19 April 2013

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

CHAMBER OF MINERALS AND ENERGY OF WESTERN AUSTRALIA (CME) EXPOSURE DRAFT OF THE AUSTRALIAN JOBS BILL 2013 SUBMISSION

Please find attached, on behalf of the Western Australian resources industry, CME's submission for the Exposure Draft of the Australian Jobs Bill 2013 that was sent to the Department of Industry, Innovation, Science, Research and Tertiary Education on 12 April 2013.

CME supports the main objective of the Bill to create and retain Australian jobs, however CME seeks greater clarity and improvement of design features of the Bill.

Currently there are numerous resources and energy projects in Western Australia that have established successful State Agreements to encourage local content. CME is concerned that the Bill in its current form will be administratively onerous and impose unrealistic and ill-defined deadlines. Much of the detail is also left to future regulation.

The Bill will significantly increase compliance costs by mandating new requirements in reporting, training, website maintenance and feedback to suppliers all ahead of project timelines.

If you have any inquiries, please do not hesitate to contact Shannon Burdeu, Manager Economics & Tax

Thank you in advance for your consideration.

Yours sincerely

Reg Howard-Smith
Chief Executive

Att: Exposure Draft of the Australian Jobs Bill 2013 Submission to the Senate.

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9 April 2013

The Hon Greg Combet MP
Department of Industry, Innovation,
Science, Research and Tertiary Education
Level 11/147 Pirie Street
Adelaide SA 5000

Dear Minister

The Australian Jobs Bill 2013 – Exposure Draft
This submission is made by the Chamber of Minerals and Energy of Western Australia (CME) in response to the call for public comment from the Department of Industry, Innovation, Science, Research and Tertiary Education on the Australian Jobs Bill referred for inquiry on 21 March 2013.

CME and the WA resources industry
CME is the peak resources sector representative body in Western Australia funded by its member companies who generate 95 per cent of the value of all mineral and energy production and employ 80 per cent of the resources sector workforce in the State.

The Western Australian resources sector is diverse and complex covering exploration, processing, downstream value adding and refining of over 50 different types of mineral and energy resources. The sector plays a significant role in locating, analysing, and developing water resources in regional and remote areas.

In 2011-12, the value of Western Australia's mineral and petroleum production was $106 billion, accounting for 91 per cent of Western Australia's total merchandise exports and thus representing the majority of Western Australia's 46 per cent contribution to Australian merchandise exports. Furthermore, royalty payments to the state government totalled $5.3 billion in 2011-12.

The prospects for future growth are strong, with $2.1 billion invested in minerals exploration in Western Australia in 2011-12, accounting for 53 per cent of total national investment. This exploration is translating into significant further development, with the value of resource projects either committed or under construction at $167 billion.

Background
The Australian Government announced a $1 billion investment to boost innovation, productivity and create jobs on 21 March 2013. Under the Plan for Australian Jobs, major projects worth $500 million or greater will be required be to have an "Australian industry participation plan", identifying opportunities for local firms. A new Australian Industry Participation Authority will have oversight of the system. Projects worth more than $2 billion applying for concessions under the Enhanced Project By-Law scheme will also have to "embed" Australian Industry Opportunity officers within their global supply offices.

The third part of the plan involves measures to improve access to finance for small and medium-sized business and give them more help in the government procurement market. To fund this, the government would cut the research and development tax incentive for business with an Australian turnover of more than $20 billion.

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CME Position and the Australian Jobs Bill 2013 ("the Bill")
CME supports the main objective of the Bill to create and retain Australian jobs. CME supports efforts to create full, fair and reasonable opportunities for local companies to bid for the supply of key goods and services for major projects. CME appreciates the focus in the Bill on the management of sensitive and confidential information, however, CME seeks clarification and further detail regarding a number of design features and definitions contained within the Bill.

CME supports overall measures that seek to increase productivity in the resource sector, noting the steep increases in the cost of doing business in Western Australia. However, much of the proposed Bill represents a duplication of initiatives and obligations already initiated by the Western Australian Government. With the capital-intensive nature of the mining and energy sector, this Bill will add considerable cost with little or no value add at a time when increased costs of doing business are already significantly weighing on future investment plans.

There are numerous resource and energy projects in Western Australia that have established successful State Agreements to encourage local content. Further, there continues to be a very high level of local industry participation in spending in the mining sector, with CME and Australian Petroleum Production and Exploration Association research showing 86% Australian spending in construction phase, and 95% Australian spending in operations phase. Improvements have also been noted in local content used in specific projects by the Government of Western Australia Department of Commerce Local Content Report November 2012.

