



Western Australia

Procurement (Debarment of Suppliers) Regulations 2021

Compare between:

[05 Nov 2021, 00-a0-00] and [01 Jan 2022, 00-b0-00]

Procurement (Debarment of Suppliers) Regulations 2021

Part 1 — Preliminary

1. Citation

These regulations are the *Procurement (Debarment of Suppliers) Regulations 2021*.

2. Commencement

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 January 2022.

3. Terms used

- (1) In these regulations —

Australian Consumer Law means the Australian Consumer Law as defined in the *Competition and Consumer Act 2010* (Commonwealth) section 130 or the Australian Consumer Law (WA) as defined in the *Fair Trading Act 2010* section 17(1);

Category A debarment conduct has the meaning given in regulation 9;

Category B debarment conduct has the meaning given in regulation 10;

Commonwealth Criminal Code means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* (Commonwealth);

Corporations Act means the *Corporations Act 2001* (Commonwealth);

corresponding debarment regime means a law or administrative policy of another jurisdiction (whether an Australian or overseas jurisdiction) under which suppliers are debarred from supplying goods, services or works to government or other agencies because of their conduct;

official investigation means an investigation into an alleged offence or other conduct by —

- (a) a police officer or prosecuting authority; or
- (b) any other public officer or body;

other debarment conduct has the meaning given in regulation 11;

penalty includes a decision by a court or a public officer or body for —

- (a) the payment of a fine or other amount; or
- (b) the taking or restraining of action because of any conduct;

related body corporate has the meaning given in the Corporations Act section 9;

senior officer, of a supplier, means an officer, as defined in the Corporations Act section 9, of the supplier;

supplier undertaking means an undertaking about the future conduct of a supplier entered into between the Department CEO and the supplier under Part 7;

WA Criminal Code means *The Criminal Code*.

- (2) A term used in these regulations has the same meaning as it has in Part 7 of the Act.

4. Affiliates of debarred suppliers

- (1) For the purposes of the definition of *affiliate* in section 32 of the Act, a person or body is an affiliate of a debarred supplier if the person or body —
 - (a) controls or is controlled by the debarred supplier; or
 - (b) is a related body corporate of the debarred supplier; or
 - (c) has a senior officer who is also a senior officer of the debarred supplier; or
 - (d) is the successor (whether immediate or not) to, or of the whole or part of the business of, the debarred supplier.
- (2) For the purposes of this regulation —
 - (a) the Corporations Act section 50AA applies to the determination of whether a person or body controls another person or body; and
 - (b) a person or body may be the successor of a debarred supplier because of a merger, amalgamation, acquisition, restructure, takeover, divestiture or consolidation or because of any other reason; and
 - (c) a person or body may be the affiliate of a debarred supplier even if the debarred supplier has ceased to exist.

~~Parts~~ **Part 2-8** — **Debarment of suppliers**

5. Department CEO may debar suppliers

(1) The Department CEO may debar a supplier from supplying goods, services or works to State agencies because of any conduct of the supplier or of a senior officer of the supplier if satisfied that —

(a) the conduct is conduct for which a supplier may be debarred as provided by Part 3; and

(b) the debarment is in the public interest.

(2) The Department CEO cannot debar a supplier because of conduct that is Category A debarment conduct unless —

(a) in the case of conduct that is an offence — a court has convicted the supplier or a senior officer of the supplier of the offence; or

(b) in the case of conduct that is not an offence — a court or a public officer or body has —

(i) determined that the conduct occurred; and

(ii) imposed a penalty on the supplier or a senior officer of the supplier for the conduct;

or

(c) in any case —

(i) the Department CEO is satisfied that the conduct occurred; and

(ii) the supplier has not denied that the conduct occurred in a submission to the Department CEO on a show cause notice relating to the proposed debarment under regulation 13.

Note for this subregulation:

The above restriction on debarment does not apply to the suspension of a supplier pending a debarment decision.

(3) The Department CEO cannot debar a supplier because of conduct of a senior officer of the supplier unless —

(a) the senior officer was duly acting for and on behalf of the supplier; or

(b) the supplier was convicted of an offence, or incurred a penalty, because of the conduct; or

(c) the person became or continued as a senior officer of the supplier even though the supplier was aware or ought to have ~~not come into~~ been aware of the conduct (whether the conduct occurred before or after the person became a senior officer of the supplier).

(4) The Department CEO may also debar an affiliate of a supplier who was debarred for relevant conduct under subregulation (1) if satisfied that it is in the public interest.

