

THE PROPOSED WESTERN AUSTRALIAN DEBARMENT REGIME: WHAT YOU NEED TO KNOW

Perth, Australia

Legal Briefings - By **Elizabeth Macknay, Christopher Hicks**

The Western Australian Government has recently released a proposal for a new public procurement debarment regime. If implemented, suppliers who have engaged in unlawful or unethical conduct may be prohibited from contracting with the government for up to five years. The regime will be the broadest one of its kind in Australia, and will impose high standards of conduct on suppliers. Suppliers should review their existing practices and procedures to understand how the proposed regime may affect them.

The Western Australian Department of Finance (Department) has recently [released](#) its proposed Western Australian Debarment Regime. If implemented, the regime—which is part of the Department’s broader public procurement reform package—will be the broadest one of its kind in Australia, applying to all types of government procurement. The proposed regime is open for public comment until Monday, 27 July 2020.

The proposed regime will provide a framework for assessing whether or not suppliers should be debarred from doing business – directly or indirectly – with the Western Australian Government. The regime would allow the CEO of the Department to debar a supplier if they are satisfied that:

- on the balance of probabilities, a cause for debarment is applicable to the supplier, and

- debarment is in the public interest.

The causes for debarment capture a wide range of unlawful and unethical conduct, which may be entirely unrelated to the procurement process. Causes for debarment include:

- **serious white-collar and integrity offences**, such as bribery, corruption and fraud
- **non-compliance with modern slavery reporting requirements** – if implemented, the draft debarment regime will introduce the first effective sanctions regime for non-compliant businesses
- **non-compliance with industrial relations, WHS, anti-discrimination and tax laws**, and
- conduct of such a nature that, in the opinion of the CEO of the Department, contracting with the supplier would be **likely to have a material adverse effect on public confidence** in the state or its procurement processes.

This last limb is very broad, and could potentially extend to conduct engaged in overseas which is not in accordance with prevailing norms in Australia, but which is not illegal under local law.

Under the proposed regime, suppliers (including their affiliates) may be debarred for up to five years. Debarred suppliers will be listed on a public register, and in addition to debarment from future public procurement opportunities, the government will also be entitled to terminate its existing contracts with a debarred supplier (although this statutory termination right may be excluded by contract).

As an alternative to ongoing debarment, the proposed regime will allow the CEO of the Department to enter into an undertaking with a debarred supplier to stay its debarment, provided it complies with certain prescribed conditions, such as the separation of particular employees from management, the introduction of compliance and/or training programs, or the undertaking of external audits of the supplier's business.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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