



# fact sheet

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## Commonwealth legislation that may apply to Australian Government contractors

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This fact sheet provides contractors who enter into contracts with Australian Government agencies with information about some Commonwealth laws that may be relevant to their engagement and contractual arrangements. The legislation referred to in this fact sheet can be accessed at <http://www.comlaw.gov.au>

### ***Privacy Act 1988***

The *Privacy Act 1988* contains 13 Australian Privacy Principles (APPs) which apply to Australian Government agencies and to a range of organisations.

Where the contractor is a 'contracted service provider', under s 95B of the Privacy Act, Australian Government agencies are required to take contractual measures to ensure that contractors do not breach the APPs. This may mean that an organisation who is not ordinarily otherwise required to comply with the APPs will be contractually required to comply in accordance with the relevant contract.

For further information see: <http://www.oaic.gov.au>

### ***Freedom of Information Act 1982***

The *Freedom of Information Act 1982* requires Australian Government agencies to provide access to documents in their possession unless the document is within an exception or exemption specified in the legislation. Documents held by third parties may be considered 'in the possession of an agency' if the agency has a contractual right to immediate physical possession of them.

For certain contracts entered into on or after 1 November 2010, agencies must take contractual measures to ensure that they have access to a document that is the subject of a freedom of information request if the document relates to the performance of the contract (but not the entry into the contract) and was created by, or is in the possession of, a contracted service provider (or its subcontractor). The requirement applies to a contract involving the provision of services for or on behalf of the agency to other persons in connection with the performance of the agency's functions or exercise of its powers. The requirement does not apply to procurement of services for the agency's own use (such as information technology or cleaning services).

While the Act provides a broad right of access, confidentiality can be preserved where appropriate if an exemption applies under the Act.

### ***Archives Act 1983***

The purpose of the *Archives Act 1983* is to govern the preservation and use of archival resources of the Australian Government. Under the Act it is an offence to engage in conduct that results in the

destruction or other disposal, the transfer of custody or ownership, or the damage or alteration, of a Commonwealth record unless an exception applies. Exceptions apply where:

- the conduct was required by law
- the conduct was carried out with the permission of the National Archives of Australia (NAA) or in accordance with a practice or procedure approved by NAA
- the disposal is a normal administrative practice of the Commonwealth or Commonwealth authority, other than one of which NAA has notified that it disapproves
- the conduct was carried out to place Commonwealth records in the custody of the Commonwealth or a Commonwealth institution.

For further information see: <http://www.naa.gov.au>

### ***Auditor-General Act 1997***

The *Auditor-General Act 1997* allows the Auditor-General to conduct a review or examination, at any time, of any aspect of the operations of Australian Government agencies. The Auditor-General has extensive information-gathering powers, including in relation to commercial-in-confidence material, and also has a contractual right under many Australian Government contracts to exercise these powers in relation to contractors to Australian Government agencies.

For further information see: <http://www.anao.gov.au>

### ***Ombudsman Act 1976***

The *Ombudsman Act 1976* authorises the Ombudsman to investigate the administrative actions of Australian Government departments and agencies and sets out the limits on his or her jurisdiction.

The Ombudsman may conduct investigations following complaints or at his or her own instigation and may make reports with recommendations. The Ombudsman has extensive information-gathering powers.

The Ombudsman also has jurisdiction to investigate the actions of certain Australian Government contractors that provide goods and services for or on behalf of the Australian Government to another person who is not the Australian Government. Actions of those contractors are deemed to have been taken by the contracting Commonwealth agency.

For further information see: <http://www.ombudsman.gov.au>

### ***Public Governance, Performance and Accountability Act 2013***

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) provides the framework for the proper management of relevant money and relevant property (public resources), and regulates certain aspects of corporate governance and reporting of Commonwealth authorities and companies.

The Minister for Finance has issued the Commonwealth Procurement Rules (CPRs) under the PGPA Act. The CPRs are a key mechanism to enable Australian Government agencies to manage public resources efficiently, effectively, economically and ethically when undertaking procurement. In certain circumstances, the CPRs may apply to contractors who procure goods and services on behalf of the Australian Government.

For further information on the PGPA Act and the CPRs see: <http://www.comlaw.gov.au>

### ***Crimes Act 1914***

The *Crimes Act 1914* sets out various offences, including:

- offences against the Government (such as destroying or damaging Commonwealth property)
- offences covering disclosure of information by Commonwealth officers (including persons performing services for the Commonwealth) – see in particular ss 70 and 79 — miscellaneous offences including trespassing on Commonwealth land.

