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**Submission from the Tax Justice Network Australia to the inquiry
into the *Public Governance, Performance and Accountability
Amendment (Ban Unethical Contractors) Bill 2025*
12 December 2025**

The Tax Justice Network Australia (TJN-Aus) welcomes the opportunity to make a submission to the inquiry into the *Public Governance, Performance and Accountability Amendment (Ban Unethical Contractors) Bill 2025*. We urge the Committee to recommend that the Parliament pass the Bill, although we believe that the definition of “unethical conduct” in 105BC needs amendment, as the current drafting is too broad. The Committee should not use our support for amendments to the Bill as implying that we oppose the passage of the Bill.

The Commonwealth Government lags behind other governments in its failure to have a proper debarment system for unethical contractors.

As noted by the Global Suspension and Debarment Directory, “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.”¹ They noted that each agency sets its own exclusion grounds and decides whether to follow another agency’s exclusions. Exclusion decisions are entirely discretionary.

We note that Section 6.7 of the Commonwealth Procurement Rules prohibits covered Commonwealth Government 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.”²

The Global Suspension and Debarment Directory reported that being excluded by a Commonwealth Government agency would not prevent a consulting service from

¹ World Bank Office of Suspension and Debarment, IDB, Bureau de l'Inspecteur Général Ville de Montréal, and the International Bar Association, “Exclusion System Summary Australia. Global Suspension & Debarment Directory”, July 2021, 1 and World Bank Office of Suspension and Debarment, IDB, and GW Law, “Global Suspension and Debarment Directory 2025”, 2025, 60.

² World Bank Office of Suspension and Debarment, IDB, Bureau de l'Inspecteur Général Ville de Montréal, and the International Bar Association, “Exclusion System Summary Australia. Global Suspension & Debarment Directory”, July 2021, 2.

subsequently serving as a subcontractor to another consulting service that obtains a contract from the Commonwealth Government.³

The Global Suspension and Debarment Directory states that as of 2025, Western Australia is the only Australian jurisdiction with a comprehensive debarment law: the Procurement Act 2020, the Procurement (Debarment of Suppliers) Regulations 2021, and the Debarment Regime.⁴

A debarment regime can be an effective tool to drive more ethical business behaviour. It has been argued that fines, even large ones, impose a financial impact on earnings and balance sheets. However, they are a blunt sanction because they don't automatically affect field personnel, where corporate integrity offences most often occur. The advantages of debarment processes are that they affect field personnel by disrupting sales opportunities, income streams, revenue models, and incentive-based compensation. Debarment regimes are argued to encourage self-reporting and rectification to avoid debarment. It is further argued that debarment regimes are designed to facilitate a shift toward cultural integrity rather than to punish.⁵

The definition of "unethical conduct" under (a) in section 105BC of the Bill would be better aligned with the list of offences and conduct contained in the Western Australian Government *Procurement (Debarment of Suppliers) Regulations 2021*. We do not believe the public interest is served by excluding entities and individuals from receiving a procurement contract for any breach of a Commonwealth, State, or Territory law, regardless of whether the offence in question is irrelevant to the suitability of the entity or person to fulfil the procurement contract.

In relation to clause (c) of the definition of "unethical conduct", we would prefer a positive requirement modelled on the tender document issued by the Department of Home Affairs in 2019 for contracts for visa processing services.⁶ This language was provided by the Department in [Question on Notice](#) to a Senate Inquiry.⁷ The wholesale outsourcing of visa processing under this tender agreement was ultimately abandoned. The model language is provided in Section 4.12.1.1(c) of the published RFT, which states, "The Successful Tenderer must maintain an exemplary compliance record with the Australian Taxation Office in relation to the successful tendering entity (i.e., the SPV) and its other business affairs connected with Australia." The assessment of an entity having satisfactory tax compliance should include the risk rating assessed by the ATO under Practical Compliance Guide PCG 2017/4⁸, which relates to the level of risk a business poses in relation to its tax arrangements around cross-border related party loans. Consideration of similar ATO risk assessments based on objective criteria should also be included when assessing whether a business has exemplary tax compliance.

³ Ibid., 3.

⁴ World Bank Office of Suspension and Debarment, IDB, and GW Law, "Global Suspension and Debarment Directory 2025", 2025, 60.

⁵ Olivia Dixon, 'The Efficacy of Australia Adopting a Debarment Regime in Public Procurement, *Federal Law Review* Vol 49(1), (2021), 141.