Opportunities for local industry participation in oil and gas projects are fundamentally different due to scale and complexity of some projects, and a more specialised and globalised supply chain. The net result is lower local content spend is achieved in the construction phase (56% Australian spend). However operational spend is more in line with mining, with 83% Australian spending. Currently most large resource and energy companies adhere to voluntary reporting of local content.

In its current form the Bill is likely to be administratively onerous and, it imposes unrealistic and ill-defined deadlines. The reporting dates outlined in the Bill are unsuitable for many planning and investment processes, the practicalities of which will simply not be able to be met by many businesses.

Further, much detail is left to future regulation, the elements of which are not clear. CME is concerned that the Bill will significantly increase compliance costs by mandating new requirements in reporting, training, website maintenance and feedback to suppliers all ahead of project timelines. Importantly, these increased compliance costs are unlikely to translate into improved local content uptake – the key objective of the Bill.

Current West Australian requirements for local content are working effectively and transparently and it is unclear what the Bill will add in a practical sense to increase local industry participation in the sector. The Bill is uncertain in its current form, and it will impose unwarranted and unnecessary additional compliance costs and delays on a sector that is already heavily burdened by red tape. CME believes that it would be of greater benefit for state and federal governments to align local industry participation initiatives to reduce duplication and achieve traction with a combined and cohesive policy.

Design Features

<u>Thresholds (ss8 & 10)</u>
The values chosen to determine low and high value contracts appear to be arbitrary. The low value contracts of A$1 million and high value contracts equal or greater than A$500 million will capture a significant portion of the resource sector projects. Projects now considered small by the resource and energy industry will be above the threshold.

Small resource related companies unfamiliar with previous Australian industry participation plans are likely to find the Bill's broad requirements onerous and will add another layer of administrative uncertainty in a market already struggling with red tape. The thresholds will further burden small

businesses unable to deal with additional compliance costs and this seems contrary to the broader aim of the Bill. We recommend that the minimum low value and high value contract thresholds be reviewed in consultation with industry.

The Trigger date (ss13, 41) & Australian Industry Participation "AIP" Plan (s17)

The requirement of an AIP Plan submission for projects to establish, expand, improve or update a facility worth $500 million at least 90 days before the trigger date (s17(1)) is an unworkably early deadline. It is impossible to plan and prepare an AIP Plan if planning itself triggers the requirement for an AIP. The trigger date could also relate to commercially sensitive information which would otherwise be confidential, and potentially breach ASX disclosure requirements.

The Bill needs to provide more certainty about the point in the planning process at which the trigger date would be initiated. The notification requirements to be lodged with the Authority for approval of project plans remain unclear. The current proposal leaves open the possibility for extensive reporting requirements at an early stage of a projects life cycle – when current environmental and other regulatory approvals take an average 4.5 years – the AIP plan requirements could be imposing costs on a resources project that never goes ahead.

CME recommends a later trigger date more closely aligned to formal design stages when there is more certainty in proposed projects.

Notification of Proposal (s41)

The notification obligations created under section 41 do not provide sufficient detail as to when the Authority must be notified. On current reading, one person alone formulating a proposal must notify the authority. It is not clear what constitutes a proposal and what benefits arise from notification which may be required many years before a project is approved.

CME believes that this in an unnecessarily early date to deliver plans to the Authority, with no commensurate benefit to local content suppliers.

Exceptions (ss17 & 118 - 119)

The draft is unclear on what state based plans would satisfy the exception set out in section 17 of the Bill which provides for an exemption from AIP plan requirements. The lack of detail about the nature of future regulation that would determine eligibility for this exemption leaves this clause unmeaningful and of no practical use.

Further, the exposure draft states in sections 118 and 119 that the Act will not exclude or limit the operation of a State or Territory law or be given preference. This clearly describes that the Act will be functioning concurrently to State Agreements regarding local content and is therefore an unnecessarily duplication of process, costs and administration.

CME recommends that a clearly defined exception be given to projects where State Agreements regarding local participation have similar requirements. This will align with current State agreements and will remove duplication for many companies.

Potential project delays (ss10, 18-20,35,36,58-59)

There is considerable lack of clarity across a number of sections of the Bill around definitions and processes for how the Authority will establish and assess compliance with the requirements contained in the Bill. For example, CME would like to see greater detail on how "reasonable expenditure" (s10(6)) and "a broad understanding of the capability and capacity of Australian entities generally to supply" (s35(1)) would be assessed.

