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

Email: economics.sen@aph.gov.au.

***Australian Jobs Bill 2013*: Submission from the Australian Petroleum Production & Exploration Association**

The Australian Petroleum Production & Exploration Association (APPEA) is the peak national body representing Australia's oil and gas exploration and production industry. APPEA has more than 80 member companies actively exploring for and/or producing Australia's oil and gas resources. These companies currently account for around 98 per cent of Australia's total oil and gas production and the vast majority of exploration. APPEA also represents over 250 service companies providing a range of goods and services to the industry. Further details about APPEA can be found at our website at www.appea.com.au.

With respect to the *Australian Jobs Bill 2013* (the Exposure Draft), APPEA considers that the proposed legislative approach is unlikely to significantly increase opportunities beyond those created by the extensive efforts already employed by the oil and gas industry to provide full, fair and reasonable opportunity to local suppliers.

APPEA considers that:

- Greater benefits would be delivered by focussing on building the capacity and capability of Australian suppliers to enable them to compete internationally.
- Most major projects already have mechanisms in place to achieve the objectives of the proposed legislation, which is to make supply opportunities more visible. On this basis, any opportunities resulting from increased transparency measures would already have been achieved.
- Any reforms need to recognise that development of a competitive local service sector is of shared interest to industry, suppliers and government, and responsibility should rest with all parties to remove impediments to increase supplier participation.

Industry already recognises the many benefits provided by local suppliers[1] and is investing heavily both in financial terms and in the development of collaborative relationships to address priority areas of capability, capacity, skills and training gaps, which are seen as key to improving the participation of Australian suppliers globally.

[1] Including in relation to faster turnaround of services, localised employment, improved timings and improved communication.

APPEA

HEAD OFFICE
Level 10
60 Marcus Clarke St
Canberra ACT 2601

GPO Box 2201
Canberra ACT 2601

T +61 2 6247 0960
F +61 2 6247 0548
E appea@appea.com.au
ABN 44 000 292 713

BRISBANE OFFICE
Level 36
32 Turbot St
Brisbane QLD 4000

T +61 7 3231 0500
E brisbane@appea.com.au

PERTH OFFICE
Level 4
190 St Georges Tce
Perth WA 6000

PO Box 7039
Cloisters Square
WA 6850

T +61 8 9426 7200
F +61 8 9321 9778
E perth@appea.com.au

SYDNEY OFFICE
Suite 4, Level 8
3 Spring St
Sydney NSW 2000

T +61 2 8241 1900
E sydney@appea.com.au

Global economic transformations and what this means for Australia

Major shifts in world economic growth from west to east have been driven by the rapid industrialisation of China and other structurally large Asian economies and the economic advance of our region is overwhelmingly positive for Australia. This has changed the dynamics of key international resource, product and capital markets. For Australia, this has translated into strong demand for our energy and mineral resources, and is driving massive investment by the oil and gas industry. It plays to our comparative advantages: as a secure and reliable energy exporter; and our proximity to markets.

Reliable, secure and competitively priced energy is crucial to industry, our communities and households. It underpins Australia's economy and industrial structure. Within this framework, oil and gas plays a key role. At present, petroleum (oil and gas) accounts for nearly 60 per cent of Australia's primary energy needs – this is expected to increase over the next two decades.

Australia's upstream oil and gas industry has entered a period of unprecedented growth and transformation. Almost $200 billion is likely to be invested in oil and gas projects in Australia, which would deliver eight of the world's fourteen gas liquefaction plants under construction or firmly committed worldwide. This will propel Australia towards being the world's second largest LNG exporter and potentially challenging Qatar for the top position. This growth will:

- increase Australian GDP by up to 2.2 per cent a year;
- require a construction workforce peaking at 103,000 full-time equivalent jobs; and
- see substantial indirect benefits flow from the industry, including to the national and state economies via a growing services and contractor sector.

By 2025, the construction and operation of these projects will:

- cumulatively add more than $260 billion to Australian GDP in net present value (NPV) terms; and
- see the industry's total tax contribution be around $12.1 billion a year in taxation revenue.

In the context of projects in the western region, local content levels of approximately 56 per cent are expected on average through the construction phase of projects.[2] Equivalent or potentially even higher rates could be achieved for eastern region projects.

