CMDT GROUP

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Department of Finance

Defining an Australian Business for Commonwealth Procurement – Public Consultation response from CMDT Group

About CMDT Group

CMDT Group is an Australian-owned and based technology company specialising in professional services (Crown Management Pty Ltd) and innovative cybersecurity solutions (Defendable Technologies Pty Ltd) for defence and government clients. Our mission is to deliver integrated communication technologies, creating sovereign solutions that enhance resilience and security within Australia.

Over the past three decades, we have played a pivotal role in modernising and integrating Army tactical communications. Our solutions have been essential for Australian soldiers, sailors, and aviators during combat and peacekeeping operations.

With approximately 100 employees across Australia, most of whom have backgrounds in science, technology, and engineering, we are committed to excellence. Recently, we internally invested in, and launched Auralis, a new sovereign dual-use technology to harden communication networks across defence, national security, and critical infrastructure.

Our core goal is to develop, build, and export security technology products, fostering Australian industrial sovereignty. By countering emerging threats, securing Australia's intellectual leadership, and maintaining information integrity, we stay agile in the face of strategic and technological changes.

Executive Summary

An agreed definition of an Australian Business for use across Commonwealth procurement is urgently required to foster a more competitive and fair economy, encouraging entrepreneurial and innovative enthusiasm. As outlined in the Public Consultation pre-reading, the divergence in definitions lacks meaningful impact to encourage investment in Australian goods and services.

The non-discriminatory approach to Commonwealth procurement highlights the legacy writing of the framework during a previously buoyant global market. Unfortunately, the pace of technological change and the rising tide of state and non-state threats has accelerated global trade and investment which no longer is contained within national boundaries.

A definition of an Australian Business is required to sharpen the Commonwealth Procurement Rules (CPRs), to add importance and weight to those that hold an Australian Business Number (ABN) (including contribution to the tax system) and acknowledge foreign investment into Australia must support the common good (not deteriorate the already fragile national security fabric).

A first step in the definition is to encourage an equal playing field for Australian based businesses who have the requisite commercial, legal, technical and financial ability (not their size) with a refreshed ABN which boosts confidence to both government and industry.

The degree of foreign affiliation or ownership, location, or the origin of the goods and services must be scrutinised with a greater level of assurance, but not exclude foreign investment (including the inflow of new capital, technology and expertise) to ensure risks (be that data security & privacy, control, compliance & legal, and third-party outsource services) are appropriately interrogated and understood during a commercial procurement.

Without the Australian Government as a valued customer and a fierce promoter of Australian Business to the world, complacent procurement practices which perpetuate non-discrimination obligations will continue to encourage the entrenched muscle memory to buy goods and services from international companies.

We must be proud to be recognised as an Australian Business like we once were when spotting a '*Made in Australia*' label and support Australia's interests.

Factors for consideration

Business Location / Operations

Should the Australian business definition include consideration of:

- **the place of incorporation/establishment of the business?**
- **the location of a business' operations?**
- **the principal place of business?**
- **whether the business is considered to be an Australian employer?**

Yes. The definition of an Australian Business must take into account; the place of incorporation/establishment, the location of business' operations, and the principal place of business.

Developing domestic economic growth and resilience, demands boosting confidence in Australian Businesses.

Where businesses have operations in multiple locations, should all the locations be considered, or just the principal place of business?

All locations need to be considered. Currently, a small business who seeks to expand domestically must consider the value of expansion in Australia due to the increased overhead in accounting for state-specific tax rules, for example:

- **Payroll Tax** – varies by state and territory,
    - the Australian Capital Territory (ACT) as the highest payroll tax rate at 6.85% (with notably the highest threshold which may not need to be paid),
    - The Queensland tax rate is 4.75% for businesses with annual wages over $1.3m
    - Victoria, the standard payroll tax rate is 4.85%, but regional businesses benefit from a reduced rate of 1.2125%.
- **Stamp Duty and Land Tax** – also state-specific.

