



# Exclusion System Summary Australia

## I. Government-Wide Legal and Institutional Framework:

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### Government-Wide Exclusion Framework? No.

- Australia does not have a government-wide exclusion framework at the Commonwealth level. Exclusions are generally rare, and any exclusions would be *ad hoc* depending on the agency involved.

#### Related Law and Regulations:

- [Commonwealth Procurement Rules \("CPRs"\)](#) (Dec. 14, 2020).

### Decision-Maker: Individual Contracting Officer.

#### Qualification:

- None.

#### Independence:

- Not required.

## II. Functioning and Enforcement of the Government-Wide Exclusion System:

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### General Provisions:

*Type of Procedures:* Administrative.

*Decision Deadline:* Not addressed.

*Provisional Exclusions:* None.

### Commencement of Proceedings: Ability to Initiate an Exclusion Proceeding.

- Exclusion proceedings are *ad hoc* depending on the agency involved, which may (or may not) require a referral to initiate proceedings.
- Non-governmental parties are able to submit complaints and/or evidence.

**Notice Requirements & Opportunity to be Heard:** Yes & Yes.

*Notice:*

- Suppliers receive notice when the decision-maker decides that grounds exist.
- Notice must contain the grounds for exclusion.

*Opportunity to be Heard:*

- Suppliers are entitled to procedural fairness and may present a defense to the decision-maker by:
  - Making a written submission to the decision-maker.
  - Requesting an in-person hearing with the decision-maker.

**Appellate Review of Exclusion Decisions:** Yes (Judicial Review of Government Decisions).

*Nature and Forum of Review:* Any decision by a Commonwealth public official is subject to judicial review after exhausting the administrative process.

*Means Available to the Supplier:* As part of appellate review, suppliers may:

- Obtain the evidentiary record.
- Make a written submission to the appellate body.
- Request an in-person hearing with the appellate body.
- Call witnesses to an in-person hearing to testify on the supplier's behalf.

*Duration of Appeal Process:* One to two years (on average).

**Legal Representation:** A supplier **may** be represented by counsel.

**Subsequent Modification of Exclusion Decision:** No.

### III. Substantive Grounds for Government-Wide Exclusion:

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**Unsatisfied Judicial Decisions:**

- Section 6.7 of the CPRs prohibits covered Commonwealth agencies from entering into contracts with suppliers "who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order."

**No Other Shared Substantive Grounds or Commonwealth-Wide Exclusion Program:**

- Aside from the above, each agency sets its own exclusion grounds and decides whether to follow another agency's exclusions.
- Exclusion decisions are entirely discretionary.

## IV. Scope and Effect of Government-Wide Exclusion:

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**Types of Excluded Suppliers:** Corporations only.

**Scope of Exclusion:**

*Extension to other Government Agencies:* No.

- Exclusions do **not** automatically extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Australia.

*Effect on Ongoing Contracts:*

- **No** automatic cancellation of ongoing contracts.
- Subsequent modifications to ongoing contracts are **not** affected by a supplier's exclusion.

*Effect on Subcontracting:*

- An exclusion **does not** prevent the supplier from acting as a subcontractor.

*Effect on Excluded Individuals:* N/A.

*Tailoring Exclusion:*

- No option to tailor the exclusion to certain divisions, operating units, or business lines within a corporate supplier.

**Effect on Affiliates:**

- Does not extend to affiliated companies or individuals.

**Duration of Exclusions:** No set duration.

**Exceptions/Waivers to Exclusions:** Not addressed.

**Other Sanctions:** Not addressed.

## V. Government-Wide Transparency and Exclusion List:

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**Official List of Excluded Suppliers?** No.

**Procurement Checks:** No. Procuring entities are not required to check a list of excluded suppliers before awarding a contract.

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

*Regular Reporting:* No requirement for regular reporting on exclusions.

*Other Transparency Mechanisms:* No (except potentially requests to individual agencies under the Freedom of Information Act).

## VI. Limited Scope Exclusion Systems:

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**Entity-Wide (e.g., Single-Agency) Exclusion?** No.

**Contract-By-Contract (e.g., Single-Tender) Exclusion?**

- Any exclusions would be *ad hoc* depending on the agency involved, which may include contract-by-contract exclusions

**Subnational Exclusions:**

- Exclusion mechanisms may exist at the Provincial/State levels.
- States also have their own independent anti-corruption commissions to which people can report allegations of serious corrupt conduct by public officials or the misuse of public funds.