

Business
Council of
Australia



Submission to the Senate
Economics Legislation Committee
regarding the Australian Jobs Bill
2013 Exposure Draft

APRIL 2013

The Business Council of Australia (BCA) brings together the chief executives of more than 100 of Australia's leading companies, whose vision is for Australia to be the best place in the world in which to live, learn, work and do business.

This is the BCA submission to the Senate Economics Legislation Committee regarding the exposure draft of the Australian Jobs Bill 2013.

Key points

- The Business Council of Australia supports sensible efforts to raise the participation by competitive local suppliers in major Australian projects but considers the Australian Jobs Bill a step too far.
- By mandating government-approved Australian Industry Participation Plans (AIPPs) for all private investment projects over \$500 million, the Bill unnecessarily adds to the red tape burden on investment projects and establishes an expensive new regulatory agency to approve AIPPs at a time when the budget is in deficit.
- The Bill establishes a worrying new precedent for government intervention in the management of procurement for private investments. This will add to Australia's reputation as a costly and unpredictable place to invest in major capital projects. The introduction of a new regulator to oversee project procurement risks creating an antagonistic instead of a cooperative and constructive relationship with business.
- The Bill does not pass the test of good legislation – the problem is poorly defined, the costs and risks of the Bill are understated and the costs and benefits of sensible, alternative policy options have not been properly assessed.
- The government should seriously rethink this Bill and instead pursue alternative policies that can help grow the participation of local suppliers in major projects without adding to the regulatory burden on business.
- The most effective way to increase domestic participation is to reduce the cost of regulatory burdens that are harming our competitiveness.

Summary Checklist for New Regulation

This checklist is based on the Business Council of Australia Standards for Rule Making.

Principle	Status
1. The problem to be solved is well understood Before government seeks to regulate, it must understand the problem or policy priority in depth and test the case for regulation, along with the risks and consequences of not regulating a particular activity.	The problem is poorly described in the Regulatory Impact Statement (RIS). The government cites information gaps and the increasing role of overseas-based Engineering, Procurement and Construction Managers (EPCMs) as causing local sourcing problems. Importantly, the RIS does not explain why recent policy initiatives are failing so badly that new regulation is now required.
2. New regulation is subject to cost–benefit analysis The costs of new regulation are thoroughly assessed and tested with the community through cost–benefit analysis, which includes an explicit understanding of the costs to the community including business.	A rigorous and independent cost–benefit analysis has not been undertaken. In our view, in the RIS the costs and risks of the Bill are understated and the benefits overstated. There is no proper analysis of the costs and benefits of alternative policy options.

3. Regulation achieves its objectives at least cost

Regulation is carefully targeted to achieve its stated objectives and minimise the cost impacts on the community including business.

Alternative policy options that are lower cost and likely to be more effective have been rejected in favour of a legislated approach. As a matter of good regulatory process, before locking in or announcing such new requirements on business, the Business Council expects a detailed cost–benefit analysis of a range of options to be undertaken and publicly released for consultation with business.

About the Australian Jobs Bill 2013

The objective of the Bill is to ‘support the creation and retention of Australian jobs by requiring Australian Industry Participation Plans for major projects’. The RIS states that ‘making companies aware of alternative local suppliers is a basic rationale’ for AIPPs (p. 12).

The Bill does the following:

- establishes a new law requiring all investment projects with capital expenditure of \$500 million or more to develop Australian Industry Participation Plans
- sets out what is required in those AIPPs and other obligations on how private project owners should engage with local industry in the procurement process
- establishes a new Australian Industry Participation Authority to approve the AIPPs at a cost of \$18.9 million over five years
- establishes a new ‘AIP Advisory Board’ to advise the Authority and the minister on Australian Industry Participation matters.

AIPPs require ‘large companies to provide information about their supply needs and encourage them to seek out information about local capacity and capability.’¹

Minimum local content is not mandated for AIPPs, nor will it be mandated under the proposals to extend the requirements for AIPPs in the Bill.

The Bill should be reconsidered

Currently, AIPPs are already required to be undertaken for investment projects where the company is either seeking tariff duty concessions on capital goods under the Enhanced Project By-law Scheme or tendering for government projects with Commonwealth funding of over \$20 million.

The Australian Jobs Bill extends the same requirement to produce an approved AIPP to *all* private projects over \$500 million.

The Bill will capture private investments in: mines and quarries; land transport facilities; wharves and ports; petroleum facilities; electricity facilities; factories; airports; water supply, sewage and wastewater facilities; telecommunications networks; and ‘any other productive facility’.

The government estimates that around 23 current projects worth over \$32 million over the past two years would have been netted by the AIPP requirement if the Bill had been in place in that time .

This is a step too far.

We understand and support the government’s desire to improve the competitiveness of Australian businesses wanting to participate in major project supply chains. However, introducing excessive and unnecessary regulations on major investors is not the right approach.

1. *A Plan for Australian Jobs: The Australian Government’s Industry and Innovation Statement Fact Sheet* at www.aussiejobs.innovation.gov.au.

Our view is that the Bill and RIS relating to these laws fail to clearly establish the nature of the problem to be solved and clear evidence to justify legislation of project procurement, particularly when non-legislative alternative policy options exist. The Bill establishes a worrying precedent that government should intervene in the procurement processes of private businesses.