(5) The Department CEO can only debar an affiliate of a debarred supplier if the period since the supplier was debarred does not exceed 3 years (whether or not the supplier remains debarred).

6. Maximum period of debarment

(1) The maximum period for which a supplier may be debarred for relevant conduct is as follows —

(a) if the supplier is debarred because of conduct that is or includes Category A debarment conduct — 5 years;

(b) in any other case — 2 years.

(2) A supplier who has previously been debarred because of particular conduct may be subsequently debarred for a further maximum period under this regulation because of other conduct.

(3) The maximum period for which an affiliate of a debarred supplier may be debarred is the maximum period for which the debarred supplier could have been debarred.

(4) An affiliate of a debarred supplier who has previously been debarred may be subsequently debarred for a further maximum period under this regulation —

(a) in the person's capacity as the affiliate of another debarred supplier; or

(b) in the person's capacity as a supplier and not merely as the affiliate of a debarred supplier; or

(c) in connection with a subsequent debarment of the supplier.

7. Factors in determining whether debarment in the public interest and period of debarment

(1) In determining whether the debarment of a supplier is in the public interest and the period for which the supplier should be debarred, the Department CEO may consider all or any of the following —

(a) the seriousness of the conduct for which the supplier may be debarred;

(b) any remedial measures taken by the supplier in respect of that conduct;

(c) any mitigating circumstances relating to that conduct;

(d) whether the supplier had effective standards of operation~~†~~ and internal control systems in place at the time of that conduct and before any official investigation of that conduct;

~~†Schedules 1~~(e) whether the supplier brought that conduct to the attention of the appropriate government authority in a timely manner on becoming aware of it;

(f) whether the supplier has fully investigated the circumstances in which that conduct occurred and ~~2~~made the result of the investigation available to the Department CEO;

-
- (g) whether the supplier cooperated fully with the appropriate government authority during any official investigation of, or court or administrative action in relation to, that conduct;
- (h) whether the supplier has paid or met all criminal, civil and administrative penalties or liabilities for that conduct (including any investigative or administrative costs incurred by government authorities in relation to that conduct);
- (i) whether the supplier has made or agreed to make full restitution for the consequences of that conduct;
- (j) whether the supplier has taken appropriate disciplinary action against the individuals responsible for that conduct;
- (k) any criminal or other penalties that have been imposed on the supplier for that conduct or on the individuals responsible for that conduct;
- (l) any current or previous decision to debar or suspend the supplier under these regulations or under a corresponding debarment regime;
- (m) any other factor the Department CEO considers relevant.
- (2) In the case of the debarment of an affiliate of a debarred supplier, the Department CEO may consider all or any of the factors specified in subregulation (1) in relation to the conduct for which the supplier was debarred and may in addition consider the following —
- (a) the nature and extent of the connection or relationship between the debarred supplier and the affiliate;
- (b) the extent of any suspected involvement of the affiliate in the conduct for which the supplier was debarred (including the extent of the affiliate's knowledge or suspected knowledge of the conduct, or awareness or suspected awareness that the conduct was unlawful or wrong);

Procurement (Debarment of Suppliers) Regulations 2021

Part 2 Debarment of suppliers

r. 7

(c) any other relevant matters arising since the debarment of the supplier.

Part 3 — Conduct for which supplier may be debarred

8. Conduct for which supplier may be debarred

- (1) A supplier may be debarred because of any of the following conduct —
- (a) Category A debarment conduct;
 - (b) Category B debarment conduct;
 - (c) other debarment conduct.
- (2) A supplier may be debarred only if —
- (a) in the case of the debarment of a supplier because of conduct of the supplier or a senior officer of the supplier that is or includes the commission of an offence for which there has been a conviction — the period since the conviction does not ~~come~~ exceed 3 years; or
 - (b) in the case of the debarment of a supplier because of conduct of the supplier or a senior officer of the supplier for which a penalty has been imposed — the period since the imposition of the penalty does not exceed 3 years; or
 - (c) in the case of the debarment of a supplier because of the debarment of the supplier under a corresponding debarment regime — the period since that debarment does not exceed 3 years; or
 - (d) in any other case — the period since the conduct occurred does not exceed 3 years.
- (3) A supplier may be debarred because of conduct whether or not the conduct relates to the supply of goods, services or works to State agencies and whether or not the conduct occurred in Western Australia.

(4) Subject to subregulation (2), a supplier may be debarred because of conduct whenever that conduct occurred.

