



Australian Government

AusAID

Lists of Laws and Guidelines for Contractors undertaking activities for AusAID

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In accordance with the clause headed “Compliance with Laws, Guidelines and Policies” in AusAID’s contracts, this document provides a list of some laws of the Commonwealth of Australia that may apply to the delivery of development aid to foreign countries and a list of guidelines that Contractors undertaking activities for AusAID must comply with.

The laws can be found at <http://www.comlaw.gov.au/> and also at the links provided below. Links to other Commonwealth agencies’ websites are also provided so that Contractors can source further relevant information.

Disclaimer:

The list of laws contained here does not purport to be all-inclusive. Contractors must ensure that they comply with all applicable laws, whether or not they are listed on this web page. The brief description below the title of each law is for general information purposes only and should not be relied on as an official description or interpretation of the law.

Compliance with the laws listed below does not in any way relieve the Contractor of the requirement to comply with all its contractual obligations to AusAID.

The contents of this web page may be amended by AusAID from time to time without notice.

Laws

A New Tax System (Goods and Services Tax) Act 1999

The ***A New Tax System (Goods and Services Tax) Act 1999*** established a value-added tax of 10% on most goods and services transactions in Australia.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/antsasta1999402/

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 premises and the administration of Australian Government laws and programs.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/ada2004174/ and <http://www.hreoc.gov.au/age/index.html>

Archives Act 1983*

The **Archives Act 1983** is concerned with the preservation and use of archival resources of the Commonwealth. 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; or
- 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.austlii.edu.au/au/legis/cth/consol_act/aa198398/ and <http://www.naa.gov.au/records-management/index.aspx>

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 may exercise these in relation to contractors to Australian Government agencies.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/aa1997157/ and <http://www.anao.gov.au/director/aboutus.cfm>.

Building and Construction Industry Improvement Act 2005 (Australian Government Building and Construction OHS Accreditation Scheme)*

The Australian Government Building and Construction OHS Accreditation Scheme is established under the **Building and Construction Industry Improvement Act 2005**. Accreditation under the scheme is a requirement of contracting for certain building and construction projects funded by the Australian Government.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/bacii2005527/ and <http://www.fsc.gov.au/ofsc/Theaccreditationscheme/>

Banking Act 1959

The **Banking Act 1959** sets out the laws dealing with banks and banking practices in Australia.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/ba195972/

Criminal Code Act 1995 (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 activity;
- fraud and forgery;
- bribery; and

- causing harm to, and impersonation and obstruction of, Commonwealth public officials.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/

Corporations Act 2001

The **Corporations Act 2001** sets out the laws dealing with business entities in Australia at federal and interstate level. It focuses primarily on companies, although it also covers some laws relating to other entities such as partnerships and managed investment schemes.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/

Crimes Act 1914*

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

- offences against the Government;
- offences by and against public officers;
- Commonwealth officers (which includes persons who perform services for or on behalf of the Australian Government which may include contractors) publishing or communicating facts or documents which come into their possession by virtue of their position and which it is their duty not to disclose; and
- miscellaneous offences including trespassing on Commonwealth land.

Where the Act applies, it excludes State and Territory law.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/

Disability Discrimination Act 1992*

The **Disability Discrimination Act 1992** makes it against the law to discriminate against someone if they have a disability in areas of life including employment, access to premises used by the public, the provision of goods, services and facilities and the administration of Commonwealth Government law and programs.