Despite creation of a "guiding timeframe", there remains uncertainty about the extent to which the activity of the Authority – in relation to plan approval, plan refusal, plan replacement and injunction processes – has the potential to impose delays on a project's development and eventual realisation. It is unclear how an appeals process will be implemented to contest rulings and delays by the Authority.

CME recommends the remove of the injunctions clause as it could significantly increase timeline uncertainty – with the potential to raise costs – of a project.

Compliance Reporting Duplication (ss24-26 & 118-119)
The Bill details that a compliance report will be required semi-annually relating to the status of the project to the plan (ss24-26). The Authority will require accompanying information "as specified in a legislative instrument made by the minister". The accompanying information requirement needs clarification.

Projects already subject to state agreements regarding local content will face a duplication of administrative burdens (ss118-119). Constant status updating will create an additional administrative burden with little or no clear benefit especially given procurement activity is unlikely to commence before broader approvals are finalised.

CME recommends that compliance requirements are simplified and that semi-annual reporting is removed.

Supplier Feedback requirements (ss 35-36)
The provision of feedback to all unsuccessful suppliers, including "recommendations about any relevant training and any relevant skills development" (s35(1)), conducting of "awareness programs about opportunities for Australian entities" (s36(1)) and conducting of "training programs" (s36(1)) has a substantial cost and imposes an undue burden upon project proponents.

This measure places the cost of training and developing the capabilities of suppliers onto resource companies. This may not be a core competency of a project proponent and it should not become their responsibility.

There are great benefits associated with sourcing materials locally, especially due to the isolation of resource projects. However, the general view of industry is that whilst local suppliers have an intimate knowledge of the market and deliver high quality speciality supplies, due to the high costs in the Australian market local suppliers will not always be able compete on a cost base.

CME recommends that these onerous feedback requirements are removed.

Designated project and eligible facility (ss6-7)
The legislation is not clear with respect to a designated project and an eligible facility. For example, it does not make clear whether separate projects being undertaken by a company alone, or with a potential joint venture partner, would be assessed as one facility for the purposes of determining the value of the facility and whether it falls within the eligibility criteria of the legislation.

For example, would the development of separate mines in separate locations by a single entity be deemed to be a single project or facility, or would they be considered separate "eligible facilities"? Likewise, would a rail/port development be deemed a single eligible facility, or could they be separated for the purposes of determining whether they are eligible facilities – i.e. rail development is one facility and port a separate facility.

The above may be construed as one project under proposed section 8(5) – the legislation may deem it anti-avoidance, whereas industry would consider them separate projects from a departmental, board approval and execution point of view.

It also states that the minister may declare a combination of 2 or more specified things as an eligible facility. Will this be necessary to seek a legislative instrument for confirmation on ever event? If so, this would be an arduous and time consuming task for companies due to the number of events that could potentially arise.

CME seeks further clarification on eligible facility and seeks removal of the need for a legislative instrument to confirm that a specified thing, or combination of 2 or more specified things, is an eligible facility.

Clarification of definitions

A number of key elements of the proposed Bill remain unclear and CME would like to see greater clarity on a number of definitions to remove uncertainty given the broad potential scope in the current text.

- How are non-Australian entities determined? Are there percentage ownership thresholds? (s5)
- "The objective that the procurement entity will not discriminate against Australian entities in relation to timeframes for responding to requests for bids to supply key goods or services for the project" requires further clarification (s36)
- What will be the categories referred to in section 40(d)?
- Is the key definition of "key goods or services for a new relevant facility's initial operation phase" appropriate? (s11)
- What constitutes a "certain event" and a "notifiable event"? (ss46 & 49)
- What are the "specified steps" as per sections 35(2), 36(2), 39(2) and 40(2)? Who approves these specified steps?
- Could further clarity be given for the definition for "Pre-commencement Proposal" (s42)
- The current definition for the "Person responsible for carrying out project" contradicts the definition of Project proponent (s9).
- The exposure draft details the requirement of compliance report submission semi-annually "until the project is completed", how will this be determined and by whom? (ss21 & 35)

CME supports the main objective of the Bill to create and retain Australian jobs. CME supports full, fair and reasonable opportunities for local companies to bid for the supply of key goods and services for major projects. We look forward to continued industry consultation to ensure greater clarity and improvement of the design features of The Australian Jobs Bill.

Thank you for the opportunity to comment. Should you wish to discuss any aspect of this submission with CME, please do not hesitate to contact Shannon Burdeu, Manager Economics & Tax

Yours sincerely

Reg Howard-Smith
Chief Executive