The Act also contains provisions relating to the investigation and prosecution of Commonwealth offences, and the sentencing, administration and release of federal offenders. Where the Act applies, it excludes State and Territory law.

### **Commonwealth Criminal Code**

The Commonwealth Criminal Code, established by the *Criminal Code Act 1995*, provides the general principles of criminal responsibility that apply in the prosecution of all offences against laws of the Commonwealth. In addition, the Code establishes the parameters of corporate criminal responsibility and makes it an offence to commit various acts against the Commonwealth including:

- terrorist acts, and conduct associated with a terrorist act (such as providing or collecting funds)
- theft and property offences (where the property belongs to the Commonwealth or a Commonwealth entity)
- fraud and forgery against the Commonwealth
- bribery of a Commonwealth public official
- causing harm to, impersonating and obstructing Commonwealth public officials
- communication of information concerning the Commonwealth's security or defence (s91.1).

### ***National Security Information (Criminal and Civil Proceedings) Act 2004***

The *National Security Information (Criminal and Civil Proceedings) Act 2004* (NSI Act) provides a procedure for courts to follow when information that is likely to prejudice national security is introduced in federal criminal proceedings conducted in Commonwealth, State or Territory courts. The NSI Act does not prevent such disclosure where non-disclosure would seriously interfere with the administration of justice.

For further information see: <http://www.nationalsecurity.gov.au>

### **Additional protective security requirements**

In addition to the above, readers should be aware that other legislation may be relevant in the handling of security-classified resources including, for instance, *Intelligence Services Act 2001*, *Public Service Act 1999*, *Defence Act 1903* and *Australian Security Intelligence Organisation Act 1979*.

For further information see the Protective Security Policy available at <http://nationalsecurity.ag.gov.au/www/agd/agd.nsf>

### ***Crimes (Overseas) Act 1964***

The *Crimes (Overseas) Act 1964* applies Australian criminal law (based on the Jervis Bay Territory) to certain categories of Australian citizens and permanent residents working overseas. It applies to contractors if Australia has entered an agreement with the foreign country or the United Nations to grant immunity from criminal prosecution in that country.

Contractors are also subject to the criminal law of the Jervis Bay Territory if they are undertaking a task or project on behalf of the Commonwealth in a declared foreign country, such as Iraq or the Solomon Islands.

For further information see: <http://www.ag.gov.au>

### **United Nations Security Council sanctions**

Regulations made under the *Charter of the United Nations Act 1945* implement sanctions imposed by the United Nations Security Council against a number of countries, individuals and entities. Under the Regulations, it is a criminal offence to deal in a specified range of goods or services with particular countries, or to use or deal with the assets of a number of specified individuals or entities, or to make assets available to a number of specified individuals or entities. The offences created by

the Regulations apply to conduct in Australia and to conduct by Australians anywhere in the world. A contravention of these offences carries significant criminal penalties in terms of fines and terms of imprisonment and are strict liability offences for bodies corporate.

The Regulations are supported by parallel regulations and ordinances made under other legislation, for example the *Customs (Prohibited Imports) Regulations 1956* and *Customs (Prohibited Exports) Regulations 1958*.

For further information see: <http://www.dfat.gov.au>

### ***Racial Discrimination Act 1975***

The *Racial Discrimination Act 1975* makes racial discrimination unlawful in Australia and covers discrimination in areas such as employment, renting or buying property, the provision of goods and services, access to public places and advertising.

For further information see: <http://www.humanrights.gov.au>

### ***Sex Discrimination Act 1984***

The *Sex Discrimination Act 1984* makes it unlawful to discriminate on the basis of sex, marital status, pregnancy or potential pregnancy in a number of areas of public life. These areas include employment, education, accommodation, the provision of goods, facilities and services, the activities of clubs and the administration of Australian Government laws and programs.

The Act also seeks to eliminate dismissal of employees on the basis of family responsibilities and to eliminate sexual harassment in areas of public activity.

For further information see: <http://www.humanrights.gov.au>

### ***Disability Discrimination Act 1992***

The *Disability Discrimination Act 1992* makes it unlawful to discriminate against someone in areas of life, including employment, access to public premises, the provision of goods and services and facilities and the administration of Commonwealth Government law and programs, if they have a disability. Disability discrimination happens when people with a disability are treated less fairly than people without a disability or when people are treated less fairly because they are relatives, friends, carers, co-workers or associates of a person with a disability.

For further information see: <http://www.humanrights.gov.au>

### ***Age Discrimination Act 2004***

The *Age Discrimination Act 2004* makes it unlawful to discriminate on the basis of age in a number of areas of public life. These areas include employment, education, accommodation, the provision of goods, services and facilities, access to public premises and the administration of Australian Government laws and programs.

