

ANNEX 13-B - GOVERNMENT PROCUREMENT MARKET ACCESS COMMITMENTS

SECTION A - SCHEDULE OF THE EUROPEAN UNION

The Union reaffirms the market access conceded to Australia under the WTO Government Procurement Agreement, subject to the notes and reservations contained therein.

In addition, the following market access is granted:

1. Central Entities

Thresholds:

Goods and services: SDR 130 000

Construction services: SDR 5 000 000

Procurement by central government contracting authorities of EU Member States listed in Annex 1 to the Union's Appendix 1 of the GPA that have been marked with an asterisk or a double asterisk.

2. Sub-central Entities

Procurement currently excluded from coverage through the application of Note 1(i) to Annex 2 of the EU's Appendix I to the WTO Government Procurement Agreement, i.e.:

- Procurement between SDR 200 000 and SDR 355 000 by regional contracting authorities (NUTS 1), and
- Procurement between SDR 200 000 and SDR 400 000 for bodies governed by public law.

3. Other Entities

Thresholds:

Goods and services: SDR 400 000

Construction services: SDR 5 000 000

All contracting entities whose procurement is covered by the EU utilities directive which are contracting authorities (e.g. those covered under Annex 1 and Annex 2 to the EU's Appendix I to the GPA, or under Sub-sections 1 and 2 above) or public undertakings and which have as one of their activities the provision or operation of networks providing a service to the public in the field of transport by railways.

An indicative list of such contracting entities is contained in Annex 3 to the EU's Appendix I to the GPA.

4. Coverage of Goods

For the entities covered under heading 1, 2 and 3 above, procurement of goods will be covered as set out in Annex 4 to the Union's Appendix I to the GPA.

5. Coverage of Services

1. For all entities covered under headings 1, 2 and 3 above, procurement of services shall be covered as set out in Annex 5 to the Union's Appendix I to the GPA.

2. In addition, for all entities covered under headings 1, 2 and 3 above, as well as for entities that are covered for Australia under Annexes 1-3 to the Union's Appendix I to the GPA, the following services, which are identified in accordance with the United Nations Provisional Central Product Classification (CPC Prov.) as contained in document MTN.GNS/W/120, shall be covered:

#	Description	CPC Prov.
1	Hotel and Restaurant Services	641
2	Food serving services	642
3	Beverage serving services	643
4	Telecommunication related services	754
5	Photographic services	87501-87503, 87505, 87507, 87509
6	Packaging services	876
7	Other business services	87901, 87903, 87905-87907
8	Education Services	92

Note: Hotel and restaurant services (CPC 641), food serving services (CPC 642), beverage serving services (CPC 643) and education services (CPC 92) contracts are included under the national treatment regime for the suppliers and service providers of Australia, provided that their value equals or exceeds EUR 750 000 when they are awarded by procuring entities covered under Annexes 1 and 2 to the Union to Appendix I to the GPA or under headings 1 and 2 here above, and that their value equals or exceeds EUR 1 000 000 when they are awarded by procuring entities covered under Annex 3 to the Union's Appendix I to the GPA or under heading 3 here above.

6. Works concessions

1. For the purposes of this Annex, the term "works concession" means a contract for pecuniary interest concluded in writing by means of which procuring entities entrust the execution of works (Annex 6 to the Union's Appendix I to the GPA) to one or more

economic operators the consideration for which consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment. The award of a works concession shall involve the transfer to the economic operators of an operating risk in exploiting those works encompassing demand or supply risk or both. The recoup of the investments made or the costs incurred in operating the works should not be guaranteed.

2. Unless otherwise provided for in this Annex and subject to the Notes to this Section and the General Notes in Annex 7 to the Union's Appendix I to the GPA, the following provisions of the GPA apply to works concessions awarded by procuring entities covered under headings 1 or 2 above, as well as for entities that are covered for Australia under Annexes 1-3 of the Union's Appendix I to the GPA:

- (a) Article I (Definitions);
- (b) Article II (Scope and Coverage), except paragraphs 7 and 8. However, the value of the procurement is to be calculated in accordance with Art. 8 of Directive 2014/23/EU of the European Parliament and of the Council¹;
- (c) Article III (Security and General Exceptions);
- (d) Article IV (General Principles), except paragraph 4(a);
- (e) Article VI (Information on the Procurement System);
- (f) Article VII (Notices), except subparagraphs 2(c) and 2(e) and paragraphs 4 and 5;
- (g) Article VIII (Conditions for Participation);
- (h) Article X (Technical Specifications and Tender Documentation);
- (i) paragraph 1 of Article XI (Time-Periods);
- (j) subparagraphs 1(a) to 1(c) of Article XIII (Limited Tendering); and
- (k) Articles XV (Treatment of Tenders and Awarding of Contracts) to XVIII (Domestic Review Procedures).

