

Department of Finance
One Canberra Avenue
FORREST ACT 2603

Via email (ProcurementConsultation@finance.gov.au)

SYPAQ Systems submission to "Defining an Australian Business for Commonwealth Procurement" Public Consultation

SYPAQ Systems welcomes the opportunity to provide comment on the Department of Finance (the Department) public consultation on 'Defining an Australian Business for Commonwealth Procurement'.

By way of background, SYPAQ is an Australian engineering and systems integration company. Since 1992, SYPAQ has been providing advanced management and technology consulting services, systems integration and software application development and support services across a broad range of technologies in several industry sectors including Defence and Aerospace, Information and Communication Technology (ICT), State and Federal Government and Private Enterprise.

SYPAQ supports the creation of a definition for what would constitute an Australian Business as part of the Commonwealth Procurement Rules (the Rules). As the discussion paper notes, there has been difficulty in obtaining a standard definition of 'Australian Business' under the current rules. Whilst noting that Australian Government procurement policy is and will remain non-discriminatory, the creation of a set definition for what would constitute an Australian business would allow Australian companies to approach government procurement processes with a greater degree of certainty than under the current rules.

Business Location/Operation

SYPAQ notes the Department is seeking to create a definition that gives confidence to both government and industry as well as being clear, understandable and simple enough to be easily applied, and agrees with this approach. As an Australian founder, owned and operated business, SYPAQ believes that the creation of a standard definition surrounding Australian businesses should be designed in a way that streamlines and enhances the ability for businesses such as SYPAQ to fairly compete and interact with the Commonwealth Procurement Rules.

SYPAQ notes that in the framework for the Defence Industry Development Strategy (DIDS) and the Australian Standard for Defence Contracting (ASDEFCON) guidelines, government is required to consider additional factors when assessing defence contracts, including the inclusion of metrics around whether a potential contractor is a significant Australian employer or that a proportion of its workforce consists of Australian citizens. These metrics are designed to incentivise growth in local workforces, in turn facilitating domestic economic growth and job creation. SYPAQ recommends that in the development of a definition of 'Australian Business' as part of the Commonwealth Procurement Rules, the Department should consider its need to encourage greater innovation and investment in Australian-based industry.

To meet this end, the Department should seek to include requirements for a registered place of business to be in Australia and should investigate the need for a set proportion of a workforce to be domestic. Similarly, to add further emphasis on the need for strong domestic links within a business in order to meet a new definition, the Department is recommended to consider the need for certain senior executives or a proportion of board members to be Australian citizens in order to qualify as an Australian business for the purposes of the rules.

Further, SYPAQ recommends the introduction of a taxonomy that clearly defines the 3 classifications of Australian Business:

- **Indigenous** - as per current definition pertaining to >50% indigenous ownership.
- **Sovereign** - where control of the entity is wholly Australian, with no overseas parent or other Foreign Ownerships, Control or Influence (FOCI), and as such all business assets (eg: balance sheet, profits, intellectual property, and business strategic instruments (eg: Board and Executive, workforce,

manufacturing infrastructure etc) reside wholly in Australia. This ensures primacy of Australian interests in times of urgency.

- **Australian** – where the business is registered in Australia, and a minimum proportion of the Board, Executive and Workforces resides in Australia.

Recommendation 1: *The Department of Finance ensure that a clear taxonomy that addresses both economic impact and sovereign control be developed in the proposed definition of "Australian Business", to include the classifications of Indigenous, Sovereign and Australian businesses.*

Recommendation 2: *The Department of Finance ensure that a business is registered in Australia to be eligible for the proposed definition of "Australian Business".*

Recommendation 3: *The Department of Finance ensure that clear requirements are developed for a proportion of workforce to be located in Australia for a business to be eligible for the proposed definitions of the three classifications of "Australian Business",*

Recommendation 4: *The Department of Finance ensure that clear requirements are developed for certain senior executives and/or a proportion of board members to be Australian Citizens in order for a business to be eligible for the proposed definition of "Australian Business".*

Recommendation 5: *The Department of Finance ensure that clear requirements are developed for genuine IP development and ownership to reside in Australia in order for a business to be eligible for the proposed definition of "Australian Business".*

