

Australian Capital Territory

Government Procurement (Secure Local Jobs Complaints and Noncompliance Investigation) Guidelines 2018

Disallowable instrument DI2018–288

made under the

Government Procurement Act 2001, s22U(1) (Secure Local Jobs Complaints and Noncompliance Investigation Guidelines)

EXPLANATORY STATEMENT

Overview

This explanatory statement relates to the *Government Procurement (Secure Local Jobs Complaints and Noncompliance Investigation Guidelines) 2018*.

The Secure Local Jobs Code provides the detailed requirements introduced by the Secure Local Jobs Package (the Package), covering workplace standards such as collective bargaining, freedom of association, health and safety, workplace inductions and union workplace representation.

The requirement to comply with the Code is reinforced at multiple levels and applies to an entity who holds a Secure Local Jobs Code Certificate (Certificate):

- The requirement to hold a Certificate is established by *the Government Procurement Act 2001* (GPA) (as amended by the *Government Procurement (Secure Local Jobs) Amendment Act 2018*):
 - o a territory entity cannot accept a response to a procurement for territory-funded work unless a tenderer holds a certificate
 - o a territory entity cannot enter into a contract for procurement for territory-funded work unless the other entity holds a certificate
- Territory-funded work is defined by reference to the kind of services or work, and initially covers specific industries. The term will later be broadened to include any contract primarily for labour with an estimated value at or above \$200 000.

Anyone who believes on reasonable ground that an entity that holds a secure local jobs code certificate has failed to comply with the Code may make a complaint to the registrar.

The authority to make the guidelines for the making and handling of complaints about noncompliance with the Code is contained in section 22U of the GPA, which states that –

- (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;*
 - iv. the content of audit reports;*
 - b. the making and handling of complaints about noncompliance with the code.*
- (2) A guideline is a disallowable instrument.*

Regulatory impact statement

A regulatory impact statement has been prepared for the Code and is available on the ACT Legislation Register. The regulatory impact statement also addresses two related legislative instruments, the *Government Procurement (Secure Local Jobs Code) Amendment Regulation 2018* and *Government Procurement (Secure Local Jobs Code Model Contract Terms) Determination 2018*.

Human rights implications

During the development of this Regulation regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA). Human rights implications are discussed in detail in the Regulatory Impact Statement for the Code.

CLAUSE NOTES

Clause 1 Introduction

This clause provides an overview of the *Government Procurement Act 2001* and provisions relating to the Secure Local Jobs Code and outlines the guidelines information on processes to be undertaken for complaint making, investigation, possible sanctions and review pathways.

Clause 2 Making a complaint about noncompliance

This clause outlines the requirements of the registrar for complaints to be made by claimants in writing with supporting documentation on the notification form specified by the Territory.

Clause 3 Receiving an allegation of noncompliance

This clause outlines the information requirements of the registrar for complaints, acknowledgement of complaint receipt within specified timeframes by the registrar's office, and the determination of course of actions to be undertaken by the registrar in respect of the complaint.

Clause 4 Referral of a Regulatory Authority

This clause outlines the registrar may refer an allegation of noncompliance to an existing regulatory authority if the alleged breach relates to a legislative requirement. Referral to a regulatory authority does not preclude the registrar from conducting their own investigation or taking action.

Clause 5 Audit process

This clause outlines the process the registrar may take to appoint an approved auditor to conduct an audit a Code Certified Entity's compliance with their Code obligations with specific reference to the alleged complaint.

Clause 6 Investigation by the registrar

This clause outlines the how the registrar may initiate investigations by the Compliance Unit to investigate noncompliance with the Code by a Code Certified Entity and the actions available to registrar following the investigation.

Clause 7 Application of sanctions in response to an adverse ruling

This clause outlines the possible imposition of sanctions or actions to be taken by the registrar against a Code Certified Entity for noncompliance with the Code or in the event of an adverse ruling against a Code Certified Entity

Table 1 Classification of noncompliance and possible sanctions

Table 1 provides classifications of noncompliance with the Code and the infringement points associated with the classification, examples of noncompliance with the Code and possible sanctions available to the registrar.

Clause 8 Review process

This clause outlines the review process to be followed should the registrar apply sanctions to a Code Certified Entity.