This is just the contribution of the first wave, which only considers currently committed and under construction projects. Once operational, these projects will also help reduce the growth in Australian and global greenhouse gas emissions, improve Australia's energy security and increase the competitiveness of our energy markets. They will also provide a long-term boost to jobs and income for service industries and tax revenues for governments.

[2] APPEA & WA Chamber of Minerals and Energy, Submission to 'Local Industry Participation – WA Labor Discussion Paper'.

The second wave of investment has the potential to:

- cumulatively increase Australian GDP by $192 billion (in NPV terms) above the level of what could be expected from the first wave of investment, over the period 2012 to 2035 ($804 billion compared with $612 billion);
- increase the peak construction workforce to 167,000 full-time equivalent jobs, compared with 103,000 for the first wave;
- lead to industry taxation payment totalling up to $18.9 billion per annum by 2035; and
- achieve significantly higher levels of Australian content through operation, over construction, with the North West Shelf project achieving overall spend of 85.5 per cent on local content in 2012. Estimated levels of operational local content spend can be as high as $33 billion.[3]

It is important to note that the above benefits are based on the assumption that all current investment goes ahead as planned. Projects experiencing delays or failing to proceed result in economic losses to the Australian economy. If an 'average-scale' LNG project fails to proceed, there are significant losses to the economy. Compared with the significant benefits outlined above, if a project does not proceed, GDP is modelled to increase by about $234.4 billion by 2025, which is around $27 billion lower than if the project were to proceed. The reduction in employment would be in the order of 13,000 jobs in 2015 at the peak period of construction.

In addition, further analysis of the economic cost of projects delays (including for governments in terms of the impact of a deferment in taxation revenues) can be found in APPEA's Cutting Green Tape report which is available on APPEA's website.

Current and Previous Efforts to Increase Australian Industry Participation

Despite the global challenges associated with maintaining competitiveness, the industry has a strong and demonstrated record of active engagement in exploring and implementing processes for enhancing the ability of local suppliers to participate in the resource development process.[4] Most recently, APPEA and its members have engaged with the Australian Government's Buy Australian at Home and Abroad program and the Resources Sector Supplier Advisory Forum and associated initiatives. Considerable effort is therefore being expended by oil and gas companies to promote local participation within these processes.

Where local firms are capable and competitive, the ICN service has been widely embraced by proponents, providing maximum opportunity for suppliers. However, experience has indicated that there are several key issues preventing local suppliers from successfully winning work, including:

[3] Australian Venture Consultants, 'The Wider Contribution to Australia of the Oil and Gas Industry: Selection of Case Studies from the Development of Offshore Gas Fields', P. 27.
[4] Examples of these processes includes: Industry Capability Network (ICN); National Resources Sector Employment Taskforce; Western Australian Government's Local Industry Participation Framework; Western Australian Government State Agreement Acts; New South Wales Government Procurement Local Jobs First Plan; Queensland Industry Participation Plan 201; and Queensland Resources and Energy Sector Code of Practice for Local Content.

- Having appropriate management systems, together with processes to meet legislative requirements for health, safety and the environment;
- Developing the management systems and processes required to prequalify;
- Knowing how to tender and submit compliant tenders;
- Remaining internationally competitive with a high Australian dollar; and
- Complying with Australian and globally accepted technical standards for asset integrity and safety.

Without addressing these core issues of capability and competitiveness, the Exposure Draft will not have any significant impact on increased local content outcomes.

General Comments on the Exposure Draft

Recognising the above concerns, and in the event that the legislation proceeds, a number of significant practical and operational matters need to be addressed to provide the transparency, certainty and administrative framework to ensure companies are not further buried in red tape and incur unnecessary costs. While detailed comments on the Exposure Draft and the Regulation Impact Statement (RIS) are outlined in Attachment 1, a number of high level issues require particular attention and are outlined below:

- The Exposure Draft proposes to capture a very broad range of activities and components of a project which do not necessarily reflect potential opportunities for local suppliers.
- A number of areas in the legislation would be better suited for inclusion in regulations or a regulatory guidance document to reflect the unique characteristics that exist for each project. No two projects are alike, with some projects taking decades to transition for the initial planning phase to construction and production.
- The industry believes that greater clarity needs to be provided across a number of areas and specifically in relation to the concepts and definitions the legislation will rely on (further detail is in Attachment 1). In particular, the notion of a 'Trigger Date' needs to be carefully considered as a number of the milestones that have been proposed as triggers are very early in a projects' planning cycle. Requiring the submission of an AIP Plan 90 days prior to these milestones would decrease any potential value that an AIP Plan might deliver.
- The inclusion of provisions for injunctions will escalate compliance costs without commensurate benefit for Australian industry or evidence to suggest that non-compliance is an issue.

