



19 April 2013

The Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Bryant

Thank you for the opportunity to provide a submission to the inquiry into the exposure draft of the *Australian Jobs Bill 2013* (the "Bill").

CCI is the leading business association in Western Australia and the second largest organisation of its kind in Australia. CCI has a membership of over 8,000 organisations in all sectors of the economy. About 85 per cent of members are small businesses, and members are located in all geographical regions of WA.

It is positive to see that the Federal Government has recognised the important role Australian industry participation in major resources projects can play in building a diverse Australian economy. CCI has long held the view that Australian companies should be given full, fair and reasonable opportunities to be involved in the supply chain of major projects – particularly as many of these projects are based in Western Australia.

However, the Federal Government has not demonstrated a case to regulate the use of local content on major projects through a legislated instrument such as proposed in the Bill.

In its 2011 policy paper discussing *Local Content*, CCI put forward that a local content policy should have the goal of facilitating the long-term development of an internationally competitive industrial and service sector in Western Australia, that can secure work on not only Australia's major resources projects but on global projects. In order to achieve this, CCI called for the government to implement policies to reduce the burden on local industry, and to invest in infrastructure that promoted business growth and investment. CCI also called for industry to play its role, with suppliers to act together to better showcase their capabilities, and project proponents encouraged to have a physical procurement presence amongst the local industry.

There are already a range of policies in place aimed at increasing local content:

- The Western Australian State Government has a Local Industry Participation Framework, which aims to link suppliers and major project proponents in a number of formal and informal ways.
- The State Government also administers three steering committees for major LNG projects that are underway or under consideration in the state.
- The Industry Capability Network (ICN), the Western Australian brand of which is administered by CCI on behalf of the WA Government, provides a platform for Australian suppliers to tender for work on major projects.

- The Federal Government has a national framework for Australian Industry Participation Plans, which provide a system for major projects worth over \$2 billion to provide extensive opportunities for local industry participation.
- Other Federal Government policies include: Supplier Advocates and the Buy Australia Home and Abroad initiative.

These policies have been successful. According to the WA Department of Commerce¹, some \$29.9 billion worth of contracts have been awarded to Western Australian companies between July 2011 and November 2012. The level of Australian local content in Western Australian resources projects in the **operations** phase is currently at 94.7 per cent, while the level for projects **under construction** stands at 73.6 per cent. The latter figure is influenced by the use of modularised rigs for offshore oil and gas projects in the state's North West coast, which are produced by a handful of companies globally.

Given the demonstrated success of these policies, CCI believes that legislating the introduction of Australian Industry Participation Plans (AIPPs) is unnecessary, and is likely to add to the cost of major projects in Australia and increase the time and money spent by adding to the extensive project approvals process that already exists. Project proponents will be required to deal with yet another government agency in order to progress a project from conception to construction.

Specific concerns with the Bill

CCI has a number of concerns with the Bill, and its potential implications, as they currently stand.

The Bill does not take into account the **impact on, and interaction with, existing State Government policies**, such as the Western Australian Government Local Industry Participation Framework². In this regard, the introduction of a legislated instrument at a Federal level seeking to promote local industry participation, such as the one proposed in the Bill, risks duplicating work for the private sector and adding to compliance costs, without increasing local content outcomes. Most major project proponents and tier one suppliers in Western Australia already have AIP plans as part of existing government policy, and do so without a legislated requirement³.

The Bill also contains plans for the introduction of a **new government agency**, the Australian Industry Participation Authority (The Authority), and new oversight in the form of the Australian Industry Participation Advisory Board (AIPAB). The Bill outlines that the role of the Authority will be to monitor and enforce compliance with the AIPP process, but it is unclear as to the size of the new agency, and how it will be resourced. CCI is concerned that the creation of a new government agency to police AIP may unnecessarily add to pressure on Australia's public finances.

¹ Western Australia Department of Commerce. 2012. *Local Content Report: November 2012*. Accessed online at <http://www.commerce.wa.gov.au/>

² While this document calls for a greater use of Industry Participation Plans at a Federal level, it does not call for the introduction of a legislated instrument such as the one proposed in the Bill.

³ Western Australian Department of Commerce. 2011. *Local Content Report: November 2011*. Accessed online at <http://www.commerce.wa.gov.au/>

The Bill contains a number of passages that are **complex** and potentially onerous for business to implement, particularly for smaller companies that may not have the in-house capability to interpret and comply with the legislation proposed in the Bill. The rules governing the primary and secondary obligations under the AIP plan rules (section 35, 36, 38 and 39 of the Bill), and the requirements to report on compliance with the AIPP (sections 24 through 28 of the Bill) will require significant additional work and capital investment on the part of project proponents, and likely add to project development costs.

This effect will be compounded when the proposed **materiality thresholds** are taken into consideration. The project value threshold of \$500 million is materially lower than the current threshold of \$2 billion, and will mean that many projects that have not been required to submit an AIPP under the current regime will now be required to. In addition, the definition of a 'major project' is proposed to be broadened to the point where a large number of capital spending projects, beyond the resources sector, will be required to develop, maintain, implement and report on the progress of AIPPs. This appears to be an unintended consequence of this Bill. Based on the application of the new definitions of a major project, the share of investment projects that must develop, maintain, implement and report on AIPPs will rise from approximately six per cent of total major projects to 26.2 per cent⁴.

The proposed **indexation factor** is not an appropriate recognition of the cost associated with a major project. The Bill proposes the use of the Consumer Price Index, designed to measure the broad-based price increase of a basket of consumer goods purchased by households, as the escalation factor for the major project threshold amount; which is not the best reflection of project cost escalation. A more appropriate figure could be from the Producer Price Index Table 17 (ABS Catalogue 6427.0), which seeks to measure construction costs.

In addition, the **definition of a 'trigger date'** is unreasonable, in the context of the project development pipeline. It is unreasonable to require a project owner to provide an AIPP, under the onerous parameters set out in the Bill, to the Australian Industry Participation Advisory Board (AIPAB) some 90 days before 'the project concept design begins', as it is unlikely that the precise project specifications will be known at this point in the process. In addition, the Bill provides scope for the AIPAB to determine its own timing for the lodgement of an AIPP, which would allow this timing to be pushed even earlier into the early stages of a project's development.

The penalties for non-compliance with the AIPP process as outlined in the Bill compound the problems caused by prescriptively legislating to increase local content penetration on major projects in Australia. These penalties, including the 'naming-and-shaming' of project proponents and the ability for the AIPAB to apply for an injunction to halt work on the project are excessive, and could potentially harm Australia's reputation as a destination for investment and a place to do business. They would place Australian industry participation compliance in the same league as taxation and environmental laws, which CCI views as an excessive ratcheting up of requirements.

⁴ CCI calculations based on Access Economics. 2013. *Access Economics Investment Monitor: December 2012*. Accessed online at <http://www.deloitteaccess-economics.com.au/>

Summary

In CCI's view, the Bill should not proceed in its current form. The Government has not presented a persuasive case for a legislated instrument on local industry participation. Instead, the Federal Government should acknowledge that there are already a number of policies in place to address local industry participation, that local content penetration in major projects is significant, and looks to ways of coordinating these efforts more effectively as a means of promoting full, fair and reasonable opportunity for local suppliers. The Government should, as a priority, consider a broad suite of measures to boost Australian industry's competitiveness and productivity, so that Australian firms can take full advantage of that full, fair and reasonable opportunity.

Should you have any questions or concerns, please contact Ryan Buckland

Yours sincerely

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