

Commonwealth Cleaning Services Guidelines

The instrument to which this explanatory statement relates

This explanatory statement relates to the *Commonwealth Cleaning Services Guidelines* (the instrument).

The legislative authority under which the instrument is made

Section 64(1) of the *Financial Management and Accountability Act 1997* (FMA Act) provides that the regulations may authorise a Minister to issue guidelines to officials on matters within the Minister's responsibility.

Regulation 7B of the *Financial Management and Accountability Regulations 1997* provides that the Minister for Workplace Relations may issue guidelines (to be called the *Commonwealth Cleaning Services Guidelines*) for the administration of tenders conducted by Agencies in relation to the procurement of cleaning services for properties occupied by Agencies, including:

- (a) procurement policies and processes; and
- (b) requirements regarding entering into procurement arrangements.

Purpose of the instrument

The purpose of the *Commonwealth Cleaning Services Guidelines* is to prescribe certain circumstances in which Australian Government agencies must decline to accept a tenderer's proposal or enter into a contract with a tenderer in relation to an Australian Government Cleaning Services Contract (AGCSC) as defined at Section 6 of the *Commonwealth Cleaning Services Guidelines*.

Background

On 24 November 2011, the Minister for Workplace Relations issued the *Commonwealth Cleaning Services Guidelines* to take effect on 1 January 2012. The *Commonwealth Cleaning Services Guidelines* are complementary to the requirements of the Fair Work Principles which were introduced in 2009.

On 1 July 2012 the *Commonwealth Cleaning Services Guidelines* were revised to reflect the introduction of the Commonwealth Procurement Rules (released by the Department of Finance and Deregulation on 1 July 2012) and to include the new prescribed Australian Government Cleaning Services Contracts minimum hourly base rates of pay.

Notes on the instrument

The *Commonwealth Cleaning Services Guidelines* apply to Australian Government agencies, their employees and contractors, subject to the *Financial Management and Accountability Act 1997* (FMA Act).

A body subject to the *Commonwealth Authorities and Companies Act 1997* (CAC Act) is not subject to the *Commonwealth Cleaning Services Guidelines* unless the Finance Minister has made a General Policy Order (GPO) in accordance with section 48A of the FMA Act, specifying the mandatory requirements for that body under the instrument.

The *Commonwealth Cleaning Services Guidelines* apply to each request for tender or request for expressions of interest for an Australian Government Cleaning Services Contract issued for the first time on or after 1 January 2012.

The *Commonwealth Cleaning Services Guidelines* establish a framework within which Australian Government agencies can accept a tender and enter into a contract for an Australian Government Cleaning Services Contract (see further at section 3.2-3.3 of the *Commonwealth Cleaning Services Guidelines*).

In summary, the *Commonwealth Cleaning Services Guidelines* will require Australian Government agencies to:

- a. decline to accept any tender where the tenderer does not undertake to comply with the requirements outlined in the *Commonwealth Cleaning Services Guidelines*, including to pay their employees no less than the prescribed wage rates and to comply with the mandatory practices for Australian Government Cleaning Services Contract;
- b. decline to enter into a contract with a tenderer if they are not satisfied at the time of tender for an Australian Government Cleaning Services Contract that the tenderer has demonstrated they can and will comply with the mandatory practices outlined in the *Commonwealth Cleaning Services Guidelines*;
- c. include contractual obligations, as outlined in the *Commonwealth Cleaning Services Guidelines*, in the Australian Government Cleaning Services Contract; and
- d. ensure the successful tenderer complies with these throughout the life of the Australian Government Cleaning Services Contract.

The *Commonwealth Cleaning Services Guidelines* should be read in conjunction with the Fair Work Principles. The Fair Work Principles seek to ensure that procurement decisions made by Australian Government agencies promote fair, cooperative and productive workplaces. The Fair Work Principles and the Fair Work Principles User Guide are published on the Department of Education, Employment and Workplace Relations website (www.deewr.gov.au/FairWorkPrinciples).

Consultation

Key industry and union stakeholders along with Australian Government agencies were consulted during the development of the *Commonwealth Cleaning Services Guidelines*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Commonwealth Cleaning Services Guidelines

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill/Legislative Instrument

The purpose of these Guidelines is to prescribe certain circumstances in which Australian Government agencies must decline to accept a tenderer's proposal or enter into a contract with a tenderer in relation to an Australian Government Cleaning Services Contract.

Human rights implications

This Legislative Instrument does not negatively impact any of the applicable rights or freedoms.

This Legislative Instrument prescribes certain circumstances in which Australian Government agencies must decline to accept a tenderer's proposal or enter into a contract with a tenderer in relation to an Australian Government Cleaning Services Contract as defined at Section 6 of the *Commonwealth Cleaning Services Guidelines* ('Guidelines'). These Guidelines require an Australian Government Agency to decline to accept any tender where the tenderer does not undertake to comply with the requirements outlined in the Guidelines, including to pay their employees no less than the prescribed wage rates and to comply with the mandatory practices for Australian Government Cleaning Services Contract. An Australian Government agency must also decline to enter into a contract with a tenderer if they are not satisfied at the time of tender for an Australian Government Cleaning Services Contract that the tenderer has demonstrated they can and will comply with the mandatory practices outlined in the Guidelines.

This promotes the enjoyment of just and favourable conditions of work contained in article 7 of the International Covenant on Economic, Social and Cultural Rights as it ensures that the Australian Government strengthens the cleaning specific requirements of Fair Work Principles, and ensures that the Government's objective of promoting better wages and conditions for vulnerable workers in the cleaning industry in respect of Australian Government Cleaning Services Contracts can be realised. It also sets an example for other parties who contract for cleaning services to do the same.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

William Richard Shorten, Minister for Employment and Workplace Relations