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.austlii.edu.au/au/legis/cth/consol_act/dda1992264/ and http://www.humanrights.gov.au/disability_rights/dda_guide/dda_guide.htm

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); and
- 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.austlii.edu.au/au/legis/cth/consol_act/epabca1995588/ and <http://www.environment.gov.au/epbc/about/index.html>

Equal Opportunity for Women in the Workplace Act 1999*

The **Equal Opportunity for Women in the Workplace Act 1999** requires:

- private sector companies;
- community organisations;
- non-government schools;
- unions;
- group training companies; and
- higher education institutions

with 100 or more people to establish a workplace program to remove the barriers to women entering and advancing in their organisation and report regularly to the Equal Opportunity for Women in the Workplace Agency (EOWA) on the effectiveness of the program.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/eofwitwa1999497/ and http://www.eeo.gov.au/About_EOWA/Overview_of_the_Act.asp

Financial Management and Accountability Act 1997*

The **Financial Management and Accountability Act 1997** provides the framework for the proper management of public money and public property.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/fmaaa1997321/ and http://www.finance.gov.au/FinFramework/fma_act.html.

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.

While the Act provides a broad right of access, confidentiality can be preserved where it is necessary for the protection of essential public interests or the private and business affairs of persons and organisations in respect of whom information is collected.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222/ and http://www.ag.gov.au/www/agd/agd.nsf/Page/Freedom_of_Information.

Human Rights and Equal Opportunity Commission Act 1986*

The **Human Rights and Equal Opportunity Commission Act 1986** empowers the Human Rights and Equal Opportunity 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 the Commonwealth.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/hraeoca1986512/ and http://www.hreoc.gov.au/human_rights/index.html

Occupational Health and Safety Act 1991*

Under the **Occupational Health and Safety Act 1991**, Australian Government employers and certain licensed corporations have a statutory duty to ensure the health and safety of their employees, as well

as third parties at or near the workplace. The Act is administered by Comcare, a Commonwealth statutory authority.

For further information on the Act see http://www.austlii.edu.au/au/legis/cth/consol_act/ohasa1991273/ and on other relevant legislation, codes of practice and national standards relating to occupational health and safety see http://www.comcare.gov.au/ohs_legislation

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.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/oa1976114/ and http://www.ombudsman.gov.au/commonwealth/publish.nsf/Content/aboutus_role.

Privacy Act 1988*

The **Privacy Act 1988** contains eleven Information Privacy Principles (IPPs) which apply to Australian (and ACT) Government agencies and ten National Privacy Principles (NPPs) which apply to all businesses with a turnover of \$3 million or more and a range of small businesses.

For further information on the IPPs see <http://www.privacy.gov.au/publications/ipps.html>, and for the NPPs see <http://www.privacy.gov.au/publications/npps01.html> and for the Act see http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/

Australian Government agencies are required to take contractual measures to ensure that contractors do not breach the IPPs. In addition contracted service providers are deemed to be organisations for the purposes of the Privacy Act and therefore subject to the NPPs in relation to their contracted work with the government. Where the IPPs are applied contractually to a contractor, the contractor is only required to comply with NPPs 7-10 in addition to the IPPs in performing the contract (as the IPPs effectively displace NPPs 1- 6).

Section 16F of the Act also has particular relevance to Australian Government contractors, as it contains a prohibition on the use or disclosure of personal information for direct marketing collected for the purpose of an Australian Government contract.

For further information see http://www.privacy.gov.au/publications/IS14_01.html.

Public Service Act 1999

The **Public Service Act 1999** is the principal Act governing the establishment and operation of, and employment in, the Australian Public Service.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/psa1999152/

Section 10 of the Act contains the **APS Values**. These values provide the basis and integrating element of the Australian Public Service, its professionalism, its integrity and its impartial and responsive service to the government of the day. The APS Values are available at <http://www.apsc.gov.au/values/index.html>

Section 13 of the Act contains the **APS Code of Conduct**, which sets clear standards of behaviour for Australian Public Servants, and requires them to behave at all times in a way which upholds the APS Values. All Australian Public Service employees are bound by the APS Code of Conduct. The Code is available at <http://www.apsc.gov.au/conduct/>

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, accessing public places and in advertising.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/ and http://www.humanrights.gov.au/racial_discrimination/index.html.