Note for this subregulation:

Section 36(9) of the Act provides that a supplier may be debarred or suspended under Part 7 of the Act because of conduct that occurred before the commencement of that Part.

(5) This regulation does not apply to the debarment of an affiliate of a debarred supplier under regulation 5(4).

9. Category A debarment conduct

Category A debarment conduct is any conduct described in Schedule 1.

10. Category B debarment conduct

Category B debarment conduct is any conduct described in Schedule 2.

11. Other debarment conduct

(1) Other debarment conduct is any conduct of a supplier or senior officer of a supplier that is not Category A debarment conduct or Category B debarment conduct but that the Department CEO is satisfied is of such a nature that the procurement of goods, services or works by State agencies from the supplier would be likely to have a material adverse effect on —

- (a) the integrity of, and public confidence in, the procurement activities of State agencies; or
- (b) the reputation of the State; or
- (c) the business risk to State agencies.

(2) Other debarment conduct also includes any of the following conduct of a supplier or senior officer of a supplier —

- (a) a failure to cooperate with an investigation of the supplier by the Department CEO under Part 4;
- (b) conduct for which the supplier has been debarred under a corresponding debarment regime.

Part 4 — Investigation of suppliers and debarment procedures

12. Department CEO may investigate whether supplier should be debarred

(1) The Department CEO may carry out an investigation into whether a supplier should be debarred —

(a) if the Department CEO reasonably suspects that the supplier or a senior officer of the supplier has engaged in conduct for which the supplier may be debarred; or

(b) if —

(i) the supplier or a senior officer of the supplier is under official investigation for conduct for which the supplier may be debarred; or

(ii) proceedings for an offence or the imposition of a penalty have been commenced against the supplier or senior officer for any such conduct.

(2) The Department CEO may also carry out an investigation into —

(a) whether a supplier should be debarred because they are an affiliate of a debarred supplier; or

(b) whether a supplier will become an affiliate of a debarred supplier if a supplier under investigation by the Department CEO is debarred.

(3) An investigation may be carried out on the initiative of the Department CEO or at the request of a State agency.

(4) The Department CEO may appoint an officer of the Department or other suitably qualified person to carry out an investigation and report to the Department CEO on the results of the investigation.

13. Show cause notice to supplier and opportunity to make submissions

(1) Before deciding whether or not to debar a supplier, the Department CEO must give the supplier a notice advising the supplier of the following —

(a) that the debarment of the supplier is under consideration;

(b) the reasons for the proposed debarment of the supplier;

(c) the procedures relating to debarment under these regulations, including in relation to supplier undertakings and rights of review;

(d) the consequences under these regulations of a debarment of the supplier.

(2) The notice must specify the period, being not less than 7 days, within which the supplier may make submissions to the Department CEO about the proposed debarment.

(3) The supplier may make submissions to the Department CEO about the proposed debarment of the supplier within the period specified in the notice.

(4) The Department CEO must consider any submissions duly made by the supplier before deciding whether or not to debar the supplier.

14. Notice of debarment decision

(1) The Department CEO must give a supplier notice of a decision to debar or not to debar the supplier.

(2) If the Department CEO decides to debar the supplier, the notice of the decision must advise the supplier of the following —

(a) the reasons for the decision to debar the supplier;

(b) the period for which the supplier is debarred, including the date on which the period of debarment commences;

(c) the supplier's rights of review under the Act or these regulations.

Note for this regulation:

Section 36(1) of the Act requires the Department CEO to maintain a public register of debarred suppliers.

Part 5 — Suspension of suppliers pending debarment decision

15. Department CEO may suspend supplier in relation to Category A debarment conduct

- (1) The Department CEO may, if satisfied it is in the public interest, suspend a supplier who is under investigation by the Department CEO from supplying goods, services or works to State agencies pending a decision on whether the supplier should be debarred.
- (2) The Department CEO may suspend a supplier only if the investigation by the Department CEO relates to conduct that is or includes Category A debarment conduct.

16. Duration of suspension

- (1) The Department CEO may terminate the suspension of a supplier at any time.
- (2) The Department CEO must terminate the suspension of a supplier if —
 - (a) official investigations into the offence or other conduct concerned are discontinued; or
 - (b) proceedings commenced for the offence or other conduct concerned are withdrawn or dismissed.
- (3) The Department CEO must terminate the suspension of a supplier if the Department CEO decides not to debar the supplier.
- (4) The suspension of a supplier is terminated if the Department CEO decides to debar the supplier.