In order to realise the sector's potential, and maximise its contribution to the development of an internationally competitive service sector, appropriate fiscal and industry policy settings must be maintained as a framework for an on-going dialogue on local firm competiveness between project proponents, engineering and procurement companies and governments. In the absence of such action, compliance costs will increase, again, particularly for smaller projects and/or those with limited exposure to the existing EPBS structure, without commensurate additional benefit to Australian industry.

Failure to make competitiveness a central pillar of reform would mean that the "once-in-a-century resources boom could yield an economic dividend well into the future or be seen, in retrospect, as an opportunity at least partially wasted."[5] The policy framework must seek to ensure that Australia's explorers and producers are not competitively disadvantaged with producers of other energy sources and similar activities that are undertaken in other countries.

We would be pleased to expand on any of the points discussed in this submission. Any queries may be directed to Stedman Ellis, Chief Operating Officer – Western Region

Yours sincerely

Noel Mullen
ACTING CHIEF EXECUTIVE

[5] Deloitte Access Economics, *Harnessing our comparative advantage* (June 2012)

Attachment 1

Detailed Comments

1. Regulation Impact Statement (RIS)

REF	APPEA COMMENT
1.1.	There is no evidence that the proposed AIP Plan changes will address the distress being felt in certain manufacturing sectors or the underlying causes outlined in the RIS. In particular, the declining competitiveness of Australian industry over the last few years is not sufficiently acknowledged as an underlying cause in the decline of Australian industry participation in major capital projects.
1.2.	The RIS places significant emphasis on the need to create further opportunities for early engagement with Australian industry. However, there are examples where AIP Plans have been implemented with regulatory oversight, early engagement has occurred, and Australian suppliers have still not been competitive.
1.3.	Similarly, the RIS assumes that comprehensive and verifiable information leads to increased levels of local content. However, some of the more strident criticisms have been directed at projects with comprehensive AIP Plans in place that make extensive use of external websites to publicise their requirements.
1.4.	The Exposure Draft places significant weighting on information from ICN to identify local contract 'wins' achieved (page 22). An ICN 'win' is essentially the level of Australian content in the award value of a contract. These are an important measure of the extent of ICN involvement in major projects, but not necessarily an improvement in local content as a result of ICN involvement. For example, an ICN win can displace another vendor who would also provide a significant level of local content – in which case the improvement in Australian content is only a portion of the total opportunity. It is also noted that ICN has typically primarily focussed on the manufacturing sector and that there is further opportunity to increase participation of the services sector.
1.5.	There is a fundamental misunderstanding in the RIS that means the cost to develop and implement an effective AIP Plan is significantly underestimated: ▪ AIP Planning is not just about development of the Plan or reporting on compliance, there is also a requirement to actively manage the AIP Plan on a daily basis. Larger projects need to sustain this effort for five years or more, encompassing FEED, execution and operations phases with these timeframes likely to increase as a result of measures proposed in the Exposure Draft. ▪ Responsibility for AIP Plan implementation is also not just limited to one person within the Proponent organisation. AIP requirements flow to many internal buying groups and involve widespread interaction with many other areas of the Proponent organisation. They also further flow to Engineering, Procurement, and Construction Management (EPCM) and other contractors.
1.6.	▪ As an example of the costs that can be involved, APPEA understands that two projects alone have already spent around $1.5 million on ICNWA and ProjectConnect services, not taking into consideration the costs of the interaction with ICNWA and ProjectConnect by the Proponent, EPCM and major contractor personnel, or other matters addressed in 1.5 above.