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.austlii.edu.au/au/legis/cth/consol_act/sda1984209/ and http://www.humanrights.gov.au/sex_discrimination/publication/guide/index.html

Trade Practices Act 1974

The **Trade Practices Act** aims to enhance the welfare of Australians by promoting competition and fair trading and providing for consumer protection. The Act deals with almost all aspects of the marketplace: the relationships between suppliers, wholesalers, retailers, competitors and customers. It covers unfair market practices, industry codes, mergers and acquisitions of companies, product safety, product labelling, price monitoring, and the regulation of industries such as telecommunications, gas, electricity and airports.

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/

Charter of the United Nations Act 1945 (United Nations Security Council Sanctions)*

Regulations made under the Charter of the United Nations Act 1945 (the Regulations) 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.

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

For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/cotuna1945288/ and http://www.dfat.gov.au/un/unsc_sanctions/index.html.

Workplace Relations Act 1996*

The **Workplace Relations Act 1996** provides a framework for workplace relations. For further information see http://www.austlii.edu.au/au/legis/cth/consol_act/wra1996220/ and <http://www.workplace.gov.au/workplace/Publications/Legislation/WRAAct/>

* Details of asterisked laws are taken from the Australian Government Solicitor's fact sheet: "Commonwealth legislation that may apply to Australian Government Contractors" available from <http://www.ags.gov.au/publications/agspubs/factsheets/ContractorFactSheetJune08.pdf>

Guidelines

Commonwealth Procurement Guidelines

The **Commonwealth Procurement Guidelines** (CPGs) are for all Australian Government agencies operating under the **Financial Management and Accountability Act 1997**. The guidelines clarify what is required and expected in Commonwealth acquisition of property and services. The procurement policy framework is based on the principles of value for money; efficient, effective and ethical use of resources; and accountability and transparency in Australian Government procurement activities. Clause 6.25 of the CPGs states that procurement of services ought to be conducted in a way that imposes as far as practicable the same level of accountability and responsibility on a service provider as would exist if the agency carried out the services itself.

The CPGs are available at <http://www.finance.gov.au/publications/fmg-series/procurement-guidelines/index.html>

Commonwealth Fraud Control Guidelines

The **Commonwealth Fraud Control Guidelines** outline the principles of fraud control within the Commonwealth and set national minimum standards to assist agencies carry out their responsibilities to combat fraud against their programs. The Guidelines outline agency responsibilities for fraud prevention, reporting of fraud information, fraud investigation case handling and training of agency fraud investigators and fraud prevention officers.

The Guidelines apply to all agencies that are subject to the **Financial Management and Accountability Act 1997** and **Commonwealth Authorities and Companies Act 1997** (CAC) agencies that are at least 50% budget funded for their operating costs. Other Government agencies are encouraged to comply with the Guidelines,

The Guidelines are available at http://www.ag.gov.au/www/agd/agd.nsf/Page/Fraudcontrol_CommonwealthFraudControlGuidelines-May2002

Australian Government Investigations Standards (AGIS)

The **Australian Government Investigations Standards (AGIS)** replaced the Commonwealth Fraud Investigations Standards Package (CFISP) in September 2003. AGIS has been developed for all Australian Government agencies to further enhance their investigative practices. All Australian Government agencies required to comply with the **Commonwealth Fraud Control Guidelines** must also comply with the minimum standards for investigations set out in AGIS. Agencies may use AGIS as a set of best practice standards for all investigations of offences under Commonwealth legislation. Provision of AGIS is currently restricted to Australian Government Agencies and private organisations with a demonstrated need for AGIS (for example accredited investigational training providers).

Lobbying Code of Conduct

Under the **Lobbying Code of Conduct**, any lobbyist who wishes to contact a Government representative for the purpose of lobbying activities must be registered and must agree to comply with the requirements of the Lobbying Code of Conduct. Government representatives are only allowed to deal with registered lobbyists. The Lobbying Code of Conduct defines a Government representative as including persons engaged as contractors or consultants by Australian Government agencies.

For further information see <http://lobbyists.pmc.gov.au/lobbyistsregister/>