(5) The suspension of a supplier is terminated on the expiry of the period of 12 months, but may be extended by the Department CEO for a period not exceeding 6 months at any one time if —

(a) an official investigation or a proceeding in relation to the offence or other conduct concerned is pending or still in progress; and

(b) the total period of the suspension does not exceed the period for which the supplier could be debarred.

17. Notice of suspension decision

(1) The Department CEO must give a supplier notice of a decision to suspend the supplier or to terminate the suspension of a supplier.

(2) The notice of a decision to suspend a supplier must advise the supplier of the following —

(a) the reasons for the decision to suspend the supplier;

(b) the period for which the supplier is suspended, including the date on which the period of suspension commences;

(c) the supplier's rights of review under the Act or these regulations.

Note for this regulation:

Section 36 of the Act requires the Department CEO to notify State agencies of suppliers who are suspended. Suspended suppliers are not required to be included on the public register of debarred suppliers maintained under that section. Under that section, the Department CEO may suspend a supplier without any notice to the supplier of the proposed suspension or opportunity to show cause why they should not be suspended.

18. Review by SAT of suspension decision

A decision of the Department CEO to suspend a supplier is prescribed for the purposes of section 34(b) of the Act.

Note for this regulation:

Section 34 of the Act gives a supplier the right to apply to the State Administrative Tribunal to review a decision to debar the supplier or any other decision prescribed by the regulations.

Part 6 — Consequences of debarment or suspension

19. Consequences of debarment or suspension

- (1) A supplier who is debarred or suspended is precluded from —
- (a) seeking, or being awarded, a new contract for the supply of goods, services or works to a State agency; and
 - (b) being the agent or representative of another supplier in relation to the supply of goods, services or works to a State agency; and
 - (c) seeking, or being awarded, an extension of supply options in an existing contract for the supply of goods, services or works to a State agency or an extension of the scope of any such existing contract.
- (2) A supplier who is not debarred or suspended is precluded from seeking, or being awarded, a contract for the supply of goods, services or works to a State agency if the goods, services or works, or any part of them, are to be supplied under a subcontract with another supplier who is debarred or suspended.
- (3) Subregulation (1)(c) applies to an extension made after this regulation comes into operation, in connection with an existing contract entered into before or after this regulation comes into operation.
- (4) The operation of this regulation may be —
- (a) excluded by the Department CEO in a particular case under regulation 20(2); or
 - (b) wholly or partly stayed by a supplier undertaking under Part 7.

Note for this regulation:

Section 35 of the Act authorises a State agency to terminate a supply contract with a debarred supplier.

20. Compliance by State agencies with debarment or suspension decision

(1) A State agency must comply with a decision to debar or suspend a supplier except as provided by subregulation (2).

(2) The Department CEO may exclude the operation of regulation 19 in relation to a particular contract or subcontract if satisfied that exceptional circumstances exist and it is in the public interest to do so.

Note for this regulation:

Section 36(4) of the Act provides that the validity of a contract is not affected by a failure of a State agency to comply with a decision to debar or suspend a supplier.

21. Public register of debarred suppliers

The public register of debarred suppliers required to be maintained by the Department CEO under section 36(1) of the Act must contain the following information —

(a) the name of the supplier;

(b) any Australian Company Number or Australian Business Number of the supplier;

(c) the period of debarment.

Part 7 — Supplier undertakings about future conduct

22. Department CEO may enter into supplier undertaking

- (1) The Department CEO may enter into an undertaking with a supplier who has been debarred or suspended, or who is under investigation by the Department CEO under Part 4, about the future conduct of the supplier.
- (2) A supplier undertaking may stay —
 - (a) all or any of the consequences of the supplier’s debarment or suspension under these regulations; or
 - (b) any proposed debarment or suspension of a supplier.
- (3) The Department CEO has the sole discretion whether to enter into a supplier undertaking and on the terms of the undertaking.

23. Terms of supplier undertaking

- (1) A supplier undertaking may contain provisions the Department CEO considers appropriate to remedy or mitigate the causes of the conduct for which the supplier has been or could be debarred.
- (2) In particular, a supplier undertaking may contain provisions relating to the following —
 - (a) the exclusion of particular employees from all or any management roles or programs;
 - (b) the implementation or extension of compliance programs or employee training;
 - (c) external auditing;
 - (d) giving the Department CEO access to particular documents or information;
 - (e) reporting to third parties.

