



Department of Finance  
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Australia

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**Subject: Response to Public Consultation on Defining an Australian Business for Commonwealth Procurement**

Vault, an Australian company dedicated to providing secure and sovereign cloud services, is honoured to contribute to the government's commitment to reinforce the Commonwealth Procurement Rules (CPRs). Vault is a strong proponent of the need to improve legislations, regulations and government policies on procurement; and we recognise the importance of a more transparent, clearer, fairer, and stronger guidance in the Commonwealth Procurement Rules (CPRs).

We understand that the The Australian Government is working to establish a clear and unified definition of an Australian business that is consistent across Australian Government legislation or policy, and applicable at federal, state, and territory levels. The purpose of this document is to put forward insights to aid in the development of a definition for an Australian business, for use within the procurement framework, specifically on factors for potential consideration in the definition.

**Key Highlights**

- There are exemptions, including national security, to Australia's free trade obligations, for this reason the definition of an Australian Business needs to be considered beyond the CPRs so that the utility can be extended to scenarios that fall within these exemptions.
- The lack of information about the nationality of shareholders of companies held by ASIC results in an increased National Security risk for companies like Vault who have tight supply chain management.
- The Defence Industry Development Strategy definition is ambiguous and ill-conceived. Through our engagement with Minister Conroy's office, we understand the definition was written to align to the current CPRs. Once this definition of an Australian Business has been defined, the Defence Industry Development Strategy should be updated. This should be done expeditiously to minimise harm to Australia's national security.
- A foreign business should be able to become an Australian Business, just as a foreign person can become an Australian Citizen. Equally, an Australian Business may choose to redomicile to another country, resulting in losing its Australian Business status.
- The definition of an Australian Business should refer to **an entity, including any related parent companies, where ownership is majority controlled by Australians, and is a tax resident of Australia.**
- Loss of Australian control can be in many forms, including but not limited to: Shareholding, Board, Constitution, sale of IP, contractual agreements, collateralised debt obligations. This



can result in a business that is both not Australian and not clearly domiciled in a foreign single country.

- The following should not be requirements to be an Australian business:
  - Place of establishment
  - other locations
- The following should not be requirements to be an Australian business, but are desirable:
  - Principal place of business
  - an Australian employer
  - Registered for an ABN
  - Registered for GST

### **Commonwealth Procurement Framework**

Australia's free trade obligations, as outlined in the Commonwealth Procurement Rules (CPRs), incorporate a non-discriminatory approach to government procurement, requiring that all potential suppliers, regardless of size, location, or foreign affiliation, be treated equitably based on their commercial, legal, technical, and financial capabilities.

There are limited exemptions to Australia's free trade obligations, therefore, the definition of an Australian Business needs to be considered beyond the scope of the CPRs so that the utility can be extended to scenarios that fall within these exemptions. This broader approach ensures that government entities have a clear and consistent method for identifying businesses that meet specific national security or public interest requirements, even when exceptions to international procurement rules are invoked.

The current definition in the Defence Industry Development Strategy is vague and poorly constructed, creating uncertainties that undermine national security, particularly in areas critical to Defence. In our discussions with Minister Pat Conroy's office, it became clear that this definition was crafted to align with the existing CPRs, but this alignment does not sufficiently address the specific needs of the defence sector. As the definition of an Australian Business is refined and finalised, it is crucial that the Defence Industry Development Strategy is promptly revised to reflect this change. Vault is supportive of foreign companies building a domestic Defence industrial base and supportive of their inclusion in the Defence Industry Development Strategy - however conflating the sovereign with foreign ownership is unproductive.

Updating the strategy in alignment with the newly defined Australian Business criteria will ensure that Australia can have a domestic Defence industrial base that is inclusive of Australian Businesses. Given the strategic importance of the defence sector, this update should be treated with urgency to minimise vulnerabilities to Australia's security.



## Ownership Nationality and Related Businesses

Considering the nationality of owners and shareholders, including beneficial owners and related businesses (e.g. parent companies), is crucial for preventing foreign entities from exploiting the Buy Australia Plan and the Australian taxpayer. For instance, a company with significant foreign ownership may be structured in a way that allows it to benefit from Australian government contracts while ultimately funnelling its profits overseas, which undermines the local economy and may impact Australia's national security. By mandating the disclosure of ownership nationality and the nationality of related businesses, procurement processes can be more effective in assessing whether a business is genuinely invested in the Australian market, supporting its economic development and accretive to national security.

