Exclusion System Summary

Australia

I. Government-Wide Legal and Institutional Framework:

**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:**

**Decision-Maker:** Individual Contracting Officer.

**Qualification:**
- None.

**Independence:**
- Not required.

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

**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.


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:

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:

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:

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:

**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.