3. The works concessions covered by this Section are subject to the exemptions set out in

¹ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ EU L 94, 28.3.2014, p. 1, ELI: <http://data.europa.eu/eli/dir/2014/23/oj>).

7. General Note

With respect to any measure adopted after 11 May 2023, if the Union assesses that Australia is applying any form of preference to benefit SMEs¹ in a manner that discriminates against Union SMEs of the same size in regard to the commitments it has made under this Agreement or the GPA as incorporated, it shall notify Australia in writing, setting out its concerns in detail. The Union shall make every effort to resolve the issue through consultations with Australia, for example on the basis of a mutually agreed compensatory adjustment to maintain a balance of rights and obligations and a comparable level of coverage to that which existed under this Agreement, or another form of mutually agreed resolution as an alternative to a compensatory adjustment.

If no agreement is reached within 60 days from the commencement of consultations, the Union reserves the right to suspend commensurate coverage that it has committed to Australia under this Agreement or the GPA as incorporated. The Union shall inform Australia in writing of any such suspension of coverage including the detailed rationale for its decision.²

SECTION B - SCHEDULE OF AUSTRALIA

In accordance with Article 13.1(1) (Incorporation of certain provisions of the GPA), Chapter 13 (Government procurement), including the provisions of the GPA listed in Annex 13-A, applies to the procurement set out in this Section.

SUB-SECTION 1

Incorporation of Australia's Annexes to Appendix I of the GPA

In accordance with Article 13.1(1) (Incorporation of certain provisions of the GPA), the following Annexes to Appendix I of the GPA, including thresholds and notes, as amended from time to time, are incorporated into, and made part of, Chapter 13 (Government procurement), *mutatis mutandis*:

- (a) Australia's Annexes 1, 4, 6 and 7 to Appendix I of the GPA;
- (b) Australia's Annex 2 to Appendix I of the GPA, except:
 - (i) Note 2.42(d) is taken to be amended to read as follows:

¹ As provided for in point (a) to paragraph 1 of Australia's Note 1 to Annex 7 of Appendix I to the WTO Agreement on Government Procurement, as incorporated into this Agreement.

² This is without prejudice to each Party's right to recourse to dispute settlement under Chapter 24 (Dispute Settlement).

"procurement by Transport for NSW that is:

- related to the functions of the Transport Construction Authority, and the Country Rail Infrastructure Authority or their successor agencies, or
- procurement by Transport for NSW of construction services related to the functions of the former Roads and Maritime Services, including under the Roads Act 1993 (NSW).";

(ii) Note 7.30(c) in relation to procurement by Department of Transport, related to the functions of Public Transport Victoria and VicRoads;

(c) Australia's Annex 3 to Appendix I of the GPA, except the following entities which are, for the purposes of this Agreement, now taken to be covered for the Union under Sub-Section 2:

- (i) Australian Communications and Media Authority;
- (ii) Australian Competition and Consumer Commission;
- (iii) Australian Financial Security Authority;
- (iv) Australian Fisheries Management Authority;
- (v) Australian Prudential Regulation Authority;
- (vi) Australian Securities and Investments Commission; and
- (vii) Great Barrier Reef Marine Park Authority; and

(d) Australia's Annex 5 to Appendix I of the GPA, except the Note to Annex 5.

For greater certainty, the Notes referred to in points (b)(ii) and (d) do not apply in relation to the Union under this Agreement.

SUB-SECTION 2

CENTRAL GOVERNMENT ENTITIES

For greater certainty, references to Australia's Annex 1 to Appendix I of the GPA in the provisions of the GPA incorporated into Chapter 13 (Government procurement) in accordance with

Article 13.1(1) (Incorporation of certain provisions of the GPA), shall be read as also referring to this Sub-Section.

