

**Senate Economics References Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Department of Industry, Science, Energy and Resources  
Inquiry into the Australian Manufacturing Industry  
11 November 2021

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**AGENCY/DEPARTMENT:** DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES

**TOPIC:** Trade obligations opportunities

**REFERENCE:** Question on Notice (Hansard, 11 November 2021, Page 71-72)

**QUESTION No.: 6**

Senator WALSH: We've had a lot of evidence throughout today about different stakeholders wanting to see a government procurement strategy that assists the development of local manufacturing. We have heard evidence from people that other countries with successful manufacturing industries do utilise strategic local procurement as a core means to support local industry. I see Ms Looney there, who might be the right person to ask this question of. I know that you've referenced before the existence of the free trade agreements that we're part of, but I was wondering if you could give us more shape on what is possible for us in the current environment and what you see as being precluded by the sorts of free trade agreements that we're in. You can answer in a general sense; then we might put some more on notice if that's too detailed a question.

Ms Looney: I'm happy to talk to that. I can go some way to answering your question, but I will take some of it on notice to make sure that I engage with my trade colleagues to put forward some of the information you're asking about around the specifics of our WTO and other trade obligations. At the moment we are working at the Commonwealth level to increase what we do to support Australian SMEs and manufacturers in particular, to build their capability to bid into supply opportunities through government procurement. We do this, as I've mentioned previously, through several avenues. One way is that we have the Australian Jobs Act 2013, which requires proponents of large projects, both public and private sector, to have an AIP plan in place or seek an exemption for an AIP plan—but the requirement is they have one. That is also supported by Commonwealth procurement connected policy that grants and some other investments have an AIP plan in place for investments in grants of \$20 million or more, where that's a government investment. That requires these proponents of these projects to provide full, fair and reasonable opportunity for Australian suppliers to bid into their supply chains. I've said previously that we don't mandate content through that. It requires those proponents to investigate where Australia has capacity and capability to provide into their projects, and to give those suppliers an opportunity to participate through those competitive tender processes.

We work very closely with the states and territories. You would be aware that the Commonwealth doesn't hold all the levers in terms of procurement in Australia, so we work very closely across states and territories with their procurements and policies. Another example we have is: in our national partnership agreements on land transport, there's a requirement to have AIP plans in place. There are a range of different things we're doing.

We also had a recent budget announcement where there was additional education provided for small to medium-sized enterprises to build their capability where we've seen gaps. We've done a sector analysis to identify where SMEs can benefit from developing their capabilities to bid into government tenders specifically. We've done that industry scan and we're working on focusing and targeting education to SMEs into that space.

On the international trade obligations: we participate in the WTO and the rules system there, and we abide by our agreements that we have in place. But those agreements also provide an opportunity for some exemptions for SMEs to bid into processes, and they also provide opportunities for our suppliers to bid into international governments and international procurement processes as well. It's

a two-way street there, and we are looking at where we can identify and raise awareness of where those opportunities are for our companies as well.

Senator WALSH: Thank you for that. To assist with what we might ask you to take on notice: my interest is less in people being given an opportunity to bid into a process and more in whether there are opportunities for us, as we're moving into spending billions of dollars to enter this renewables revolution, to say, 'Okay, company A, if you want to be part of this, and it's being supported by government, we want 30 per cent of the production to be done onshore in Australia.' I'm aware that that is something that happens in Victoria through the local jobs act. I'm not clear why that's precluded at a national level and whether it's precluded at a national level from the types of free trade agreements we're at, and, if so, why they apply to federal projects but not to state government project That was what I was pursuing there.

Ms Looney: I'm happy to take any questions that you have in more depth, but what I will just point to is that our state governments aren't subject, in some instances, to the same commitments that the Commonwealth enters into with these agreements. What I would say is that there's not a blanket rule. Each agreement that we enter into has different requirements at different levels of government and for different agreements that we have in place. We can get you some more detail on those, but it is something we're very cognisant of. Obviously, we're looking at ways that we can increase Australian industry participation in these types of projects, and that's an ongoing body of work that we're looking at constantly improving to provide those opportunities. We're engaging with industry to hear about the challenges they have and where they see that they have capability to contribute, and we're working across government with other departments including the Department of Finance, DFAT and others on where those opportunities can come from.

## **ANSWER**

Australia is a party to the World Trade Organisation (WTO) Agreement on Government Procurement, and has government procurement commitments under a number of its bilateral and regional free trade agreements (FTAs).

These agreements give Australian suppliers of all sizes, including SMEs, the legal right to tender, according to fair and transparent conditions of competition in significant government procurement markets all around the world, including in the European Union, United Kingdom, United States, Canada, Japan, and New Zealand.

The Commonwealth, as well as state and territory governments, have agreed in return to provide access to our markets to the suppliers of our trading partners on a non-discriminatory basis. There are some limited exceptions to these government procurement obligations for Australia.

There is some variation between the application of the obligations to the Commonwealth and the states and territories. Under international obligations, states and territories have additional flexibilities including a higher threshold at which point the obligations apply – the threshold at which the Commonwealth must go to open tender is \$80,000 or above, whereas states and territories are around \$680,000 and above.

The Commonwealth supports Australian businesses (including SMEs) and Australian jobs whilst complying with Australia's international obligations.

The Australian Government supports an open market economy as the best way to generate investment and employment, and is committed to fostering an environment where Australian businesses have full, fair and reasonable opportunity to compete for work on eligible major Australian public and private projects through the requirements of Australian industry participation (AIP) plans under the Australian Jobs Act 2013 and Commonwealth AIP policy.

Australian Industry Participation requires procurement entities to communicate supply opportunities publicly, such as via public websites and industry briefings, and provide information on how potential suppliers and subcontractors can respond to tenders. This ensures Australian suppliers and subcontractors are given equal consideration alongside the existing or international supplier base. Unsuccessful bidders are also offered feedback to improve future performance and capability.

Mandating Australian content in projects or procurements could contravene Australia's international government procurement obligations, in particular the national treatment obligation which prohibits discrimination between Australian suppliers and foreign suppliers. Australia's international trade commitments have specific procurement obligations for Commonwealth government entities, which in turn provides Australian suppliers with access to international markets far larger than our own. It may also cause unintended consequences and market distortions.