In our view, the government should reconsider this Bill. It has many undesirable features:

- Regulating procurement processes and introducing a new compliance requirement is damaging to private initiative and to innovation in procurement.
- It adds to red tape for new investment projects by introducing new approvals requirements, proscriptive rules over business processes and new compliance reporting at a time when major projects are already overloaded with regulation. The RIS estimates the AIPP requirement adds of \$50,000 to \$150,000 to a project; however, this is untested and appears to underestimate the cost of implementation and compliance.
- It establishes a costly new regulatory authority at time when Australia has numerous other regulatory agencies engaging with projects and when the budget is in deficit.
- The establishment of a new regulatory authority with powers to approve or disapprove of company procurement processes and to gather information from companies is likely to lead to an antagonistic relationship between business and government. Instead, government should be pursuing a cooperative and constructive relationship that would stand a better chance of lifting local procurement.
- Legislating AIPPs is unlikely to have any meaningful positive effect on local procurement, given: the existence of other government policies in place to highlight local opportunities to purchasers (many only introduced in the past few years); the prevalence of programs already within companies to source locally; and the fact that many project owners already have good incentives to source product locally – as the government itself says, it makes good business sense.
 - It is important to remember that the Australian economy is already reaping the benefits from major projects associated with the resources boom as usefully illustrated in recent analysis by the Reserve Bank of Australia. It found that the resource economy accounted for around 18 per cent of output in the economy in 2011–12, with 6.5 per cent of this coming from industries that provide inputs to resource extraction and investment, such as business services, construction, transport and manufacturing. The Reserve Bank also finds that these secondary activities are significantly more labour intensive than resource extraction, accounting for an estimated 6.75 per cent of total employment in 2011–12, compared with 3.75 per cent for the resource extraction sector.
- By introducing this legislation, future governments will be tempted to extend its application to more projects in future or to contemplate mandating local content.
- The policy adds to the growth in federal and state duplication in industry policy, with state governments also requiring these types of plans for government tenders and also running similar local supplier programs for major projects.

The timing of this proposal is especially poor as it comes at a period where the peak in resources investment is expected later in 2013 and when investors are openly expressing doubts about the cost and risk of investing in new large-scale greenfield projects in Australia.

By introducing yet another regulatory impost on major projects and intervening in efficient business operations, the Bill lessens Australia's attractiveness as a place to invest. In that regard it is more likely to work to reduce opportunities for local suppliers and for job creation in Australia, which goes against the objectives of the Act.

With around \$450 billion in major capital projects currently underway and another potential \$500 billion under consideration or in planning, Australia's economy is highly reliant on the successful attraction and delivery of major investment projects. Businesses face considerable pressures in delivering these projects on time and on budget, in part as a result of inefficient

regulatory requirements. Policy should be aligned to creating a positive investment environment that will grow our economy and create the local employment and supplier opportunities of the future.

Instead of proceeding with this Bill, we support proper review of existing policies that sensibly address information gaps in the market, and advocacy on behalf of suppliers to major project supply chains, as well as general policies that are designed to improve the competitiveness of Australian firms. We support greater consideration of these alternative options:

- Identify and address information barriers experienced by project owners and local suppliers by improving existing programs such as 'Buy Australian at Home and Abroad', and 'Enterprise Connect', which provide companies with the information and capabilities to compete to participate in major project contracts. One example with some success has been the introduction of the Industry Supplier Advocates. Many of these policies have only been in place for a few years and can be reviewed and improved.
- Work with project proponents to lift engagement with local suppliers on a voluntary basis. If the government believes it has worthwhile suggestions to make to project owners about their procurement processes that make good business sense, it should advocate for the take-up of those processes – not mandate them by law.
- Generally, governments should pursue taxation and regulatory policies that grow the international competitiveness of Australian suppliers – mandating AIPPs should not be used as a bandaid solution for competitiveness problems that are caused by poor taxation and regulatory settings elsewhere in the system.

Specific comments on the Bill

The level of proscription in the Bill around what should be in a AIPP and the process for obtaining approval from the AIP Authority for a AIPP reinforce our view that government would be better to pursue voluntary and cooperative measures rather than enforcing the AIPP model on private projects. Further issues with exposure draft of the Bill include that:

- There should be less prescription in the requirements of an AIPP to allow greater scope for project owners to innovate in the procurement process. For example in sections 35 and 36, the Bill makes requirements relating to:
 - objective setting
 - the use of websites to publish procurement procedures and justifications for goods and services standards
 - personnel training
 - providing feedback to local suppliers including recommendations for skills development
 - conducting 'awareness programs'.
- The many definitions of an 'eligible facility', the 'trigger date' of a project, what constitutes a 'designated project' and 'goods and services' are all open to interpretation and will potentially lead to inefficient debates between the new Authority and project owners. It would be better to give more scope to the project owner to determine when and how to submit an AIPP.
- The multiple definitions of a 'trigger date' (e.g. 'project concept design begins', 'an environmental assessment of the projects begins', etc.) listed in section 13 need to be practically tested as to whether a project owner can feasibly develop a procurement plan that early in a project's life. The Bill requires a project proponent to give a draft AIPP to the Authority 90 days before the earliest of the possible 'trigger dates' on the list.

- The notification requirements in Part 3 seem unnecessary in many cases, e.g.
 - notify the AIPP when a proposal is ‘formulated’ for a major project in a form approved, by writing, by the Authority
 - notify the AIPP if a project is abandoned or cancelled, in a form approved, by writing, by the Authority.
- The information-gathering powers in Part 4 risk building an antagonistic relationship between the company and the regulator, rather than a constructive relationship.

Conclusion

In summary, the Australian Jobs Bill is not supported as it does not address a properly defined problem, introduces unnecessary, prescriptive and costly regulation and associated bureaucracy and establishes a worrying precedent for government interference in private procurement processes. Alternative policy options are recommended for lifting the participation of Australian suppliers in major capital projects.

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