- **Income Tax** – whilst set by the federal government, states can have different thresholds and concessions that affect how much tax a small business pays.
- **Other State-Specific Taxes**
    - Motor Vehicle Duty – varies by state, applied when registering or transferring a vehicle.
    - Insurance Duty – applied to insurance premiums, with rates varying by state.

The definition of an Australian Businesses must acknowledge the investment by Australian companies to navigate and comply to the variable tax thresholds despite operating under a federally issued ABN which provides no additional benefits or exemptions.

What are the advantages or disadvantages of including the above considerations in the definition?

The advantages of considering location as a factor are as follows:

- Non-discriminatory CPR framework
- The degree of foreign affiliation or ownership, location or the origin of their goods and services is a key element in an assessment of suitability by government agencies. The threat of utilizing imported good and services is lack of regulatory control. It is difficult for local industry to compete with foreign imports.
- Currently, multi-nationals meet regulatory compliance by holding an ABN. Enforcing tax laws across borders is complex. Multi-nationals (including Australian companies) are able to use profit shifting to move profits from high tax jurisdictions to low-tax or no-tax jurisdictions through the transfer pricing where goods and services are traded between subsidiaries at manipulated prices to reduce taxable income in high-tax countries.
- The prominent challenge in the development of Australian tech is the Australian Governments use of Commonwealth procurement process. The Australian Government established panel and supply agreements to streamline interactions with governmental bodies. However, there lies a concern. These policies often prioritise multinational corporations (evoking the non-discrimination elements of the procurement framework), inadvertently overshadowing opportunities for local Australian businesses. Rather than fostering local industry participation, the government nudges Australian companies into sub-contractor or supplier roles beneath foreign-owned giants.
- This unintentionally widens the gap between Australian Government and domestic businesses, reinforcing Australia's position as a mere customer for international companies.
- Difficulty of taxing multinationals and the national security risks associated with sensitive sectors or critical infrastructure assets.

The disadvantages of considering location as a factor are as follows:

- Overreach and Government intervention – a definition which excludes location to promote competition has the potential to represent an overreach of government power, potentially stifling business innovation and growth, perpetuating the non-discrimination clause currently in effect.

- Excess regulations – could lead to inefficiencies and hinder the competitive market dynamic it aims to promote. For example, regulating.

Income tax

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

Yes. The definition of an Australian business must contribute to the income tax system.

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

No. However, the Australian business definition must include a requirement to be an Australian resident for taxation purposes.

Should the Australian business definition take into consideration a business' disclosure as to their country of tax residency?

Yes. The Australian business definition should take into consideration a business' disclosure as to their country of tax residency.

What are the advantages or disadvantages of including either of these considerations in the definition?

The advantages of including income tax considerations in the definition are as follows:

- Currently, Australia enforces Double Tax Agreements (DTAs) with over 40 countries, including the United States, United Kingdom, Canada, China, India, Germany and Japan which significantly reduces tax liability allowing income taxed in one country to be credited against the tax liability in the other country.
- Government commitments such as the '*Future Made in Australia*' plan primarily aims to support Australian businesses and industries. However, it does not explicitly exclude foreign companies from participating. The key requirement is that the projects and investments align with the plan's objectives, such as boosting local manufacturing, renewable energy, and critical minerals processing. Foreign companies can potentially access support if they contribute to these goals and demonstrate significant benefits to the Australian economy and community. This includes creating jobs, fostering innovation, and enhancing Australia's economic resilience.

The disadvantages for taking into consideration a business is an Australian resident for taxation or their country of tax residency, are as follows:

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Carrying on an enterprise – ABN and GST registration

Should the Australian business definition include a requirement for businesses to be registered for an ABN?

Yes. As an active trading entity an ABN should be required for all contributing companies to the tax system.

Should the Australian business definition include consideration of whether a business is registered for GST?

No. The extant regulatory requirements demand a company requires an ABN to be compliant with the ATO, therefore the entity is remitting GST.

What are the advantages or disadvantages of including these considerations in the definition?