The absence of a requirement for Australian companies to report the nationality of their shareholders to ASIC presents a national security risk, particularly for technology companies like Vault, which maintain strict supply chain management protocols. Currently, while directors of Australian companies must provide personal details such as their address and place of birth, information on the nationality of shareholders, including beneficial owners, is not systematically collected and disclosed. This lack of transparency creates vulnerabilities, as foreign entities or individuals could potentially gain control or influence over businesses critical to Australia's security interests without proper scrutiny.

When defining an Australian business, particularly in critical sectors like Defence and the Defence Supply Chain, the percentage of ownership or shareholding is crucial. This metric reflects the extent of control foreign entities may exert over operations vital to national security. For example, a defence contractor that is more than 50% owned by foreign shareholders might prioritise overseas interests, potentially compromising Australia's strategic autonomy and security commitments. In contrast, a company with at least 51% ownership of Australian citizens or permanent residents, alongside a board composed of at least 51% Australian directors, is more likely to align with local priorities and national security objectives. By incorporating ownership percentages into the definition, procurement officials can effectively evaluate a business's commitment to supporting the Australian economy and national security, ensuring that government resources are directed toward companies that are genuinely dedicated to both the nation's industrial base and its safety.

This focus on ownership can foster local investment by encouraging businesses that are rooted in Australia to participate in government contracts. For instance, initiatives that prioritise companies with Australian ownership could enhance economic resilience, ensuring that funds are reinvested in local communities.



## **Business Location, Operations, and Tax Residency**

A foreign business should be able to attain Australian Business status if it meets specific criteria, such as majority Australian ownership and tax residency, ensuring that it genuinely contributes to the local economy through investment and operations. This would allow foreign companies committed to Australia's growth to benefit from government procurement and other advantages. On the other hand, an Australian Business that relocates its operations or headquarters abroad should lose its status, ensuring that only businesses actively supporting Australia's economic development continue to benefit from government policies and opportunities. We note that for Vault to enter the US market, we need the US entity to be majority US owned, controlled and governed if we want to be able to call the US entity an American Business. This does not mean that the Australian entity has to redomicile to the US.

Loss of Australian control can occur in many forms, including but not limited to shareholding, board composition, constitutional changes, the sale of intellectual property, contractual agreements, and collateralised debt obligations. These factors can result in a business that is no longer clearly Australian but also not fully domiciled in any single foreign country, leading to ambiguity about its identity and control. Equally important in this context is the consideration of the principal place of business, which indicates where central management and control occur. For instance, a multinational corporation might be incorporated in Australia, but if its core operations and decision-making take place in another country, this diminishes its genuine Australian presence. On the other hand, if a company's headquarters, where strategic decisions are made, is based in Australia, it reinforces the business's commitment to the local market and supports domestic employment. Together, these factors highlight the need for a clear and comprehensive definition of an Australian Business that addresses ownership, control, and operational presence to prevent foreign entities from exploiting protections designed for genuinely local enterprises.

The place of establishment and other locations should not be strict requirements for defining an Australian business. Many businesses operate internationally, and focusing on physical location could exclude companies genuinely committed to Australia. Instead, criteria like ownership, tax residency, and central management should take priority, as they better reflect a business's connection to the Australian market and economy.

## **Public Interest**

Many of the nuanced legislative requirements will not be known or understood by the public. However as the public are a significant tax contribution it is reasonable that the definition of an Australian Business should align with the public. We suggest that the public "pub test" would be that an Australian business should be owned, controlled and governed locally.

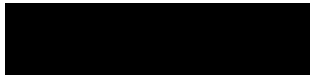


## Conclusion

Vault Cloud supports having a clear definition of an Australian business to the Commonwealth procurement framework without unnecessary burden of cost of compliance. It should enhance transparency and consistency in procurement processes, ensuring that local suppliers are prioritised for government contracts. By clearly defining what constitutes an Australian business, procurement officials can better evaluate eligibility based on ownership, operational control, and contribution to the local economy. This definition could be particularly relevant to procurement-connected policies that prioritise Australian skills and local economic development, ensuring that businesses genuinely rooted in Australia can compete on a level playing field.

Vault Cloud submits that having a clear and unambiguous definition of an Australian Business within the Commonwealth Procurement Framework is vital for ensuring that government contracts support truly local enterprises while aligning with Australia's international procurement obligations and government policies. The lack of a standard definition poses significant challenges, particularly for smaller businesses attempting to navigate complex compliance requirements. By integrating the aforementioned factors, the Australian Government can establish a robust definition that fosters fairness, encourages local investment, and streamlines the procurement process. This, in turn, will not only bolster economic growth but also strengthen the overall integrity and effectiveness of the procurement framework, ensuring that public resources are utilised to their fullest potential in support of Australian communities and industries.

Yours sincerely,



Rupert Taylor-Price  
CEO