Thresholds

Unless otherwise specified, Chapter 13 (Government procurement) covers procurement by entities listed in this Sub-Section, subject to the following thresholds:

Goods	SDR 130 000
Services	SDR 130 000
Construction Services	SDR 5 000 000

List of Entities

1. Asbestos Safety and Eradication Agency;
2. Australian Communications and Media Authority;
3. Australian Competition and Consumer Commission;
4. Australian Financial Security Authority;
5. Australian Fisheries Management Authority;
6. Australian Institute of Family Studies;
7. Australian National Preventative Health Agency;
8. Australian Prudential Regulation Authority;
9. Australian Securities and Investments Commission;
10. Australian Skills Quality Authority (National Vocational Education and Training Regulator);
11. Cancer Australia;
12. Clean Energy Regulator;

13. Climate Change Authority;
14. Digital Transformation Agency;
15. Great Barrier Reef Marine Park Authority;
16. High Speed Rail Authority;
17. Independent Parliamentary Expenses Authority;
18. National Anti-Corruption Commission;
19. National Disability Insurance Scheme Quality and Safeguards Commission;
20. National Emergency Management Agency;
21. National Health and Medical Research Council;
22. National Health Funding Body;
23. National Mental Health Commission;
24. North Queensland Water Infrastructure Authority;
25. Office of the Auditing and Assurance Standards Board;
26. Office of the Special Investigator;
27. Organ and Tissue Authority;
28. Parliamentary Budget Office;
29. Sport Integrity Australia; and
30. Tertiary Education Quality and Standards Agency.

Notes to Sub-Section 2

1. Chapter 13 (Government procurement) only covers those entities incorporated pursuant to Sub-Section 1 or listed in this Sub-Section (including an office within an incorporated or listed entity).
2. For the High Speed Rail Authority, Chapter 13 (Government procurement) only covers procurement related to the functions of the former National Faster Rail Authority.
3. For the National Anti-Corruption Commission, Chapter 13 (Government procurement) only covers procurement related to the functions of the former Australian Commission for Law Enforcement Integrity.

SUB-SECTION 3

SUB-CENTRAL GOVERNMENT ENTITIES

For greater certainty, references to Australia's Annex 2 to Appendix I of the GPA in the provisions of the GPA incorporated into Chapter 13 (Government procurement) in accordance with Article 13.1(1) (Incorporation of certain provisions of the GPA), shall be read as also referring to this Sub-Section.

Thresholds

Unless otherwise specified, Chapter 13 (Government procurement) covers procurement by entities listed in this Sub-Section, subject to the following thresholds:

Goods	SDR 355 000
Services	SDR 355 000
Construction Services	SDR 5 000 000

List of Entities

1. Australian Capital Territory
 - 1.1 Canberra Institute of Technology;
 - 1.2 City Renewal Authority; and
 - 1.3 Suburban Land Agency.

Note for the Australian Capital Territory

For the entities listed for the Australian Capital Territory, Chapter 13 (Government procurement) does not cover the procurement of health and welfare services, education services, utility services or motor vehicles.

2. New South Wales

- 2.1 Art Gallery of NSW Trust;
- 2.2 Hunter and Central Coast Development Corporation;
- 2.3 Infrastructure NSW;
- 2.4 Library Council of NSW;
- 2.5 Taronga Conservation Society Australia;
- 2.6 Technical and Further Education Commission; and
- 2.7 Venues NSW.

Note for New South Wales

For entities listed for New South Wales, Chapter 13 (Government procurement) does not cover:

- (a) procurement of health and welfare services, education services or motor vehicles; or
- (b) procurement undertaken by a covered entity on behalf of a non-covered entity.

3. Northern Territory

- 3.1 Department of Corporate and Digital Development;
- 3.2 Department of Education; and
- 3.3 Department of Infrastructure, Planning and Logistics.

Note for the Northern Territory

For entities listed for the Northern Territory, Chapter 13 (Government procurement) does not cover set-asides on behalf of the Charles Darwin University pursuant to Partnership Agreements between the Northern Territory Government and Charles Darwin University.

4. Victoria

4.1 Infrastructure Victoria; and

4.2 Transport for Victoria.

Note for Victoria

For entities listed for Victoria, Chapter 13 (Government procurement) does not cover:

- (a) the procurement of motor vehicles; or
- (b) procurement by covered entities on behalf of non-covered entities.

5. South Australia

5.1 Adelaide Cemeteries Authority;

5.2 Adelaide Festival Centre Trust;

5.3 Adelaide Venue Management Corporation;

5.4 HomeStart Finance;

5.5 Public Trustee;

5.6 Return to Work Corporation of South Australia;

5.7 South Australian Forestry Corporation;

5.8 South Australian Water Corporation;

5.9 Urban Renewal Authority; and

5.10 West Beach Trust.

Note for South Australia

For the entities listed for South Australia, Chapter 13 (Government procurement) does not cover the procurement of health and welfare services, education services, advertising services or motor vehicles.

