the Minister under section 22U (1) (c).

(3) An entity that holds a secure local jobs code certificate must comply with a request for information under subsection (1) within 7 days after the day of the request or within a longer time allowed by the registrar.

(4) If an entity fails to comply with a request under subsection (1), the registrar may take an action mentioned in section 22T (1) (a) to (e) against the entity.

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22T Compliance

(1) If the registrar is satisfied that an entity that holds a secure local jobs code certificate has failed to comply with the code, the registrar may do any of the following:

(a) take no action;

(b) cancel the entity's secure local jobs code certificate immediately or from a stated date;

(c) suspend the entity's secure local jobs code certificate;

(d) prohibit the entity from applying for a secure local jobs code certificate for a period of up to 12 months;

(e) impose or amend conditions on the entity's secure local jobs code certificate.

(2) In deciding whether there has been a failure to comply with the code or whether to take any action under subsection (1), the registrar must take into account any of the following:

(a) an audit report under section 22R;

(b) any relevant information from an authority mentioned in section 22Q (3);

(c) any relevant information referred to in section 22S (1).

22U Guidelines for audits, complaints and requests for information

(1) The Minister may make guidelines about any of the following:

(a) matters relating to audits, including the following:

(i) approval of auditors;

(ii) appointment and allocation of auditors;

(iii) the conduct of audits;

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(iv) the content of audit reports;

(b) the making and handling of complaints about noncompliance with the code;

(c) requests for information under section 22S.

(2) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Division 2B.5 Secure local jobs code registrar

22V Appointment of secure local jobs code registrar

(1) The Minister must appoint a public servant as the secure local jobs code registrar.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

(2) The registrar must be appointed for a term of not longer than 3 years.

Note 1 A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def ***appoint***).

Note 2 A person's appointment also ends if the person resigns (see Legislation Act, s 210).

(3) An appointment is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

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22W Functions of registrar

(1) The registrar has the following functions:

(a) to promote an understanding and acceptance of, and compliance with, this part;

(b) to undertake research, and develop educational and other programs, for the purpose of enabling holders of secure local jobs code certificates to comply with the code;

(c) to advise the Minister on any matter relevant to the operation of this part;

(d) to provide secretariat support to the council;

(e) any other function given to the registrar under this Act or another territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def ***entity***).

(2) In exercising the registrar's functions, the registrar is not subject to direction by the director-general.

22X Ministerial directions to registrar

(1) The Minister may give written directions to the registrar in relation to the exercise of the registrar's functions.

(2) The registrar must comply with a direction given under subsection (1).

(3) The Minister must present a copy of any direction to the Legislative Assembly within 5 sitting days after the day the direction is given to the registrar.

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22Y Delegation by registrar

The registrar may delegate the registrar's functions under this Act to another public servant.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Division 2B.6 Secure local jobs code advisory council

22Z Establishment of council

The Secure Local Jobs Code Advisory Council is established.

22ZA Functions of council

The council has the following functions:

(a) to advise the Minister about—

(i) matters relating to the operation of this part; and

(ii) anything else in relation to local jobs and procurement by territory entities requested by the Minister;

(b) any other function given to the council under this Act.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def ***entity***).

22ZB Membership of council

(1) The council consists of—

(a) the registrar; and

(b) 3 members appointed by the Minister after consultation with the people or bodies that the Minister considers represent the interests of employees; and

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(c) 3 other members appointed by the Minister, who the Minister considers have the appropriate qualifications or experience to assist the council to exercise its functions.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

(2) A person must be appointed to the council for not longer than 3 years.

(3) The Minister must appoint a chair of the council from the members appointed under subsection (1).

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def ***appoint***).

(4) The registrar is a non-voting member of the council.

22ZC Procedures of council

(1) Meetings of the council are to be held when and where the council decides.

(2) The council may conduct its proceedings (including its meetings) as it considers appropriate.

(3) The council may publish its considerations as the council considers appropriate.

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22ZD Review of pt 2B

(1) The council must review the operation of this part before the end of its 2nd year of operation.

(2) In the review, the council must consider—

(a) compliance with the code and other requirements; and

(b) the coverage of the provisions including the procurement proposals and procurements subject to the provisions; and

(c) complaints and disputes.

(3) The council must present a report of the review to the Minister within 6 months after the day the review was started.

5 New part 4A

insert

Part 4A Notification and review of decisions

48 Meaning of *reviewable decision*—pt 4A

In this part:

reviewable decision means a decision mentioned in schedule 2, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

49 Reviewable decision notices

If the registrar makes a reviewable decision, the registrar must give a reviewable decision notice to each entity mentioned in schedule 2, column 4 in relation to the decision.