Recommendation 6: *The Department of Finance ensure that Commonwealth Procurement Rules appropriately reflects the economic, national security and national resilience benefits of each classification of "Australian Business".*

Taxation and Financials

As noted above, SYPAQ is supportive of the need for a business to have and to be able to prove strong domestic links prior to being categorised as an Australian Business for the purposes of the Commonwealth Procurement Rules. Financial reporting and taxation data could be similarly used as a test for the Department to determine a business's eligibility. This could include whether a business pays income tax in Australia and whether a business is registered for Goods and Services Tax (GST), adding an additional layer of verification over the sole requirement for a business to have an Australian registered address. This could be enhanced by ensuring that a business under consideration of the proposed definition has a registered and valid Australian Business Number (ABN). It would similarly be useful for the Department to ensure that a business's country of tax residency is Australia prior to consideration under the proposed definition. SYPAQ recommends that both aforementioned points should be considered by the Department in creating a standardised definition for "Australian Business".

Recommendation 7: *The Department of Finance consider whether a business has a registered ABN, is registered for GST and/or is registered in Australia for tax purposes prior to recognition as an "Australian Business" under the proposed new definition.*

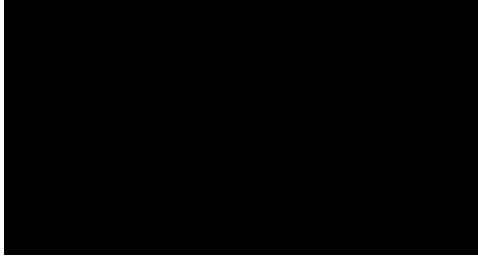
Ownership and Foreign Business Relationships

Whilst taxation information alone may not be informative enough to provide for a solid definition, related businesses (such as whether the Australian entity is part of an international parent company) and ownership/shareholder structure is a useful tool for the Department to use in forming a definition of an Australian Business. Whilst noting this, it is important that a definition does not disincentive foreign investment in Australian business, and a balance must be struck between supporting domestic operations and facilitating the competitiveness of Australian business globally. SYPAQ would recommend that the Department consider the ownership structure in the determination of an 'Australian Business' in the context of the definition applying to businesses that are in majority Australian-owned, whilst still allowing for flexibility in ownership models rather than a specific set percentage and inclusive of other caveats, including for example if a business has a significant proportion of its workforce or manufacturing capability located in Australia.

Recommendation 8: *The Department of Finance consider the ownership structure of a business in whether it is able to meet the definition of "Australian Business"*

SYPAQ again thanks the Department for the ability to provide comment on the public consultation on 'Defining an Australian Business for Commonwealth Procurement'. Should you require any further information, please contact me at [REDACTED]

Best regards,



- SYPAQ Group

Summary of Recommendations

- 1 — Recommendation 1: The Department of Finance ensure that a clear taxonomy that addresses both economic impact and sovereign control be developed in the proposed definition of "Australian Business", to include the classifications of Indigenous, Sovereign and Australian businesses.
- 2 — Recommendation 2: The Department of Finance ensure that a business is registered in Australia to be eligible for the proposed definition of "Australian Business".
- 3 — Recommendation 3: The Department of Finance ensure that clear requirements are developed for a proportion of workforce to be located in Australia for a business to be eligible for the proposed definitions of the three classifications of "Australian Business",
- 4 — Recommendation 4: The Department of Finance ensure that clear requirements are developed for certain senior executives and/or a proportion of board members to be Australian Citizens in order for a business to be eligible for the proposed definition of "Australian Business".
- 5 — Recommendation 5: The Department of Finance ensure that clear requirements are developed for genuine IP development and ownership to reside in Australia in order for a business to be eligible for the proposed definition of "Australian Business".
- 6 — Recommendation 6: The Department of Finance ensure that Commonwealth Procurement Rules appropriately reflects the economic, national security and national resilience benefits of each classification of "Australian Business".
- 7 — Recommendation 7: The Department of Finance consider whether a business has a registered ABN, is registered for GST and/or is registered in Australia for tax purposes prior to recognition as an "Australian Business" under the proposed new definition.
- 8 — Recommendation 8: The Department of Finance consider the ownership structure of a business in whether it is able to meet the definition of "Australian Business"