

AIDN Advocacy and Policy Committee (APC) – Defining an “Australian Business” for Commonwealth Procurement

An Australian Business is one that meets all the following:

1. Registration
 - i. Is either a company registered under the Corporations Act 2001 (Cth), an enterprise with an Australian Business Number (ABN), or an enterprise carrying on business through a Permanent Establishment in Australia (collectively “the Business”);
 - ii. The Business is an Australian tax resident; and
 - iii. The Business has Australian tax resident employees.

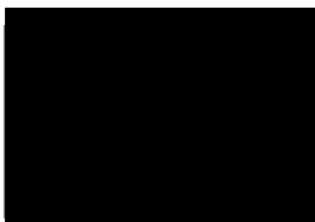
2. Ownership & Control
 - i. No foreign government, any single foreign person either alone or together with associates, or single foreign corporation either alone or together with associates, has a 20 per cent or more holding in the Business;
 - ii. Aggregate foreign ownership (including via any associates) in the Business, does not exceed 40 per cent;
 - iii. Without limiting the above, no foreign person(s), or foreign corporations(s) hold interests in the Business that amounts to control or power to direct the activities of the Business. (The assessment of control shall be broad and will include without limitation, any other financial instruments, supply chain relationships, control over critical intellectual property etc. which might add to a foreign shareholders effective level of influence in the Business);
 - iv. No foreign person(s) or foreign corporations(s) have the power, directly or indirectly, to control the election, appointment, or tenure of members of the Business’ board of directors (or similar governing body) or other management positions of the Business, or have the power to control or cause the direction of decisions or activities of the business, or have a veto-right;
 - v. At least 51% of the directors of the Business are Australian citizens whose principal place of residence is in Australia;
 - vi. The headquarters of the Business is located in Australia;



- vii. Key Intellectual Property supporting the goods and services offered by the Business is held within Australia;
- viii. Technical capabilities offered by the Business in relation to the Key Intellectual Property is provided by employees who are located in Australia; and,
- ix. The Business is not a subsidiary of a business that is not an Australian Business.

3. Confirmatory undertakings:

- i. Effective control for key decision making for the Business resides in Australia;
- ii. Each of a majority of directors (or similar governing body) of the Business meets all of the following conditions:
 - a. Is an Australian citizen;
 - b. Has her or his principal place of residence in Australia;
 - c. Is an Australian tax resident,
 - d. Is independent of any foreign shareholders in the Business; and
 - e. has no conflict/s of interests (or perceived conflict/s of interest) in relation to any foreign shareholders in the Business;
- iii. The Business continues to meet all qualifying criteria under Registration, and Ownership & Control (as outlined above); and
- iv. A key financial performance metric for the Board (or similar governing body) of the Business is to maximise the economic returns to shareholders (noting that a majority of shareholders are Australian residents for tax purposes as per 2ii.



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PO Box 5541 Kingston, ACT 2604



We acknowledge the Traditional Custodians of the land on which we work, and live.
We pay respect to Elders past, present and emerging.