Note The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

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50 Applications for review

An entity mentioned in schedule 2, column 4 in relation to a reviewable decision may apply to the ACAT for review of the decision.

6 New part 11

insert

Part 11 Transitional—Government Procurement (Secure Local Jobs) Amendment Act 2018

102 Meaning of *commencement day*—pt 11

In this part:

commencement day means the day the *Government Procurement (Secure Local Jobs) Amendment Act 2018*, section 4 commences.

103 Application—div 2B.2

(1) Division 2B.2 (Requirements for procurement by territory entities) applies only for—

(a) a new procurement proposal; and

(b) a new contract for procurement that relates to a new procurement proposal.

(2) In this section:

existing arrangement means a panel arrangement, standing offer contract or public private partnership that was made, or entered into, before the commencement day.

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new contract for procurement means—

(a) a contract for procurement (other than a contract under an existing arrangement) entered into on or after the commencement day; or

(b) a contract for procurement entered into on or after 15 January 2020 under an existing arrangement.

new procurement proposal means—

(a) a procurement proposal (other than a proposal made under an existing arrangement) made on or after the commencement day; or

(b) a procurement proposal made on or after 15 January 2020 under an existing arrangement.

standing offer contract means a contract, or a common use contract, to supply goods, services or works that the Territory or a territory entity may procure from time to time during a stated period.

104 Expiry—pt 11

This part expires 30 months after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

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7 New schedule 2

insert

Schedule 2 Reviewable decisions

(see pt 4A)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	22J	decision not to grant secure local jobs code certificate	applicant
2	22K (1) (b) and (2)	decision to impose, amend or remove condition on secure local jobs code certificate	entity that holds certificate
3	22T (1) (b)	decision to cancel secure local jobs code certificate	entity that holds certificate
4	22T (1) (c)	decision to suspend secure local jobs code certificate	entity that holds certificate
5	22T (1) (d)	decision to prohibit application for secure local jobs code certificate	entity that is prohibited from making application
6	22T (1) (e)	decision to impose or amend conditions on secure local jobs code certificate	entity that holds certificate

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8 Dictionary, note 2

insert

- ACT
- appoint
- Commonwealth
- director-general (see s 163)
- entity
- establish
- fail
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- State

9 Dictionary, new definitions

insert

approved auditor, for part 2B (Secure local jobs code)—see section 22O.

audit guidelines, for part 2B (Secure local jobs code)—see section 22E.

code, for part 2B (Secure local jobs code)—see section 22E.

council, for part 2B (Secure local jobs code)—see section 22E.

registrar, for part 2B (Secure local jobs code)—see section 22E.

reviewable decision, for part 4A (Notification and review of decisions)—see section 48.

secure local jobs code, for part 2B (Secure local jobs code)—see section 22M.

secure local jobs code certificate, for part 2B (Secure local jobs code)—see section 22E.

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secure local jobs code register, for part 2B (Secure local jobs code)—see section 22N.

tenderer, in relation to a procurement proposal, for part 2B (Secure local jobs code)—see section 22E.

territory-funded work, for part 2B (Secure local jobs code)—see section 22F.

workplace standards, of an entity, for part 2B (Secure local jobs code)—see section 22E.

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Schedule 1 Delayed amendment

(see s 3)

[1.1] Section 22F

substitute

22F Meaning of *territory-funded work*—pt 2B

(1) In this part:

territory-funded work means services or works that are for a territory entity and are any of the following:

(a) services or works that—

(i) are primarily for labour (other than services or works prescribed by regulation); and

(ii) have an estimated value equal to or greater than an amount prescribed by regulation;

(b) services or works that are primarily for any of the following:

(i) construction work within the meaning of the *Work Health and Safety Regulation 2011*, section 289;

(ii) building or other industrial cleaning services within the meaning of the ANZSIC, Class 7311;

(iii) traffic control services to redirect vehicles around a temporary disruption to a public road for the purpose of ensuring safety to workers or the public;

(iv) security services by a person who carries on a security activity within the meaning of the *Security Industry Act 2003*, section 7.

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(2) The Legislation Act, section 47 (6) does not apply to the ANZSIC.

Note The ANZSIC does not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)). The ANZSIC is available free of charge at www.abs.gov.au.

(3) In this section:

ANZSIC means the Australian and New Zealand Standard Industrial Classification 2006 as in force from time to time.

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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2 August 2018.

2 Notification

Notified under the Legislation Act on 2018.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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