Advantages for carrying on an enterprise – ABN and GST registration are as follows:

- An ABN should pay income tax on income that is effectively connected with an Australian business.

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 the beneficial owners)?**
- **related businesses, such as parent companies?**

The Australian Business definition must take into account nationality of the owners/shareholders, including related businesses (such as parent companies).

The degree of foreign affiliation or ownership, location, or the origin of the goods and services must be scrutinized with a greater level of assurance. This process must not exclude foreign investment (eg. the inflow of new capital, technology and expertise), but ensure possible risks (be that data security & privacy, control, compliance & legal, and third-party outsource services) are appropriately interrogated and understood prior to a commercial procurement to ensure compliance standards are met and maintained.

What are the advantages or disadvantages of including the above considerations in the definition?

Advantages for including foreign ownership in the Australian Business definition are as follows:

- Qualifying for an ABN needs to be more than a compliance procedure. The ABN must enhance the professional image of a business, boost its credibility within government and other nations.
- Trade is critical to our success as a nation, but trade agreements and tariffs must be updated to complement and encourage an ‘ambitious’ local content requirement to creates a competitive and resilient Australian market.
- An ABN is currently a regulatory requirement to streamline reporting and communications with Government agencies, including the ATO and other government

bodies (eg. for legal operations, efficient tax management and access to financial services).

- Current tax regulations, such as 'hybrid mismatch rules' prevent multinational companies from gaining an unfair competitive advantage by avoiding income tax or obtaining double tax benefits through hybrid mismatch arrangements. These rules seek to provide fair competition, efficiency and transparency.

Disadvantages for including foreign ownership in the Australian Business definition are as follows:

- Reduced foreign investment – potential impact resulting in slower economic growth.
- Limited access to global market – more difficult to penetrate international markets, reduce export revenues.
- Decreased competition – potentially result in higher prices and less innovation. Competition is needed to drive efficiency and productivity improvements.
- Loss of technological advancement – pace slow
- Downturn in employment – multi-nationals are significant employers, especially those sectors heavily reliant on foreign investment.
- Economic resilience – a diverse economy with local and international is more resilient.

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

Yes. As per the current Foreign Investment Review Board (FIRB) regulations; the allowed percentage of foreign ownership varies depending on the type of investment and the investor, for example, general foreign investors - FIRB approval is needed if they acquire a substantial interest which is defined as 20% or more in an Australian entity.

For the extant foreign investment policy framework to work, foreign investment approval requires national laws and regulations, together with purpose-built and resources regulators to review and enforce the FIRB.

Other considerations, including compliance.

Do you consider that a definition of an Australian business will be a useful addition to the Commonwealth procurement framework, noting the scope and context set out in this paper?

Yes. It is critical that a definition of Australian business is included in the Commonwealth procurement framework to educate and reinforce to commercial and procurement officers the value of Australian Businesses.

The prominent challenge in the development of Australian tech is the Australian Governments use of the Commonwealth procurement framework. Government established panel and supply agreements were created to streamline interactions with governmental bodies. However, there lies the concern. These policies often prioritise multinational corporations (evoking the non-discrimination elements of the procurement framework), inadvertently overshadowing opportunities for recognised Australian Business. Rather than fostering local industry participation, the government nudges Australian companies into sub-contractor or supplier roles beneath foreign-owned giants.

This use of the procurement framework unintentionally widens the gap between Australian Government and domestic businesses, reinforcing Australia's position as a mere customer for international companies.

Should the definition be applied to any of the procurement connected policies?

Yes. The definition should be adopted across government. The challenge – the definition cannot be too vague, nor be too complex to apply.

Are there any elements of a potential definition that may create a compliance cost to business?

The possible compliance cost to business for introducing an Australian Business definition should be minimal, as to not disadvantage or create complexity for the business.

If so, are there options for mitigating that cost?

Options for mitigating the cost are as follows:

- Suitable timeframes to respond.
- A graded fee based on business structure.
- Based on the percentage of ownership held.