⁶ Senate Inquiry on "Impact of changes to service delivery models on the administration and running of Government programs";

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ServiceDelivery

⁷ <https://www.aph.gov.au/DocumentStore.ashx?id=94ab29b3-1ffa-485f-b865-41a1b4c5c91d>

⁸

<https://www.ato.gov.au/law/view/document?docid=COG/PCG20174/NAT/ATO/00001&PiT=20201210000001>

Tax-related behaviours that should render an entity unsuitable for a Commonwealth procurement contract should include:

- A conviction for a tax-related offence in the last five years;
- Having been non-compliant with a directions notice on tax matters in the last four years;
- Having been subject to administrative penalties in relation to tax matters greater than \$10,000 in the last four years;
- Having failed to pay their tax liabilities of \$10,000 or greater on time or as agreed with the ATO under a payment plan in the last four years;
- Having been non-compliant with filling out the Single Touch Payroll if they are of a size required to do so, in the last four years;
- Repeatedly failing to report transactions in the time period required by the ATO;
- Having failed to lodge financial accounts with ASIC in any of the last four years when having been required to do so. The relationship between a business's accounts and its tax behaviour is important, as demonstrated by the announcement in the 2018-2019 budget that companies would be required to align their asset evaluations between what they include in their accounts and what they claim for tax purposes. This was to address the behaviour where companies were using inflated asset evaluations to be able to load themselves up with greater cross-border related party debt and stay below the thin capitalisation threshold; and,
- Having been convicted of a tax-related offence in a foreign jurisdiction in the last four years.

In considering debarment processes, the World Bank debarment process has several valuable features:

- Sanctions can be calibrated according to the level of non-compliance.
- The power to sanction parents and affiliates closes a potential loophole. Companies subject to sanctions could otherwise transfer their activities to related companies, which might even share all directors and employees. That would make the sanction largely ineffective.
- The ability to set conditions (for non-debarment or for renewed admission to procurement processes) allows the Bank to provide incentives for improved behaviour.

The World Bank's debarment process appears to have been meaningfully applied. The current list of debarred entities and individuals is made public on the World Bank website.⁹

The NSW Government has a debarment process through the *Crimes (Serious Crime Prevention Orders) Act 2016*. The Act enables the NSW District or Supreme Courts to order "... such prohibitions, restrictions, requirements and other provisions as the court considers appropriate for the purpose of protecting the public by preventing, restriction or disrupting involvement by the person in serious crime related activities." To make an order, the appropriate court must be satisfied of two facts:¹⁰

1. the person has been convicted of a serious criminal offence, 'engaged' in serious crime-related activity or was 'involved' in serious crime-related activity (whether or not the person has been convicted); and,
2. there are reasonable grounds to believe the order would protect the public by preventing, restricting or disrupting the person's involvement in serious crime-related activities.

Canada has a whole-of-government policy to address criminal and unethical behaviour by

⁹ <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>

¹⁰ Olivia Dixon, 'The Efficacy of Australia Adopting a Debarment Regime in Public Procurement', *Federal Law Review* Vol 49(1), (2021), 132.

contractors and consultants under its *Ineligibility and Suspension Policy*.¹¹ The policy outlines the suspension period from government contracts upon conviction for a variety of offences, including breaches of the Canadian *Lobbying Act*. Suspension can also apply in cases where the business is convicted of offences in overseas jurisdictions. The Canadian Government can enter into an administrative agreement with the business to shorten the suspension period. Such administrative agreements are likely to be offered where the company has cooperated with law enforcement authorities or has undertaken remedial action to address wrongdoing. However, if the business then breaches the administrative agreement's terms, the suspension period is extended.

The Canadian Government maintains a public list of companies that have been suspended from being able to gain government contracts, and people in government doing procurement are required to check the list.¹²

The US Government also has a national system for the debarment of suppliers, including consultants, under the Federal Acquisitions Regulations, section 9.406 Debarment.¹³ The policy allows for the debarment of a supplier for a range of criminal and unethical conduct, including a clause that provides for debarment for "any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor."

In addition, Nonprocurement Common Rule ("NCR"): 2 C.F.R. Part 180 allows for the suspension of a supplier or consultant where "Immediate action is necessary to protect the public interest."¹⁴

Each US federal agency has a Suspending and Debarment Official ("SDO") with the authority to make government-wide exclusion decisions.¹⁵

Both the Federal Acquisitions Regulations and the Nonprocurement Common Rule provide that debarments should generally not exceed three years, but allow for more extended periods of debarment, depending on the circumstances.¹⁶ However, a contract may be awarded to an excluded supplier if a senior government official (an agency head or designee), at the official's discretion, determines in writing that there is a "compelling reason" to do so.¹⁷ Such discretionary processes are highly open to abuse and are likely to undermine the effectiveness of a debarment regime.

Another example of using government procurement to modify business behaviour in the context of corporate criminal behaviour is the United States' Executive Order (EO) 13126 of 1999, which aims to ensure that US federal agencies do not procure goods made with forced or indentured child labour.