24. Termination or amendment of supplier undertaking

- (1) A supplier undertaking may be terminated at any time by the Department CEO by notice to the supplier if satisfied that any terms of the undertaking have not been complied with.
- (2) A supplier undertaking may be terminated at any time by the supplier by notice to the Department CEO.
- (3) If a supplier undertaking is terminated, any stay of the consequences of a debarment or suspension, or of a proposed debarment or suspension, ceases to have effect.
- (4) A supplier undertaking may be amended at any time by the Department CEO by notice to the supplier.
- (5) A supplier may request the Department CEO to amend a supplier undertaking because of a change in circumstances and the Department CEO must consider any such request.

Part 8 — Miscellaneous

25. Reconsideration of debarment or suspension where circumstances change

(1) A supplier who has been debarred or suspended may request the Department CEO to reconsider the decision to debar or suspend the supplier if —

(a) information that is materially relevant to the decision becomes available, being information —

(i) that was not available to the Department CEO or the supplier at the time of the decision; and

(ii) that could not have been obtained by the supplier with reasonable endeavours;

or

(b) the decision was made as a result of a conviction for an offence, or the imposition of a penalty for other conduct, that has been quashed or overturned; or

(c) there has been a genuine change of management of the supplier since the decision; or

(d) there is any other change of circumstances that the Department CEO considers appropriate to justify the reconsideration of the decision.

(2) On receipt of the request, the Department CEO must reconsider the decision to debar or suspend the supplier and may —

(a) revoke or amend the debarment or suspension if satisfied it is in the public interest to do so; or

(b) refuse to revoke or amend the debarment or suspension.

(3) The Department CEO must give the supplier notice of the Department CEO's decision under subregulation (2).

- (4) A decision of the Department CEO to refuse to revoke or amend the debarment or suspension is prescribed for the purposes of section 34(b) of the Act.

Note for this subregulation:

Section 34 of the Act gives a supplier the right to apply to the State Administrative Tribunal to review a decision to debar the supplier or any other decision prescribed by the regulations.

26. Authorised bodies may rely on debarment or suspension decisions

An authorised body may exclude a supplier from the authorised body's procurement of goods, services or works because the supplier is a debarred or suspended supplier.

27. Standard of proof

If the Department CEO is required to be satisfied of any matter for the purposes of these regulations, the Department CEO may be satisfied of the matter on the balance of probabilities.

28. Notices

- (1) A notice authorised or required under these regulations to be given to a person must be given to the person in writing.
- (2) A notice authorised or required under these regulations to be given to a person may be given to the person by emailing it to an email address specified by the person for giving notices of that kind to the person.
- (3) Subregulation (2) does not limit the operation of the *Interpretation Act 1984* section 76.
- (4) For the purposes of these regulations, a notice given to the agent of a person is taken to have been given to the person.

Schedule 1 — Category A debarment conduct

[r. 9]

<u>Item</u>	<u>Category of conduct</u>	<u>Description of conduct</u>
<u>1.</u>	<u>Bribery and corruption</u>	<u>WA Criminal Code — offences under sections 61, 82, 88, 96, 121, 122</u> <u>Commonwealth Criminal Code — offences under sections 70.2, 70.5, 141.1 to 142.2</u>
<u>2.</u>	<u>Embezzlement, theft and receiving stolen property</u>	<u>WA Criminal Code — offences under sections 378, 414</u> <u>Commonwealth Criminal Code — offences under sections 131.1, 132.1, 134.1, 134.2, 135.1, 135.2</u>
<u>3.</u>	<u>Extortion</u>	<u>WA Criminal Code — offences under sections 396 to 399</u>
<u>4.</u>	<u>False statements, information, creating false beliefs</u>	<u>WA Criminal Code — offences under sections 169 to 171</u>
<u>5.</u>	<u>Falsification of books and documents</u>	<u>WA Criminal Code — offences under sections 418 to 420, 424</u> <u>Commonwealth Criminal Code — offences under sections 136.1, 137.1, 137.2, 145.4</u>
<u>6.</u>	<u>Forgery</u>	<u>WA Criminal Code — offences under sections 473, 474</u> <u>Commonwealth Criminal Code — offences under sections 144.1, 145.1, 145.2</u>

Procurement (Debarment of Suppliers) Regulations 2021
 Category A debarment conduct **Schedule 1**

