



Code for the Tendering and Performance of Building Work Amendment Instrument 2022

I, Tony Burke, Minister for Employment and Workplace Relations, make the following instrument.

Dated 10 July 2022

Tony Burke
Minister for Employment and Workplace Relations

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1 Name

This instrument is the *Code for the Tendering and Performance of Building Work Amendment Instrument 2022*.

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.	26 July 2022

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 3(1)

Repeal the following definitions:

- (a) definition of *ABCC*;
- (b) definition of *above-entitlements payment*;
- (c) definition of *Department of Finance*;
- (d) definition of *enterprise agreement*;
- (e) definition of *acquiring entity*;
- (f) definition of *FW Act*;
- (g) definition of *head contractor*;
- (h) definition of *individual flexibility arrangement*;
- (i) definition of *inspector*;
- (j) definition of *working day*;
- (k) definition of *WRMP*.

2 Subsection 3(1) (note)

Repeal the note.

3 Section 5

Repeal the section.

4 Section 6 (note 4)

Omit “However, some obligations in the code of practice only apply in respect of Commonwealth funded building work—see for example subsections 8(2)-(7) and Part 6.”.

5 Subsection 6A(1)

Omit “ABC Commissioner may exempt a building contractor or building industry participant from this code of practice if the Commissioner”, substitute “Minister may exempt a building contractor or building industry participant from this code of practice if the Minister”.

6 Paragraph 6A(1)(b)

Omit “having regard to the objective in subparagraph 5(a) of this code of practice”, substitute “in the circumstances”.

7 Subsection 6B(1)

Omit “ABC Commissioner”, substitute “Minister”.

8 Subsection 6B(2)

Omit “ABC Commissioner must grant the exemption (the *infrastructure exemption*) if the Commissioner”, substitute “Minister must grant the exemption (the *infrastructure exemption*) if the Minister”.

9 Subsection 6B(4)

Omit “ABC Commissioner must revoke an infrastructure exemption (including an exemption issued for a specified period) if the Commissioner”, substitute “Minister must revoke an infrastructure exemption (including an exemption issued for a specified period) if the Minister”.

10 Sections 7 to 11E

Repeal the sections.

11 Sections 12 to 16A

Repeal the sections.

12 Part 4

Repeal the Part.

13 Sections 23 to 25

Repeal the sections.

14 Subsections 26(1) to (7)

Repeal the subsections.

15 Sections 27 to 29

Repeal the sections.

16 Part 6

Repeal the Part, substitute:

Part 6—Application and transitional provisions**30 Transitional provisions relating to the *Code for the Tendering and Performance of Building Work Amendment Instrument 2022*—exemptions**

- (1) An exemption given by the ABC Commissioner under section 6A or 6B of this instrument and in effect immediately before the commencement of the *Code for the Tendering and Performance of Building Work Amendment Instrument 2022* (the **amending instrument**) continues in effect, and may be dealt with, as if it were an exemption given by the Minister under section 6A or 6B (as the case may be) as in force after that commencement.
- (2) If:
 - (a) before the commencement of the amending instrument, a building contractor or building industry participant makes an application under subsection 6B(1) to the ABC Commissioner; and
 - (b) at that commencement, the ABC Commissioner has not made a decision on the application;then, at and after that commencement, the Minister may deal with the application as if it had been made to the Minister under subsection 6B(1) as in force after that commencement.

**31 Transitional provisions relating to the *Code for the Tendering and Performance of Building Work Amendment Instrument 2022*—
exclusion sanctions**

- (1) This section applies to a code covered entity (the *sanctioned entity*) that was subject to an exclusion sanction immediately before the commencement of the *Code for the Tendering and Performance of Building Work Amendment Instrument 2022* (the *amending instrument*).
- (2) Despite the amendments made by the amending instrument, the exclusion sanction continues in force after that commencement (subject to paragraph 3(3)(a)) with the effects set out in subsections (3) to (5) of this section.

Effects of exclusion sanction

- (3) Another code covered entity must not enter into an agreement in respect of building work with the sanctioned entity as a subcontractor, unless approval to do so is provided by the Minister.

Note: See paragraph 8(3)(a) of this instrument as in force before the commencement of the amending instrument.

- (4) The sanctioned entity is not eligible to be awarded Commonwealth funded building work.

Note: See paragraph 23(1)(b) of this instrument as in force before the commencement of the amending instrument.

- (5) A funding entity must not enter into a contract in respect of Commonwealth funded building work with the sanctioned entity.

Note: See subsection 26(1) of this instrument as in force before the commencement of the amending instrument.

17 Schedules 2 to 5

Repeal the Schedules.