



25 October 2024

Department of Finance
1 Canberra Avenue
Forrest ACT 2603

Dear Sir/Madam,

RE: RESPONSE TO THE PUBLIC CONSULTATION ON DEFINING AN AUSTRALIAN BUSINESS FOR COMMONWEALTH PROCUREMENT

Thank you for the opportunity to respond to the Department's public consultation on the definition of an *Australian Business* for Commonwealth procurement. Our responses below are arranged according to the page locations of the Department's published *Defining an Australian Business for Commonwealth Procurement*.

Page 1

'...Australian Government does not have a standard definition of an Australian business that is applicable to all situations. Instead, there are a range of Australian business-related definitions that have been adopted for different purposes, including at the federal, and state and territory level.'

Response: Any definition must be compatible across federal, state and territorial level.

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The CPRs give effect to Australia's international procurement obligations, as well as Government policy. The CPRs specify that the Australian Government's procurement framework is non-discriminatory and that all potential suppliers to government must, subject to the CPRs, be treated equitably based on their commercial, legal, technical and financial abilities and not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their goods and services.

Response: Why would the CPRs not discriminate to positively benefit Australian businesses, especially SMEs? Treating all businesses equally immediately disadvantages SMEs, who lack the 'commercial, legal, technical and financial

abilities' depth when competing with large companies, especially international or multinational companies.

The exemption for the 'protection of essential security interests' should be more generally applied to benefit Australian-owned and operated businesses supplying Defence and national security government buyers.

Page 3

Page 3 notes two exemptions to open tendering that allows limited tendering from SMEs including 'procurement of goods and services valued up to \$500,000 from an SME'.

Response: Limiting this exemption to \$500,000 value significantly diminishes its effect. There are relatively few government contacts valued at less than \$500,000. In instances where ATL consultancy is being procured this equates to about 1.5 FTE for one year. This limit should be increased to \$5m. The beneficiary of these arrangements should also be limited to Australian citizens.

Looking at the procurement framework more broadly, the definition of an Australian business may be relevant to procurement-connected policies that refer to Australian businesses, such as the Australian Industry Participation policy which currently specifies a business is Australian if it has an Australian Business Number (ABN) or an Australian Company Number (ACN).

Response: We strongly agree that defining an Australian business as one that has an ABN or ACN is inappropriate and very easily achieved by foreign entities entering the Australian market.

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- Gives confidence to both government and industry.
- Is clear, understandable and simple enough to easily apply.
- Robust enough to exclude businesses that are not genuinely Australian, while not being overly complex or difficult for businesses to meet.
- Suitable for procurement reporting (including procurement-connected policies, where relevant).
- Flexible to allow alignment (or at least not be in conflict) with existing definitions used at federal and states and territories levels and with future government priorities.
- Not susceptible to circumvention through inter-company arrangements

Response: We agree with the criteria proposed for defining an Australian business.

Pages 3 - 7

Response: Provide a summary of how different Government departments define Australian businesses.

We agree with the ATO’s approach to defining Australian businesses, which appears to be the most robust of all Government approaches described. The definition used by the DoD and incorporated into the DIDS appears to be the loosest. It provides virtually no limitation to what may be considered an Australian business. Any foreign company can essentially be considered an Australian business if it gains an ABN. This significantly assists foreign companies and disadvantages Australian SMEs.

Page 8 - Business Location - Questions

Questions	Responses
Should the Australian business definition include consideration of:	
o the place of incorporation/establishment of the business?	Yes
o the location of a business’ operations?	Yes
o the principal place of business?	Yes
o whether the business is considered to be an Australian employer?	Yes
• Where businesses have operations in multiple locations, should all the locations be considered, or just the principal place of business?	All locations should be considered. This should also be applied to Australian subsidiaries of international companies.
• What are the advantages or disadvantages of including the above considerations in the definition?	The advantage of considering these factors is that knowing the true nature of the business (e.g., Australian established, operated and owned entity, subsidiary of an international parent company or subsidiary of a multi-national company) would help to confirm what benefit they would provide in developing sovereign industry if contracts were awarded to them.

