



Consideration of relevant regulations and/or frameworks

1. Where regulations or regulatory frameworks apply to a procurement, officials should ensure they are followed.

CPRs Paragraph 10.18	Officials must make reasonable enquiries that the procurement is carried out considering relevant regulations and/or regulatory frameworks, including but not limited to tenderers' practices regarding: a. labour regulations, including ethical employment practices; b. occupational, health and safety; and c. environmental impacts.
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What is the purpose of this change?

2. To strengthen the existing requirement for suppliers to Government to comply with applicable regulations or regulatory frameworks.

What does it mean?

3. The new requirement at paragraph 10.18 of the CPRs reaffirms the Government's commitment to efficient, effective, economical and ethical procurement, which includes procurement officials making reasonable enquiries that their procurement is carried out considering relevant regulations and/or regulatory frameworks.
4. In achieving value for money, officials are already required to consider relevant financial and non-financial costs and benefits, including the environmental sustainability of proposed goods and services (refer paragraph 4.5 (e) of the CPRs). Further, paragraph 6.7 of the CPRs notes that entities should not seek to benefit from supplier practices that may be dishonest, unethical or unsafe.
5. The three examples specified in the new rule cover labour, OH&S, and environmental regulations. Where one of these areas of regulation is not applicable, or other forms of significant regulation apply, then officials should use their judgement to guide the appropriate enquiries.

What do procurement officials need to do?

6. When planning a procurement, officials should consider if any regulatory frameworks or regulations apply, for example the [National Construction Code](#) or the [Safework Australia](#) regulatory framework.

Note - paragraph 7.2 of the CPRs requires officials to maintain documentation of each procurement, this includes the process that was followed and relevant decisions.

7. To assist officials, below are some possible tools and options that may be used. Officials may:
- a. require that, as a part of their response, potential suppliers certify (e.g. via a statutory declaration or warranty) that they comply with the regulations and/or regulatory frameworks, as identified in the request documentation;
 - b. require that successful suppliers provide assurance of compliance with the regulations and/or regulatory frameworks, such as by suppliers providing an independent audit report;
 - c. undertake their own investigation to confirm that potential or preferred suppliers have not breached the regulations and/or regulatory frameworks, and do not have a judicial decision against them (not including decisions under appeal); and
 - d. require that potential suppliers demonstrate their sustainability credentials.
8. Officials should determine how best to satisfy the requirements of paragraph 10.18 of the CPRs depending on their procurement and entity requirements.
- Note - officials should be mindful of minimising red tape and additional costs to suppliers bidding for government contracts.*
9. **Paragraph 10.18 of the CPRs does not require comprehensive compliance auditing that would add materially to the cost for taxpayers.** The purpose is to ensure that there is reasonable evidence to give officials sufficient confidence in the veracity of any representations made.
10. The Attorney-General's Department website provides information for procurement officers on ethical procurement, outlines Commonwealth criminal laws relating to labour exploitation, details steps to help combat labour exploitation, and identifies industries that are likely to have a higher incidence of labour exploitation (refer [here](#)).
11. Entities may include appropriate clauses in contracts to ensure suppliers comply with relevant laws. An example of this is included in the [Commonwealth Contracting Suite](#).

Extract clause from Commonwealth Contracting Suite

C.C.19 Compliance with Laws:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Contract is performed.

Example

Entity A needs to procure cleaning services for multiple premises across Australia.

During the planning and scoping phase, Entity A determines that the successful tenderer will need to comply with local workplace laws.

When setting out the specifications in the statement of requirement, Entity A includes a requirement in the approach to market documentation that tenderers need to certify compliance (via a statutory declaration) with relevant workplace laws (for example, the Fair Work Act¹), in their response.

Note - details of whether a potential supplier has been involved in any breaches of workplace laws are on the Fair Work Ombudsman [website](#).

The term of the contract is 3 years. Given this, Entity A includes specific clauses in the resulting contract requiring:

- a. ongoing compliance with the local workplace laws during the term of the contract; and
- b. notification within 48 hours of any instances of non-compliance including information on action taken to rectify the issue.

¹ For more information on workplace laws refer to www.fairwork.gov.au this includes information on suitable questions to ask suppliers and model clauses for contracts.