

# Public Consultation on Defining an Australian Business for Commonwealth Procurement

Questions to be answered in our submission

**Due 25th October**

[Redacted]

**Relevant Docs:**

[Redacted]

- Submitted via the webform on the Finance website by 5pm, Friday 25 October 2024.
- Submit responses in Word or PDF format.

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## Draft Response to Defining an Australian Business for Commonwealth Procurement

### Business Location / Operations

**Should the Australian business definition include consideration of:**

- 1. The place of incorporation/establishment of the business?**  
Yes, the place of incorporation should be part of the definition as it establishes the legal framework in which a business operates and shows a commitment to being governed by Australian law. Incorporation in Australia should be prioritised to ensure the business aligns with national legal, regulatory, and ethical standards.
- 2. The location of a business' operations?**  
Yes, the location of operations should be considered, as it ensures businesses contribute to the Australian economy by providing employment opportunities and contributing to the local infrastructure. Prioritising businesses with substantial operational activities in Australia supports regional growth and stability.
- 3. The principal place of business?**  
Yes, businesses should disclose their principal place of business. A clearly defined principal place of business helps establish the physical presence and main area of operations, ensuring the Commonwealth deals with businesses that are grounded in Australia.
- 4. Whether the business is considered an Australian employer?**  
Yes, being an Australian employer should be a factor. This helps support businesses that contribute directly to local employment and demonstrates investment in the Australian workforce, fostering skills and job creation.

**Where businesses have operations in multiple locations, should all the locations be considered or just the principal place of business?** While the principal place of business should hold the most weight, operations in other locations should also be considered, especially if they have a substantial impact on employment and local economies in regional or remote areas.

**Advantages and Disadvantages of Including These Considerations:**

- **Advantages:**
  - Encourages businesses to establish operations within Australia, thus supporting the local economy.
  - Fosters job creation and skills development among Australian workers.
  - Provides clarity in determining which businesses are truly invested in the Australian economy.
- **Disadvantages:**
  - May exclude foreign businesses that have minimal but valuable operations in Australia.
  - Could increase the complexity of assessments for businesses with operations in multiple countries.

**Taxation, including Registering for an ABN and GST**

**Should the Australian business definition take into consideration a business' liability to pay income tax in Australia?**

Yes, the liability to pay income tax in Australia should be a crucial part of the definition. This ensures that businesses benefiting from Commonwealth procurement are also contributing to the Australian tax system, supporting national services and infrastructure.

**Should the definition include whether a business is an Australian resident for taxation purposes?**

Yes, tax residency status should be considered. It provides a clear indicator of a business's financial obligations to Australia and ensures compliance with tax laws, preventing profit shifting to lower-tax jurisdictions.

**Should the Australian business definition include consideration of whether a business discloses its country of tax residency?** Yes, transparency in tax residency is essential for determining a business's financial contributions to Australia. A business's tax obligations should be aligned with its operations, and full disclosure of tax residency helps maintain trust and integrity in the procurement process.

**Should businesses be required to register for an ABN and GST?** Yes, registration for an Australian Business Number (ABN) and GST is essential for demonstrating that a business operates within the Australian tax framework. It shows that the business is compliant with local regulations and contributes to the Australian economy.

**Advantages and Disadvantages of Including These Considerations:**

- **Advantages:**
  - Ensures businesses contribute to Australia's tax system.
  - Promotes fairness in procurement by ensuring all businesses are subject to similar tax requirements.
- **Disadvantages:**
  - Could discourage foreign-owned businesses from entering the Australian market.
  - May increase administrative burdens for businesses operating across multiple tax jurisdictions.

### **Ownership, including Nationality of Owners/Shareholders and Relationship to Other Businesses**

#### **Should the Australian business definition include consideration of the nationality of the owners/shareholders (including beneficial owners)?**

Yes, ownership should be considered, especially to ensure that the majority ownership or control of a business lies within Australia. This ensures that profits and decision-making are primarily based in Australia, benefiting the national economy.

#### **Should related businesses, such as parent companies, be considered?**

Yes, related businesses should be taken into account, especially where parent companies or subsidiaries may exert significant control or financial influence. This helps prevent the funnelling of profits offshore and ensures that the economic benefits of procurement stay within Australia.

#### **Does the percentage of ownership/shareholding need to be taken into account?**

Yes, the percentage of ownership matters. Setting a clear threshold for majority Australian ownership (e.g., more than 50%) would ensure that businesses benefiting from procurement are primarily controlled by Australians.

#### **Advantages and Disadvantages of Including These Considerations:**

- **Advantages:**
  - Ensures that profits generated from Commonwealth contracts remain in Australia.
  - Promotes Australian-owned businesses and supports the national economy.
- **Disadvantages:**
  - Could exclude foreign investments that might otherwise provide substantial benefits to Australia.
  - Complex ownership structures may make it difficult to determine the exact level of Australian ownership.

### **Other Considerations, including Compliance**

**Is a definition of an Australian business a useful addition to the Commonwealth procurement framework?** Yes, a clear and precise definition of an Australian business would provide greater transparency and ensure that businesses benefiting from

Commonwealth procurement contribute directly to the Australian economy. It would also create a level playing field for local businesses.

**Should the definition be applied to any procurement-connected policies?**

Yes, the definition should be consistently applied across all procurement-connected policies to ensure alignment and consistency in how businesses are evaluated and selected for Commonwealth contracts.

**Are there any elements of the definition that may create compliance costs for businesses?**

Yes, particularly the requirements around ownership structures and tax residency could create additional compliance costs for businesses that operate across borders or have complex ownership arrangements. However, these costs are necessary to maintain fairness and integrity in the procurement process.

**Are there additional factors that should be included in the definition?**

Yes, environmental and social contributions, such as sustainable business practices and community involvement, should also be considered in the definition, reflecting broader government objectives around corporate responsibility.

**Is there a combination of factors that should be included?**

Yes, a combination of incorporation, location of operations, tax residency, and ownership structure should be used to define an Australian business. This holistic approach ensures that businesses benefiting from Commonwealth procurement are genuinely contributing to the Australian economy.

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This response provides a balanced approach to defining an Australian business for Commonwealth procurement. By considering factors such as location, taxation, ownership, and compliance, it ensures that businesses benefiting from government contracts are aligned with national interests and contribute to the broader economic, social, and environmental goals of Australia.