

Australian Capital Territory

# Government Procurement (Secure Local Jobs Audit) Guidelines 2018

Disallowable instrument DI2018–287

made under the

*Government Procurement Act 2001, s22U(1) (Secure Local Jobs Audit Guidelines)*

## EXPLANATORY STATEMENT

---

### Overview

This explanatory statement relates to the *Government Procurement (Secure Local Jobs Audit 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.

Entities wishing to submit a response to a procurement for territory-funded need to apply to the registrar for a secure local jobs code certificate. The entity's application must include a current report from an approved auditor stating the entity meets the requirements mentioned in the code.

The authority to make the guidelines for audits 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 instrument 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 content of the Audit Guidelines.

### **Clause 2      Process to become an approved auditor**

This clause provides the process for an applicant to complete to be considered by the registrar for approval as an approved auditor.

### **Clause 3      Qualification required for approved auditors**

This clause states the qualification and experience required of an individual applicant to be granted approved auditor status by the registrar.

### **Clause 4      Determining applications for approved auditors**

This clause outlines the process undertaken by the registrar when determining whether to grant approved auditor status to an applicant, the period for which approved auditor status is granted by the registrar and the review process when an application is not approved.

### **Clause 5      Conditions applicable to approved auditors**

This clause outlines the conditions applicable to approved auditors and includes any conditions placed upon the approved auditor by the registrar; management of conflicts of interest; publication of a list of approved auditors by the registrar; contractual arrangements between approved auditors and entities wishing to apply for a secure local jobs code certificate; and contractual arrangements between approved auditors and registrar when undertaking an audit into allegations of noncompliance.

### **Clause 6      Conduct of audits**

This clause outlines the general requirements on approved auditors to produce a complete audit report for consideration by the registrar including applications for a secure local jobs code certificate, applications for exemptions from requirements of the Code and allegations of noncompliance with the Code.

### **Clause 7      Audit reports**

This clause specifies the requirements for approved auditors to complete audit reports in the format specified by the Territory.

### **Clause 8      Maintaining approved auditor status**

This clause outlines the requirements of the registrar for auditors to maintain their approved auditor status.