6. Tasmania

6.1 Brand Tasmania;

6.2 Director of Inland Fisheries;

6.3 Integrity Commission;

6.4 Macquarie Point Development Corporation (MPDC);

6.5 Marine and Safety Tasmania (MAST);

6.6 Royal Tasmanian Botanical Gardens; and

6.7 State Fire Commission.

Note for Tasmania

For the entities listed for Tasmania, Chapter 13 (Government procurement) does not cover the procurement of health and welfare services, education services or advertising services.

Note to Sub-Section 3

Chapter 13 (Government procurement) only covers those entities incorporated pursuant to Sub-Section 1 or listed in this Sub-Section.

SUB-SECTION 4

ALL OTHER ENTITIES

For greater certainty, references to Australia's Annex 3 to Appendix I of the GPA in the provisions of the GPA incorporated into Chapter 13 (Government procurement) in accordance with Article 13.1(1) (Incorporation of certain provisions of the GPA), shall be read as also referring to this Sub-Section.

Thresholds

Unless otherwise specified, Chapter 13 (Government procurement) covers procurement by entities listed in this Sub-Section, subject to the following thresholds:

Goods	SDR 400 000
Services	SDR 400 000
Construction Services	SDR 5 000 000

List of Entities

1. Australian Digital Health Agency;
2. Independent Health and Aged Care Pricing Authority;
3. Murray-Darling Basin Authority;
4. National Portrait Gallery; and
5. Regional Investment Corporation.

Note to Sub-Section 4

Chapter 13 (Government procurement) only covers those entities incorporated pursuant to Sub-Section 1 or listed in this Sub-Section.

SUB-SECTION 5

GOODS

1. For greater certainty, references to Australia's Annex 4 to Appendix I of the GPA in the provisions of the GPA incorporated into Chapter 13 (Government procurement) in accordance with Article 13.1(1) (Incorporation of certain provisions of the GPA), shall be read as also referring to this Sub-Section.
2. Unless otherwise specified, Chapter 13 (Government procurement) covers procurement of all goods by the entities listed in Sub-Sections 2 to 4.
3. Chapter 13 (Government procurement) does not cover the procurement of blood and blood-related products, including plasma derived products.

SUB-SECTION 6

SERVICES

1. For greater certainty, references to Australia's Annex 5 to Appendix I of the GPA in the provisions of the GPA incorporated into Chapter 13 (Government procurement) in accordance with Article 13.1(1) (Incorporation of certain provisions of the GPA), shall be read as also referring to this Sub-Section.
2. Unless otherwise specified, Chapter 13 (Government procurement) covers all services procured by the entities listed in Sub-Sections 2 to 4.
3. Chapter 13 (Government procurement) does not cover the procurement of:
 - (a) plasma fractionation services;
 - (b) government advertising services;
 - (c) health and welfare services; or
 - (d) research and development services.

SUB-SECTION 7

CONSTRUCTION SERVICES

For greater certainty, references to Australia's Annex 6 to Appendix I of the GPA in the provisions of the GPA incorporated into Chapter 13 (Government procurement) in accordance with

Article 13.1(1) (Incorporation of certain provisions of the GPA), shall be read as also referring to this Sub-Section.

Unless otherwise specified, Chapter 13 (Government procurement) covers all construction services procured by the entities listed in Sub-Sections 2 to 4.

SUB-SECTION 8

GENERAL NOTES

1. For greater certainty, references to Australia's Annex 7 to Appendix I of the GPA in the provisions of the GPA incorporated into Chapter 13 (Government procurement) in accordance with Article 13.1(1) (Incorporation of certain provisions of the GPA), shall be read as also referring to this Sub-Section.
2. The General Notes specified in this Sub-Section apply without exception to Chapter 13 (Government procurement), including to Sub-Sections 2 to 8.
3. Chapter 13 (Government procurement) does not apply to:
 - (a) any form of preference to benefit small and medium enterprises;
 - (b) measures to protect national treasures of artistic, historic, or archaeological value;
 - (c) measures for the health and welfare of Indigenous people;
 - (d) measures for the economic and social advancement of Indigenous people; or
 - (e) procurement of goods and services outside the territory of the procuring Party for consumption outside the territory of the procuring Party.
4. For greater certainty:
 - (a) Chapter 13 (Government procurement) does not apply to procurement funded by grants and sponsorship payments received from persons not listed in Sub-Sections 2 to 4;
 - (b) Chapter 13 (Government procurement) does not apply to procurement by a procuring entity from another government entity; and
 - (c) a procuring entity may use limited tendering procedures for unsolicited innovative proposals under Article XIII:1 of the GPA.