



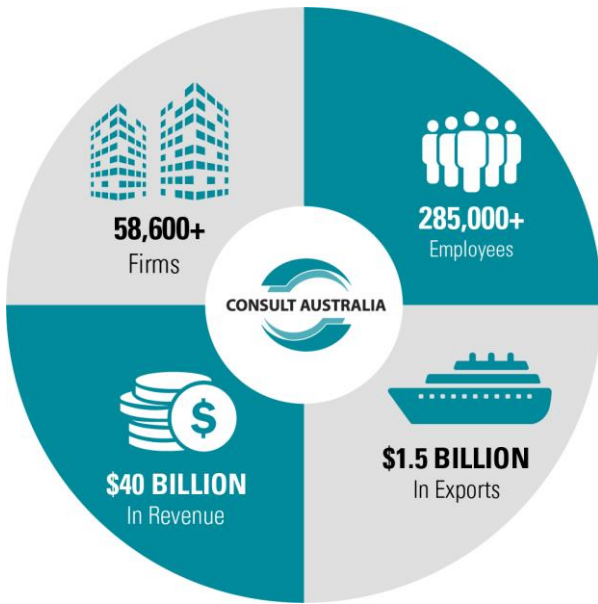
**October 2024**  
**Defining an Australian  
Business for Commonwealth  
Procurement**

SUBMISSION TO DEPARTMENT OF FINANCE

Consult Australia

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## About us

Consult Australia is the industry association representing consulting businesses in design, advisory and engineering, an industry comprised of over 58,600 businesses across Australia. This includes some of Australia’s top 500 companies and many small businesses (97%). Our members provide solutions for individual consumers through to major companies in the private sector and across all tiers of government. Our industry directly employs over 285,000 people in architectural, engineering and technical services and many more in advisory and business support. It is also a job creator for the Australian economy, the services we provide unlock many more jobs across the construction industry and the broader community.

### Our members include:



A full membership list is available on our [website](#).

Consult Australia welcomes the opportunity to contribute to the consultation on 'Defining an Australian Business for Commonwealth Procurement'.

The consultation paper states that a standard definition of an Australian business does not exist, and Treasury proposes to develop a definition of an Australian Business for Commonwealth procurement use. However, the paper does not make clear the need for a standard definition and if the definition would be used for other purposes. The consultation paper provides examples of existing definitions for an Australian business, including the various definitions of a small business. Each of the definitions currently in use have been designed to be used for a specific purpose. We recommend the purpose of having a standard definition is clearly articulated before defining an Australian business for Commonwealth procurement.

Without clarity on the purpose of the Australian business definition, our submission is necessarily limited and only suggests key considerations for the definition process. We look forward to continuing to work with the Commonwealth government on procurement reform.

### Application of a definition

The last section of the consultation paper asks if a definition of an Australian business will be a useful addition to the Commonwealth procurement framework. However, the consultation paper does not make clear the objective or the desired outcomes by having such a definition. Without this information, it is difficult for Consult Australia to provide detailed feedback.

Consult Australia recommends the objective is decided and communicated to guide the definition process. It is not clear how a definition will help facilitate compliance with the rules and achievement of Commonwealth procurement objectives. If a definition is included, a narrow definition may be considered discriminatory and unintentionally limit the number of Australian businesses that can be procured under the Commonwealth procurement framework.

The consultation paper also asks if the definition should be applied to any of the procurement connected policies. Consult Australia considers that this would depend on the objective and purpose of each policy and if the targeted outcomes only relate to Australian businesses.

### Simplicity

A narrow and detailed definition of an Australian business may unintentionally exclude valid businesses, and/or result in unnecessary costs for a business to qualify. Consult Australia members are design, advisory and engineering consulting businesses of varying sizes that provide services in various jurisdictions (including overseas jurisdictions) not just where they have a physical presence. We foresee one potential unintended consequence of a definition that is too narrow or has a location basis – an increase in special purpose vehicles to meet the definition and to continue to do business in Australia.

Consult Australia recommends the Australian government either:

- aim for a sufficiently broad definition that looks to capture the different types of Australian businesses, operating models and the digital business world; or
- include various indicators for an Australian business, where a compliant business could meet one or more of the indicators.

### International procurement

The paper outlines the importance of Australia's international procurement obligations and non-discriminatory requirements in the Commonwealth Procurement Rules. Acknowledging these, and the multicultural nature of Australia, Consult Australia is not supportive of the definition including any criteria on nationality.

Consult Australia refers to section 8 of the [Foreign Trade and Takeover Act 1975 \(Cth\)](#), which states that '*an Australian business is a business that is carried on wholly or partly in Australia in anticipation of profit or gain*'. [Guidance note 7: Business Investments](#), page 24, provides further

information on 'What is starting to carry on an Australian business'. This framing is preferable to criteria on nationality.

### Presence

Consult Australia recommends that a focus on whether the business has a presence or connection to Australia is preferable. The following presence elements could form some of the indicators suggested above (instead of a definition):

- The business has a physical presence in Australia, such as locally engaged employees or a lease of office space anywhere in Australia.
- The business has regulatory approvals to operate in Australia, such as the requirement to have an Australian Business Number.
- There is a requirement on the business to comply with Australian law.
- The business pays tax in Australia.

The above factors can be demonstrated in several ways and provide sufficient information to assess if the business is doing business in Australia. Using these factors (rather than a strict definition) would be broad enough to capture different business models, meet non-discriminatory requirements and avoid additional compliance costs.

Consult Australia does not support the inclusion or consideration of specific factors that unnecessarily limit Australian businesses and impose unnecessary compliance burdens, such as: place of incorporation, principal place of business, percentage of ownership/ shareholding and taxation specifics. For example, ownership does not provide information about the businesses' contribution to the Australian economy. Further, specific requirement on the location of business operations could exclude small businesses who do not have a physical presence in every jurisdiction, or provide services in Australia (and contributing to the Australian economy) from outside the country (e.g. from elsewhere in Australasia).

## Connect with us



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