



# **Code for the Tendering and Performance of Building Work Amendment Instrument 2017**

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I, Michaelia Cash, Minister for Employment, make the following instrument.

Dated 20 February 2017

Michaelia Cash  
Minister for Employment

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## 1 Name

This instrument is the *Code for the Tendering and Performance of Building Work Amendment Instrument 2017*.

## 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.

| <b>Commencement information</b> |   |   |
|---------------------------------|---|---|
| <b>Column 1</b>                 | <b>Column 2</b>   | <b>Column 3</b>                                 |
| <b>Provisions</b>               | <b>Commencement</b>   | <b>Date/Details</b>                             |
| 1. The whole of this instrument | The later of:<br>(a) the start of the day after this instrument is registered; and<br>(b) the commencement of the <i>Building and Construction Industry (Improving Productivity) Amendment Act 2017</i> .<br><br>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | 21 February 2017<br><br>(paragraph (a) applies) |

Note: This table relates only to the provisions of this instrument as originally made.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 subsection 34(1) of the *Building and Construction Industry (Improving Productivity) Act 2016*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Code for the Tendering and Performance of Building Work 2016*

#### **1 Subsection 11(2)**

Repeal the subsection, substitute:

- (2) Subsections (1) and (3) are subject to Schedule 5.

#### **2 Subsections 11A(2) and 15(2)**

Repeal the subsections, substitute:

- (2) Subsection (1) is subject to Schedule 5.

#### **3 At the end of the instrument**

Add:

### **Schedule 5 Application of sections 11, 11A and 15**

(subsections 11(2), 11A(2) and 15(2))

#### **1 Application of sections 11, 11A and 15**

- (1) Subsections 11(1) and (3), 11A(1) and 15(1) do not apply in relation to an enterprise agreement made before 2 December 2016 that covers a building contractor, a building industry participant, or a related entity of a building contractor or building industry participant, to the extent that the requirements in those subsections must be met for the purposes of:
- (a) the lodging of an expression of interest or tender by the contractor or participant before 1 September 2017; or
  - (b) the awarding, before 29 November 2018, of building work relating to an expression of interest or tender lodged by the contractor or participant in the period beginning on 2 December 2016 and ending at the commencement of the *Building and Construction Industry (Improving Productivity) Amendment Act 2017* (the **Amendment Act commencement**); or
  - (c) the undertaking of building work referred to in paragraph (b); or
  - (d) the awarding, before 1 September 2017, of building work relating to an expression of interest or tender lodged by the contractor or participant after the Amendment Act commencement if the enterprise agreement does not apply to the contractor, participant or related entity in respect of that building work; or
  - (e) the undertaking of building work referred to in paragraph (d).
- (2) Subsections 11(1) and (3), 11A(1) and 15(1) do not apply in relation to an enterprise agreement that covers a building contractor, a building industry participant, or a related entity of a building contractor or building industry participant, if:
- (a) the enterprise agreement:
    - (i) was made before 2 December 2016; and

- (ii) applies to the contractor, participant or related entity in respect only of building work relating to an expression of interest or tender lodged by the contractor or participant before 2 December 2016; or
- (b) the enterprise agreement:
  - (i) was made before 25 April 2014; and
  - (ii) has not been varied in accordance with section 207 of the *Fair Work Act 2009*.