¹¹ Government of Canada, "Ineligibility and Suspension Policy", <https://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-eng.html>

¹² Government of Canada, "Ineligible and suspended suppliers under the Integrity Regime", <https://www.tpsgc-pwgsc.gc.ca/ci-if/four-inel-eng.html>

¹³ https://www.acquisition.gov/far/part-9#FAR_9_406_2

¹⁴ <https://www.law.cornell.edu/cfr/text/2/part-180/subpart-G>

¹⁵ World Bank Office of Suspension and Debarment, International Development Bank, International Bar Association, "Exclusion System Summary United States", 2020, <https://www.worldbank.org/en/about/unit/sanctions-system/osd/brief/exclusion-survey>

¹⁶ *Ibid.*, 6.

¹⁷ *Ibid.*, 6.

Under EO13126¹⁸, the US Department of Labor (DOL) consults with the Department of Homeland Security (DHS) and Department of State (DOS) to create a list of products, identified by country, that may be the result of forced child labour. Federal contractors who supply products on this list must certify that they have attempted to determine whether the products are the result of forced child labour. Sanctions for non-compliance range from contract termination, suspension of the business, or debarment of the business for up to three years.

The first list was published in 2001 and contained 11 products. The list continues to be updated.¹⁹

EO13126 has assisted in making businesses more focused on taking steps to ensure their supply chains are free of forced child labour.

Similarly, in September 2012, President Barack Obama issued Executive Order 13627-*Strengthening Protections Against Trafficking In Persons In Federal Contracts*²⁰ which required updates to the Federal Acquisition Regulation and the *Ending Trafficking in Government Contracting Act*. As a result of the Executive Order, measures were introduced to combat slavery in federal procurement. These were developed in consultation with federal contractors, academia, NGOs and other stakeholders.²¹

The Executive Order requires US federal contractors with public contracts exceeding US\$500 million to take steps to ensure there is no slavery in their supply chains. Contractors are prohibited from charging employees recruitment fees or using misleading or fraudulent recruitment practices. Part 52.222-50 of the Solicitation Provisions and Contract Clauses require certain contractors to develop and maintain a compliance plan and to certify that, to the best of their knowledge, they have not engaged in trafficking-related activities.²²

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¹⁸ General information on EO13126 in this submission is drawn from the US Department of Labor publication *FREQUENTLY ASKED QUESTIONS: Executive Order 13126 of 1999*, available at https://www.dol.gov/ilab/reports/pdf/EOFAQS_2015.pdf accessed 6 June 2018.

¹⁹ The list is available at <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products-print>

²⁰ <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe>.

²¹ <https://obamawhitehouse.archives.gov/blog/2015/01/29/combating-human-trafficking-supply-chains>

²² <https://www.acquisition.gov/far/html/FARTOCP52.html>

Background on the Tax Justice Network and Tax Justice Network Australia

The Tax Justice Network (TJN) is an independent organisation launched in the British Houses of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. TJN works to map, analyse and explain the role of taxation and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. TJN's objective is to encourage reform at the global and national levels.

The Tax Justice Network believes our tax and financial systems are our most powerful tools for creating a just society that gives equal weight to everyone's needs. But under pressure from corporate giants and the super-rich, our governments have programmed these systems to prioritise the wealthiest over everybody else, wiring financial secrecy and tax havens into the core of our global economy. This fuels inequality, fosters corruption and undermines democracy. We work to repair these injustices by inspiring and equipping people and governments to reprogram their tax and financial systems.

The Tax Justice Network Australia (TJN-Aus) is the Australian arm of TJN.

In Australia, the current members of TJN-Aus are:

- ActionAid Australia
- Aid/Watch
- Anglican Overseas Aid
- Australian Council for International Development (ACFID)
- Australian Council of Social Service (ACOSS)
- Australian Council of Trade Unions (ACTU)
- Australian Education Union (AEU)
- Australian Manufacturing Workers Union (AMWU)
- Australian Nursing & Midwifery Federation (ANMF)
- Australian Services Union (ASU)
- Australian Workers Union, Victorian Branch (AWU)
- Baptist World Aid
- Caritas Australia
- Centre for International Corporate Tax Accountability & Research (CICTAR)
- Community and Public Service Union (CPSU)
- Electrical Trades Union, Victorian Branch (ETU)
- Evatt Foundation
- Friends of the Earth (FoE)
- GetUp!
- Greenpeace Australia Pacific
- International Transport Workers Federation (ITF)
- Jubilee Australia
- Maritime Union of Australia (MUA)
- National Tertiary Education Union (NTEU)
- New South Wales Nurses and Midwives' Association (NSWMWA)
- Oaktree Foundation
- Oxfam Australia
- Publish What You Pay Australia
- Save Our Schools
- SEARCH Foundation
- SJ around the Bay
- TEAR Australia
- The Australia Institute
- Union Aid Abroad – APHEDA
- United Workers' Union (UWU)
- Uniting Church in Australia, Synod of Victoria and Tasmania
- UnitingWorld
- Victorian Trades Hall Council
- World Vision Australia