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22 October 2024

Department of Finance
1 Canberra Avenue
FORREST ACT 2603

By email: [REDACTED]

RE: Public Consultation on Defining an Australian Business for Commonwealth Procurement

The Australian Industry Group (Ai Group) welcomes the opportunity to provide feedback on the development of a definition of an Australian business for the purposes of Commonwealth procurement.

Ai Group is a peak national employer association representing and connecting thousands of businesses in a variety of industries and sectors across Australia. Our membership and affiliates include private sector employers large and small from more than 60,000 businesses employing over 1 million staff.

Ai Group supports the establishment of a definition of an Australia business within the Commonwealth procurement framework which is simple to administer, flexibly accommodates diverse procurement objectives, and does not create adverse or unintended consequences for businesses supplying to government.

The Commonwealth Procurement Rules (CPRs) provide rules for how government entities should undertake procurement activities. They are guided by the principles of achieving value-for-money, promoting competition, and ensuring accountability and transparency. They establish a non-discriminatory framework, which requires that businesses be treated equitably and not discriminated against because of size, degree of foreign affiliation or ownership, location, or the origin of their goods and services.

The CPRs also give effect to Australia's international procurement commitments, particularly those made under the World Trade Organisation Agreement on Government Procurement (GPA). This provides Australian businesses reciprocal access to the government procurement markets of the 47 current GPA members, which are collectively estimated at \$2.5 trillion in size.

In developing a definition of Australian businesses for the purposes of the CPRs, there are several factors which need to be given proper consideration:

First, it should be recognised that the CPRs are a baseline that often underlie additional procurement policies. While all procurements must comply with the CPRs, there are a range of further procurement-connected policies which establish specific rules for procurements in certain areas¹. These additional policies reflect a diversity of objectives, and recognise the specific procurement considerations that may arise in different policy and/or commercial contexts.

Establishing a definition of an Australian business in the CPRs must be consistent with the objectives of these additional procurement-related policies, and not impede or lead to unintended impacts upon their normal operation. It should also allow sufficient flexibility for the future reform of these policies as context and objectives change.

Second, any definition should be simple to use, and minimise the addition of regulatory burden for businesses participating in government procurement. The consultation paper envisages the definition being used to collect data on businesses. This will impose additional reporting and compliance requirements on those tendering for, and ultimately winning, government procurements. It is widely acknowledged that administrative requirements are a major barrier to SME participation in government procurement processes.

It is imperative that any definition is therefore simple, and can be easily implemented with minimal additional administrative overheads for businesses. A complex definition which imposes significant reporting and compliance obligations may have the unintended consequence of deterring Australian SMEs from procurement processes.

Third, any definition should give recognition to the need for flexibility across different policy objectives. As the consultation paper identifies in its review of definitions used elsewhere across the regulatory landscape, these are usually designed to reflect the context, objectives and intended scope of the policy in question.

For example, the definition in the *Fair Work Act 2009* includes the requirement that a business is a trading employer within the limits of the Commonwealth, reflecting the Act's scope as a piece of employment law. Australian tax law similarly includes residency rules as part of its definition, reflecting its use for identifying tax obligations.

¹ The list of procurement-connected policies is available at <https://www.finance.gov.au/government/procurement/buying-australian-government/procurement-connected-policies>. Several further procurement processes – including but not limited to defence procurement – also apply the s2.6 exemption in the CPRs.



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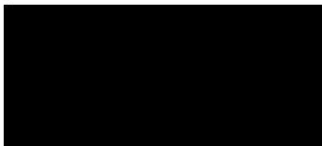
The same principle – that the definition of an Australian business should reflect the context, scope and objectives of a policy – should apply for government procurement. A one-size-fits-all definition will lack the appropriate degree of flexibility. A simple definition in the CPRs, which does not impose inappropriate or context-specific criteria, will ensure such flexibility is built in.

Given these considerations, Ai Group recommends adoption a definition of an Australian business in the CPRs as: Any business with an ABN/ACN that is actively trading in Australia. This definition is simple to administer, will not produce adverse or unintended consequences, and is sufficiently flexible to be compatible with related procurement policies and guidelines.

This approach is also consistent with the definitions used in several other contexts – including by the ABS, ATO, Defence, the *Australian Jobs Act 2013* and the *Corporations Act 2001* – thereby ensuring definitional compatibility across connected and relevant legal and administrative frameworks.

Should you wish to discuss the matters raised in this submission, please feel free to contact Dr Jeffrey Wilson at [REDACTED]

Sincerely yours,



Innes Willox
Chief Executive, Australian Industry Group