<u>Item</u>	<u>Category of conduct</u>	<u>Description of conduct</u>
<u>7.</u>	<u>Fraud</u>	<p><u>WA Criminal Code — offences under sections 83, 409, 421</u></p> <p><u>Commonwealth Criminal Code — offences under sections 134.1, 134.2, 135.1, 135.2, 135.4</u></p> <p><u>Corporations Act — offences under sections 1041A to 1041D, 1041F, 1041G</u></p>
<u>8.</u>	<u>Laundering proceeds of crime, funding terrorism and related activities</u>	<p><u>WA Criminal Code — offences under section 563A</u></p> <p><u>Commonwealth Criminal Code — offences under sections 400.2B to 400.9</u></p> <p><u>Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Commonwealth) — offences under sections 136 to 143</u></p> <p><u>Charter of the United Nations Act 1945 (Commonwealth) — offences under sections 20, 21, 27, 28, 32</u></p>
<u>9.</u>	<u>Participating in activities of criminal organisations</u>	<u>Commonwealth Criminal Code — offences under sections 390.3 to 390.6</u>
<u>10.</u>	<u>Prohibited substances</u>	<p><u>Misuse of Drugs Act 1981 — offences under sections 6(1), 7(1), 7(2)</u></p> <p><u>Commonwealth Criminal Code — offences under sections 302.2 to 302.4, 303.4 to 303.6, 305.3 to 305.5, 307.1 to 307.3</u></p>
<u>11.</u>	<u>Secret commissions</u>	<u>WA Criminal Code — offences under sections 529, 530, 532, 534 to 536</u>

Procurement (Debarment of Suppliers) Regulations 2021
Schedule 1 Category A debarment conduct

<u>Item</u>	<u>Category of conduct</u>	<u>Description of conduct</u>
<u>12.</u>	<u>False or misleading representations and unconscionable conduct</u>	<u>Australian Consumer Law — contraventions under sections 18, 20, 21, 32, and offences under section 151</u> <u>Corporations Act — offences under section 1041E and contraventions under section 1041H</u>
<u>13.</u>	<u>Unfair trade practices (cartel provisions)</u>	<u>Competition and Consumer Act 2010 (Commonwealth) — offences under sections 45AF, 45AG, 79 and contraventions under sections 45AJ, 45AK</u>
<u>14.</u>	<u>Creditor-defeating dispositions</u>	<u>Corporations Act — offences or contraventions under sections 588GAB(1), 588GAB(2), 588GAC(1), 588GAC(2)</u>
<u>15.</u>	<u>Insider trading</u>	<u>Corporations Act — offences or contraventions under section 1043A</u>
<u>16.</u>	<u>Lobbying</u>	<u>Foreign Influence Transparency Scheme Act 2018 (Commonwealth) — offences under sections 57, 57A(1), 57A(2), 60, 61</u>
<u>17.</u>	<u>Human trafficking</u>	<u>Commonwealth Criminal Code — offences under sections 270.3, 270.5, 270.6A, 270.7, 271.2 to 271.7, 271.7B to 271.7G</u>
<u>18.</u>	<u>Unlawful employment</u>	<u>Migration Act 1958 (Commonwealth) — offences under sections 245AB to 245AEB</u>

Procurement (Debarment of Suppliers) Regulations 2021
 Category A debarment conduct **Schedule 1**

<u>Item</u>	<u>Category of conduct</u>	<u>Description of conduct</u>
<u>19.</u>	<u>Serious contraventions of civil remedy provisions</u>	<u><i>Fair Work Act 2009</i> (Commonwealth) — serious contraventions of civil remedy provisions as defined in sections 539, 557A, 557B</u>
<u>20.</u>	<u>Non-compliance with occupational safety and health legislation — gross negligence, death or serious harm</u>	<u><i>Occupational Safety and Health Act 1984</i> — offences under sections 19(1), 19A(1), 19A(2), 20(1), 20(3), 20A(1), 20A(2), 21(1), 21(2), 21A(1), 21A(2), 21B(2), 21C(1), 21C(2), 22(1), 22A(1), 22A(2), 23, 23AA(1), 23AA(2), 23A, 23B(1), 23B(2), 23G(2), 23H(1), 23H(2)</u> <u><i>Mines Safety and Inspection Act 1994</i> — offences under sections 9, 9A(1), 9A(2), 10(1), 10(3), 10A(1), 10A(2), 12(1), 12(2), 12A(1), 12A(2), 12B(2), 12C(1), 12C(2), 13, 13A(1), 13A(2), 14, 15(1), 15(2), 15D(2), 15E(1), 15E(2)</u>
<u>21.</u>	<u>Non-compliance with work health and safety legislation — industrial manslaughter and Category 1 offences</u>	<u><i>Work Health and Safety Act 2020</i> — offences under sections 30A, 31</u>
<u>22.</u>	<u>Non-compliance with dangerous goods safety and petroleum legislation</u>	<u><i>Dangerous Goods Safety Act 2004</i> — offences under sections 8(1), 10, 11(2), 12, 13, 14(1), 15(1), 15(2), 16, 17(2), 65(5)</u> <u><i>Petroleum and Geothermal Energy Resources Act 1967</i> — offences under sections 29, 49, 112A(3), 117A</u>

