

# Australian Constructors Association

## Defining an Australian Business for Commonwealth Procurement

25 October 2024

The Australian Constructors Association (ACA) welcomes the opportunity to provide a submission in response to the Defining and Australian Business for Commonwealth Procurement consultation paper.

### About us

Established in 1994, ACA is a trusted voice for the construction industry. Collectively, our members construct and service over 90 per cent of the value of major infrastructure projects built in Australia. Our vision is a sustainable construction industry that is a great place to work.

### Our Position

#### *The need for a definition must be established*

In seeking a definition of an Australian Business for use in relation to the Commonwealth Procurement Rules (CPRs) it must be clear why this definition is needed and for what purpose it will be implemented. The problem we are seeking to solve must be clear. This has not been articulated clearly in the Consultation Paper and it is therefore difficult to provide comment on whether the addition of a definition will be useful.

Any definition is relative to the context in which it is to be used and any outcome that is sought. This is demonstrated by the example definitions provided within the Consultation Paper. Each of these existing definitions are adequate and relevant for the scope of their application. Each definition seeks to establish whether an organisation is meaningfully operating within Australia for the application of specific legislation, regulation or other policy. As a result, there are differences between each definition.

#### *A definition should capture businesses operating within and contributing to Australia*

If the need for a definition can be demonstrated the ACA believes that any definition should focus on determining whether a business is indeed operating in Australia. As such, the inclusion of elements such as the organisation's ability to obtain an ABN and its liability to pay income tax align with what the ACA considers an appropriate definition of an Australian business. These are also elements that are easily reportable and verifiable, minimising the compliance burden to organisations that may be required to demonstrate that they meet the definition of an Australian Business as part of the procurement process.

Registration for GST is also relatively easy to prove and verify. However, this may not be appropriate for defining an Australian Business. The reasons that an organisation may or may not be registered are not necessarily related to the location of their operations and whether they are operating within Australia. It is also unlikely that including this measure will capture any organisation not captured by the ability to obtain an ABN or liable to pay income tax.

Any definition that is developed should not be focused on ownership structures, including the nationality of shareholders/ owners or related business such as parent companies. These factors have no relevance to whether an organisation is operating a business within Australia.

Organisations that are not wholly Australian owned, including those in the construction sector, make a significant contribution to the Australian economy. ACA member organisations contribute through the creation of numerous jobs – both within their own organisation and through their supply chains – they pay taxes and possibly most significantly, they provide the capability and capacity needed to deliver Australia’s infrastructure pipeline. These organisations operate within Australia, in accordance with all applicable laws, and are focused on building their Australian operations, to the benefit of Australia.

***A definition should not be discriminatory and should recognise the diversity of Australian businesses***

ACA supports the existing key rules that underpin the CPRs – achieving value for money, encouraging competition, and accountability and transparency. We also note the requirement for procurement to reflect Australia’s obligation in relation to free trade agreements and other relevant international obligations. Any definition that is developed should not compromise these objectives.

Government policies such as the Buy Australian Plan and Future Made in Australia seek to use procurement as a tool to support and build domestic capability. The Buy Australia Plan explicitly aims to improve the way government contracts work and to build domestic industry capability through the Australian Government’s purchasing power.

The primary objective of these policies is to support domestic industries and enable Australian industry to be involved in the delivery of goods and services procured by the Commonwealth Government. There is also a focus on supporting and creating domestic employment opportunities.

To the extent that a definition of an Australian Business is being sought to support policies such as these the definition must ensure that those businesses that are contributing to the outcomes sought by these policies are included. A definition must seek to be inclusive and recognise the diversity of organisations that comprise Australian industry.

Jon Davies

**Chief Executive Officer**