For further information see: <http://www.humanrights.gov.au>

### ***Australian Human Rights Commission Act 1986***

The *Australian Human Rights Commission Act 1986* (formerly the *Human Rights and Equal Opportunity Commission Act 1986*) empowers the Australian Human Rights Commission to inquire into complaints of discrimination in employment and alleged breaches of human rights through acts or practices done by or on behalf of an individual, organisation or the Australian Government.

For further information see: <http://www.humanrights.gov.au>

### **Workplace Gender Equality Act 2012**

To be compliant with the *Workplace Gender Equality Act 2012*, relevant employers (being registered higher education providers and organisations that employ 100 or more staff) are required to lodge reports each year to the Workplace Gender Equality Agency containing information relating to various gender equality indicators.

For further information see: <http://www.wgea.gov.au>

### **Work Health and Safety Act 2011**

The *Work and Health Safety Act 2011* (Cth) requires a 'person conducting a business or undertaking' (PCBU) to ensure, so far as is reasonably practicable:

- the health or safety of their workers while they are at work in the business or undertaking
- that the health and safety of others is not put at risk from work carried out as part of the business or undertaking.

The term 'PCBU' includes companies, not-for-profit enterprises, partnerships and natural persons but not volunteer associations. The term 'worker' includes employees, contractors, volunteers and anyone undertaking 'work'.

For more information on the Act and other relevant regulations and codes of practice see: <http://comcare.gov.au/WHS>

### **Australian Government Building and Construction WHS Accreditation Scheme**

The Australian Government Building and Construction WHS Accreditation Scheme is established under the *Fair Work (Building Industry) Act 2012*.

The Accreditation Scheme applies to building work funded by the Australian Government valued at \$4 million or more. Where the Accreditation Scheme applies, each head contractor (builder) undertaking building work whose contract is valued at \$4 million or more must be an accredited builder.

For further information see: <http://www.fsc.gov.au>

### **Fair Work Act 2009**

The *Fair Work Act 2009* has put in place a new workplace relations system.

For further information see: <http://www.employment.gov.au> or <http://www.fairwork.gov.au>

### **Environment Protection and Biodiversity Conservation Act 1999**

The *Environment Protection and Biodiversity Conservation Act 1999* protects the environment, particularly matters of national environmental significance. The Act establishes a national environmental assessment and approvals process, protects Australian biodiversity and regulates the management of important natural and cultural places.

The Act requires that prior approval be obtained for actions that are likely to have a significant impact on:

- a matter of national environmental significance
- the environment of Commonwealth land (even if taken outside Commonwealth land) – the environment anywhere in the world (if the action is undertaken by the Commonwealth).

An action includes a project, development, undertaking, activity, or series of activities.

For further information see: <http://www.environment.gov.au>

### **Copyright Act 1968**

The *Copyright Act 1968* provides for the protection of an author's copyright and moral rights and allows a copyright owner to grant others rights in their copyrighted work.

For further information see <http://www.ag.gov.au> and <http://www.ipaustralia.gov.au>

Readers should also be aware of other legislation that applies to other intellectual property rights, including the *Trade Marks Act 1995*, *Patents Act 1990*, *Plant Breeder's Rights Act 1994*, *Designs Act 2003* and *Circuit Layouts Act 1989*.

### **Competition and Consumer Act 2010**

The purpose of the *Competition and Consumer Act 2010* is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection. The Act deals with almost all aspects of the marketplace: the relationships between suppliers, wholesalers, retailers, competitors and customers.

In broad terms the Act covers unfair market practices (including misleading and deceptive conduct), restrictive trade practices (for example, price-fixing), industry codes, mergers and acquisitions, product safety, product labelling, price monitoring, and the regulation of aspects of certain industries.

For further information see: <http://www.accc.gov.au>

### **Additional information**

Readers should also be aware that the Australian Government has a number of other policies that impact on the way in which the Australian Government contracts including, for instance, the Building Code 2013.

For more information see: <http://www.employment.gov.au> or <http://www.fwbc.gov.au>

This material was updated in October 2015. The legislation referred to may have changed since that date. The material is provided for general information only and should not be relied upon. It does not purport to identify all of the obligations that a contractor may have under any of the legislation mentioned or indeed any other legislation. Some of the legislation mentioned may not be applicable to a particular Australian Government agency, contractor or contract. It is also likely that there will be other legislation that applies to the contract. Contractors should take their own legal advice about what laws apply to them and what steps are required to comply with those laws.

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