<u>Item</u>	<u>Category of conduct</u>	<u>Description of conduct</u>
		<p><u><i>Petroleum Pipelines Act 1969</i> — offences under sections 6, 25(2), 35(1), 65</u></p> <p><u><i>Petroleum (Submerged Lands) Act 1982</i> — offences under sections 19(1), 39, 60A, 60(1), 60(4), 60(5), 72(2), 74(1), 119(3), 124B(1)</u></p>
<u>23.</u>	<u>Non-compliance with environmental legislation</u>	<p><u><i>Environmental Protection Act 1986</i> — offences under sections 49(2), 50(1), 50A(1)</u></p> <p><u><i>Contaminated Sites Act 2003</i> — offences under sections 30(6), 43(1), 54(5), 71, 74, 94</u></p> <p><u><i>Waste Avoidance and Resource Recovery Act 2007</i> — offences under section 78</u></p>
<u>24.</u>	<u>Non-compliance with taxation legislation</u>	<p><u><i>Taxation Administration Act 1953 (Commonwealth)</i> — offences under sections 8C, 8K, 8N, 8T, 8U, 8WC</u></p> <p><u><i>Excise Act 1901 (Commonwealth)</i> — offences under sections 117 to 117B, 120(1)(iv)</u></p> <p><u><i>Duties Act 2008</i> — conduct referred to in section 265 for which a penalty tax is required to be imposed under section 266(2) and entering into or carrying out a tax avoidance scheme referred to in section 270</u></p>

<u>Item</u>	<u>Category of conduct</u>	<u>Description of conduct</u>
		<u><i>Taxation Administration Act 2003</i> — conduct referred to in section 26 for which taxpayer liable to pay penalty tax and offences under sections 106, 107, 108</u>
<u>25.</u>	<u>Attempting, conspiring, inciting, aiding, abetting, counselling or procuring offences</u>	<u>An offence of attempting, or of conspiracy or incitement, to commit an offence described in this Schedule or an offence of aiding, abetting, counselling or procuring the commission of any such offence.</u>
<u>26.</u>	<u>Similar conduct in other jurisdictions</u>	<u>An offence or contravention under a law of another State, of a Territory or of another country that would, in the opinion of the Department CEO, have been an offence or contravention described in this Schedule if the conduct had occurred in Western Australia.</u>
<u>27.</u>	<u>Similar conduct under repealed legislation</u>	<u>Offences or contraventions under repealed enactments that are substantially the same as the offences or contraventions described in this Schedule.</u>

Schedule 2 — Category B debarment conduct

[r. 10]

<u>Item</u>	<u>Category of conduct</u>	<u>Description of conduct</u>
<u>1.</u>	<u>Unfair contract terms and unfair practices</u>	<u>Australian Consumer Law — conduct that contravenes Parts 2-3, 3-1, 4-1</u>
<u>2.</u>	<u>Resignation of directors, creditor-defeating dispositions and insolvent trading</u>	<u>Corporations Act — conduct that contravenes sections 203AA(6), 588FGAC, 588G</u>
<u>3.</u>	<u>Lobbying</u>	<u>Conduct that contravenes the <i>Integrity (Lobbyists) Act 2016</i></u>
<u>4.</u>	<u>Non-compliance with anti-discrimination legislation and gender equality reporting requirements</u>	<u>Conduct that contravenes any of the following Acts —</u> <u><i>Disability Discrimination Act 1992</i> (Commonwealth)</u> <u><i>Equal Opportunity Act 1984</i></u> <u><i>Racial Discrimination Act 1975</i> (Commonwealth)</u> <u><i>Sex Discrimination Act 1984</i> (Commonwealth)</u> <u><i>Workplace Gender Equality Act 2012</i> (Commonwealth)</u>
<u>5.</u>	<u>Non-compliance with modern slavery reporting requirements</u>	<u>Conduct that contravenes the <i>Modern Slavery Act 2018</i> (Commonwealth)</u>

