



Australian Government
Digital Transformation Agency



Finance and Public Administration Legislation /
References Committee

Public Governance, Performance and Accountability Amendment (Ban Unethical Contractors) Bill 2025

Digital Transformation Agency (DTA) Submission

Introduction

The DTA welcomes the opportunity to contribute to the Committee's deliberations on the Public Governance, Performance and Accountability Amendment (Ban Unethical Contractors) Bill 2025, and supports agencies contracting suppliers that act ethically and with integrity.

Our submission outlines two key initiatives we are undertaking to strengthen accountability and performance for suppliers participating in the marketplaces we manage on behalf of the Australian Government. In addition, our submission outlines existing mechanisms for managing suppliers.

Overview of Key Initiatives

A healthy ecosystem of suppliers underpins the delivery of contemporary digital services to Australians. It needs appropriate safeguards to promote integrity, competition and performance, so agencies can buy with confidence and suppliers have clear, fair expectations for how performance will be managed.

Digital Seller Underperformance Policy (DSUP)

The DTA has recently launched industry consultation on the DSUP. The DSUP will underpin enhanced information sharing on instances of serious underperformance to enable agencies to deploy appropriate commercial controls. This includes, where appropriate, choosing not to engage a supplier when a readily substitutable alternative exists. While initially focussed on technology marketplaces, the current consultation process is also informing ongoing work to target potential widening of the policy to other procurement categories which would benefit from this approach.

More information on the DSUP including the draft policy is available on the consultation [website](#).

Digital Marketplace Panel 2 (DMP2) Performance Management Framework (PMF)

The DMP2 now includes a PMF, which commenced in November 2025. The PMF is a structured, panel-wide process that asks government buyers to provide standardised feedback against five performance criteria for each contract: delivery on schedule, quality of products/services, pricing & invoicing, compliance with contract, and professional practice. It is designed to enhance accountability, transparency and continuous improvement across panel sellers, with performance information shared with buyers to inform procurement decisions.

The DTA collects performance ‘ratings’ across contracts to identify trends and patterns of performance, consult with buyers and sellers, and take panel level management actions where warranted (e.g., request further information, initiate a cure plan and consider suspension or termination). Sellers receive notice and a right of reply where adverse ratings arise, and the DTA analyses data and engages with parties before recording final outcomes. The PMF strengthens panel and supplier oversight to augment, rather than replace, existing agency contract management practices.

More information on the PMF is available on our [website](#).

Existing Panel Mechanisms

Incorporation of the Supplier Code of Conduct and Notification of Significant Events

The DTA’s whole-of-government panels (the panels) place legal obligations on sellers to notify the DTA immediately of significant events, including any circumstance that could affect a supplier’s integrity or compliance. Examples of significant events include adverse comments or findings by a court, tribunal, commission, or professional body about the conduct or performance of the supplier or its personnel, which impacts or could reasonably be perceived to impact their professional capacity, capability, fitness, or reputation. It also incorporates serious matters such as the commencement of legal, regulatory, or disciplinary action that may negatively affect compliance with Commonwealth policy or legislation or harm the Commonwealth’s reputation. If a seller reports a significant event, the DTA may require remediation or, if that is not possible, remove the seller from the panel and agencies may terminate panel contracts.

The panels also incorporate the Commonwealth Supplier Code of Conduct (the Code), which requires sellers to uphold integrity and high professional standards, meet tax obligations, cooperate with audits, prevent involuntary labour, human rights and employee rights abuses. It places a positive duty on sellers to proactively prevent misconduct and maintain ethical governance and accountability frameworks. Sellers must demonstrate compliance when requested, and failure to adhere to the Code can lead to remediation or contract termination.

Commonwealth Procurement Rules (CPRs)

All DTA panels have also been established in accordance with the CPRs, including evaluating seller compliance with government policies. The CPRs allow for the exclusion of suppliers based on factors such as unethical employment practices, workplace health and safety breaches, environmental concerns, dishonest or unsafe practices (including tax avoidance, fraud, corruption, and modern slavery), and unresolved judicial decisions related

to employee entitlements. Suppliers can also be excluded for bankruptcy, insolvency, false declarations, or poor performance on previous contracts. Recent changes to the CPRs emphasise that ethical conduct must be explicitly considered when assessing value for money, permitting officials to exclude suppliers with a history of unethical behaviour or require contract mitigations to address such issues. Buying agencies have the same rights and obligations under the CPRs when conducting procurements through DTA panels.

Risks of Outright Debarment

The implementation of the DSUP and the PMF reflect our considered view that outright bans on suppliers can introduce significant operational risks and unintended consequences for the Australian Government. In the digital market, where unique or highly specialised services are often supplied by a limited number of providers, a permanent exclusion of a supplier may jeopardise continuity of essential services and escalate costs and risks. Furthermore, the dynamic nature of the technology sector—with frequent mergers, acquisitions and changes in subsidiary and reseller relationships—means that a blanket ban may inadvertently restrict access to critical or innovative capabilities that subsequently become available through previously debarred organisations.

A notable example of the long-term impacts of supplier debarment can be seen in the Queensland Government's ban on IBM following the Queensland Health Payroll System failure. In response to this high-profile incident, IBM was excluded from new government contracts for several years. While this action addressed immediate concerns about accountability, it also reduced competition in the market for large-scale IT services and contributed to a contraction of the local workforce. Even after the issues were resolved and the ban was eventually lifted, the effects on competition and capability persisted, highlighting the enduring impact of such measures on government procurement and the broader technology sector.

Importance of Defined Debarment Terms

Given these risks, it is crucial that any debarment regime is underpinned by clear terms, robust controls, and defined conditions for supplier return. Permanent or indefinite bans without periodic review can limit the government's access to emerging solutions, especially in fast-evolving technology markets. Transparent criteria for the duration of debarment, the scope of restrictions, and regular reassessment of supplier eligibility are essential to safeguard both integrity and market diversity.

Conclusion

In summary, while measures to uphold ethical conduct in government procurement are vital, a balanced approach is required to avoid unintended consequences. The DSUP and PMF are designed to provide proportionate, evidence-based responses that support integrity and competition. If considered, a debarment regime should include clear terms, appropriate controls, and defined pathways for supplier re-entry to balance government interests with the need for a diverse, innovative and competitive supplier ecosystem.