Page 8 – Income Tax

• Should the Australian business definition take into consideration a business’ liability to pay income tax in Australia?	Yes
• Should the Australian business definition include consideration of whether a business is an Australian resident for taxation purposes?	Yes
• Should the Australian business definition take into consideration a business’	Yes

disclosure as to their country of tax residency?	
<ul style="list-style-type: none"> What are the advantages or disadvantages of including either of these considerations in the definition? 	<p>Requiring a company to pay income tax and to be transparent in its tax arrangements will ensure foreign companies do not have an unfair advantage compared to local companies, thereby helping to develop sovereign Australian industry. It will also ensure foreign companies operating in Australia pay their fair share in developing Australia as a sovereign country and its society.</p>

Page 9 – 10 - ABN and GST Registration

<ul style="list-style-type: none"> Should the Australian business definition include a requirement for businesses to be registered for an ABN? 	<p>Yes, but this should NOT be limit of how an Australian business is defined, as it essentially is under the DIDS.</p>
<ul style="list-style-type: none"> Should the Australian business definition include consideration of whether a business is registered for GST? 	<p>Yes</p>
<ul style="list-style-type: none"> What are the advantages or disadvantages of including these considerations in the definition? 	<p>These criteria are essential but should be considered one of many criteria to confirm a truly Australian business.</p>

Page 10 – Ownership

<ul style="list-style-type: none"> Should the Australian business definition include consideration of: 	
<ul style="list-style-type: none"> <ul style="list-style-type: none"> the nationality of the owners/shareholders (including the beneficial owners)? 	<p>Yes</p>
<ul style="list-style-type: none"> <ul style="list-style-type: none"> related businesses, such as parent companies? 	<p>Yes</p>
<ul style="list-style-type: none"> What are the advantages or disadvantages of including the above considerations in the definition? 	<p>Requiring confirmation of who owns the company, and their nationality will help identify companies that claim to be Australian when in fact they are foreign entities operating in Australia and transferring much of the benefit of Australian Government spending overseas.</p>

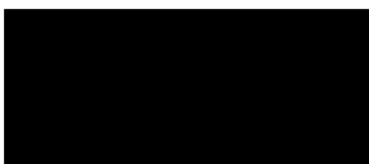
<ul style="list-style-type: none"> Does the percentage of the ownership/shareholding need to be taken into account? 	<p>Yes, although ownership should be majority Australian-owned to be considered an Australian company.</p>
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Page 10-11 – Other Considerations

<ul style="list-style-type: none"> 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? 	<p>Yes.</p>
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Should the definition be applied to any of the procurement connected policies? 	<p>Yes.</p>
<ul style="list-style-type: none"> Are there any elements of a potential definition that may create a compliance cost to business? If so, are there options for mitigating that cost? 	<p>Care should be taken to ensure the burden of establishing a company's bona fides are NOT levied on SMEs that lack the capacity to develop them or to comply with an ongoing compliance regime. This could be achieved by excluding all SMEs from this arrangement.</p>
<ul style="list-style-type: none"> Are there additional factors, not listed above, that you consider should be included in the definition of an Australian business? 	<p>Not at this time.</p>
<ul style="list-style-type: none"> Is there a combination of factors that you consider should be included in the definition? 	<p>Yes: taxation, ownership, legal status, etc arrangements.</p>
<ul style="list-style-type: none"> <ul style="list-style-type: none"> What is your reasoning for the combination of factors? 	<p>A stronger likelihood of establishing the extent Australian sovereignty through aggregated data.</p>
<ul style="list-style-type: none"> Noting the scope and context set out in this paper, are there other instances where the data collected through any such definition could be used to inform other Australian Government activities? 	<p>None.</p>

We trust our above responses assist the Department in its aims on redefining an 'Australian Business' for Commonwealth procurement.

Yours faithfully,



SME Gateway