Procurement (Debarment of Suppliers) Regulations 2021
 Category B debarment conduct **Schedule 2**

<u>Item</u>	<u>Category of conduct</u>	<u>Description of conduct</u>
<u>6.</u>	<u>Non-compliance with industrial legislation, awards and agreements</u>	<p><u>Conduct that contravenes any of the following Acts or instruments —</u></p> <p><u><i>Fair Work Act 2009 (Commonwealth) and awards and agreements made under that Act</i></u></p> <p><u><i>Industrial Relations Act 1979 and awards and agreements made under that Act</i></u></p> <p><u><i>Minimum Conditions of Employment Act 1993</i></u></p> <p><u><i>Long Service Leave Act 1958</i></u></p> <p><u><i>Construction Industry Portable Paid Long Service Leave Act 1985</i></u></p> <p><u><i>Superannuation Guarantee (Administration) Act 1992 (Commonwealth)</i></u></p>
<u>7.</u>	<u>Non-compliance with workers' compensation legislation</u>	<u><i>Workers' Compensation and Injury Management Act 1981 — conduct that contravenes sections 170(1), 303A</i></u>
<u>8.</u>	<u>Non-compliance with occupational safety and health legislation</u>	<p><u>Conduct that contravenes any of the following Acts —</u></p> <p><u><i>Occupational Safety and Health Act 1984</i></u></p> <p><u><i>Work Health and Safety Act 2020</i></u></p>

Procurement (Debarment of Suppliers) Regulations 2021
Schedule 2 Category B debarment conduct

<u>Item</u>	<u>Category of conduct</u>	<u>Description of conduct</u>
<u>9.</u>	<u>Non-compliance with environmental legislation</u>	<p><u>Conduct that contravenes any of the following Acts —</u></p> <p><u><i>Environmental Protection Act 1986</i></u></p> <p><u><i>Contaminated Sites Act 2003</i></u></p> <p><u><i>Waste Avoidance and Resource Recovery Act 2007</i></u></p>
<u>10.</u>	<u>Non-compliance with dangerous goods safety and petroleum legislation</u>	<p><u>Conduct that contravenes any of the following Acts —</u></p> <p><u><i>Dangerous Goods Safety Act 2004</i></u></p> <p><u><i>Mines Safety and Inspection Act 1994</i></u></p> <p><u><i>Petroleum and Geothermal Energy Resources Act 1967</i></u></p> <p><u><i>Petroleum Pipelines Act 1969</i></u></p> <p><u><i>Petroleum (Submerged Lands) Act 1982</i></u></p>
<u>11.</u>	<u>Non-payment of taxes</u>	<p><u>Conduct that contravenes any of the following Acts —</u></p> <p><u><i>Taxation Administration Act 1953 (Commonwealth)</i></u></p> <p><u><i>Duties Act 2008</i></u></p> <p><u><i>Taxation Administration Act 2003</i></u></p>
<u>12.</u>	<u>Similar conduct in other jurisdictions</u>	<p><u>Conduct in another State, a Territory or another country that would, in the opinion of the Department CEO, have been conduct described in this Schedule if the conduct had occurred in Western Australia.</u></p>

Procurement (Debarment of Suppliers) Regulations 2021
Category B debarment conduct **Schedule 2**

<u>Item</u>	<u>Category of conduct</u>	<u>Description of conduct</u>
<u>13.</u>	<u>Similar conduct under repealed legislation</u>	<u>Conduct that contravenes a repealed enactment and that is substantially the same as the conduct described in this Schedule.</u>

Notes

This is a compilation of the *Procurement (Debarment of Suppliers) Regulations 2021*. For provisions that have come into operation see the compilation table. ~~For provisions that have not yet come into operation see the uncommenced provisions table.~~

Compilation table

Citation	Published	Commencement
<i>Procurement (Debarment of Suppliers) Regulations 2021</i> Pt. 1	SL 2021/187 5 Nov 2021	Pt. 1 ; 5 Nov 2021 (see r. 2(a)); Regulations other than Pt. 1 ; 1 Jan 2022 (see r. 2(b))

~~Uncommenced provisions table~~

~~To view the text of the uncommenced provisions see *Subsidiary legislation as made on the WA Legislation website*.~~

Citation	Published	Commencement
<i>Procurement (Debarment of Suppliers) Regulations 2021</i> Pt. 2-8 and Sch. 1 and 2	SL 2021/187 5 Nov 2021	1 Jan 2022 (see r. 2(b))