APPEA

HEAD OFFICE
Level 10
60 Marcus Clarke St
Canberra ACT 2601

GPO Box 2201
Canberra ACT 2601

T +61 2 6247 0960
F +61 2 6247 0548
E appea@appea.com.au
ABN 44 000 292 713

BRISBANE OFFICE
Level 36
32 Turbot St
Brisbane QLD 4000

T +61 7 3231 0500
E brisbane@appea.com.au

PERTH OFFICE
Level 4
190 St Georges Tce
Perth WA 6000

PO Box 7039
Cloisters Square
WA 6850

T +61 8 9426 7200
F +61 8 9321 9778
E perth@appea.com.au

SYDNEY OFFICE
Suite 4, Level 8
3 Spring St
Sydney NSW 2000

T +61 2 8241 1900
E sydney@appea.com.au

2. The Exposure Draft

REF	SECTION(S) IN EXPOSURE DRAFT	APPEA COMMENT
2.1.	5	▪ Clarification is sought regarding the definitions of 'Non-Australian Entity', 'Major project threshold amount', 'certain event', 'pre-commencement proposal' and 'notifiable event'. These are all important terms that need to be clearly codified. ▪ 'Entrusted official'. The extent of commercially confidential information available to advisory board members needs to be strictly limited (definition of entrusted official, page 5). ICN Limited does not directly provide ICN support to major projects but does so via independent ICN offices in each state and territory. It is unlikely therefore that commercially confidential information needs to be made available to ICN Limited (Section 107 (1)(n), page 74). ▪ The definition of a 'petroleum facility' needs to be consistent with definitions contained in existing and active local content obligations, including State Agreement acts. For example, the exploration and development decisions of a project should not be captured in requirements for an AIP Plan as they are fundamentally different activities to the construction of a processing facility. ▪ 'Prescribed court'. APPEA is concerned that the inclusion of the Federal Court in the legislation introduces the possibility of injunction, which will significantly increase compliance costs. This also introduces a significant risk to investment through the possible delaying of approvals. ▪ 'Project proponent'. The definition of a proponent and how this relates to a facility operator is unclear. ▪ The 'major project threshold amount' should specify whether this relates to Operating Expenditure (OPEX) or Capital Expenditure (CAPEX). ▪ The definition of an 'eligible facility' will likely require further consideration given the interconnected nature of some petroleum projects that have more than one owner, such as those in the Cooper Basin and Gippsland Basin. They are often not one project, but a series of projects with different owners and commercial structures. ▪ The term 'specific steps' points to sections 35(2), 36(2), 39(2) and 40(2) without clarity of the term's definition or who is responsible for 'specific steps'. Further sections refer to 'reasonable steps' without explanation. Consistency and clarity of these terms is encouraged. ▪ The terms 'operational phase' and 'initial operational phase' appear a number of times throughout the legislation. Section 12 infers that the 'initial' phase is considered to be two years after the facility commences operation, although clarification of the

		reasoning for this period would be useful. ▪ The notion of an 'Australian entity' and whether this applies to an Australian-owned company or a company based in Australia needs to be clarified.
2.2.	8	Clarification is sought as to whether all the layers of cascading responsibilities - proponent, EPCM and major contractors - need to submit separate AIP Plans to the Authority for approval or whether can they be covered under the Proponent's approved AIP Plan. Separate submissions would greatly increase compliance costs for government and industry with limited benefit for Australian suppliers.
2.3.	8	'Arm's length transactions' should not take into account the transfer of funds within a joint venture as this would likely lead to double counting. It is also noted that this section provides the Authority power to determine a 'reasonable' value for 'arm's length transactions'. At present, projects may already face a minimum of three separate valuation regimes in respect to imported equipment, namely i) Customers valuation, contained in legislation, ii) ATO transfer pricing valuation, contained in legislation, iii) AIP Plan valuation, at the discretion of the regulator to determine what is a 'reasonable' value. It is suggested that an additional layer of valuations on top of the existing assessments is unnecessary, especially in respect to such a complex matter.
2.4.	8 and 11	Clarification is sought on the thresholds proposed, for example $500 million for a major project and $1 million for a 'low value contract'. In particular, it would be useful to understand how these figures have been derived.
2.5.	9	Clarification is sought regarding a 'person responsible for carrying out project' and whether this refers to a project operator in a joint venture, acting on behalf of non-operators, or a separate entity.
2.6.	13	A fundamental flaw in the Bill is the requirement to lodge an AIP Plan 90 days before project concept design commences: ▪ At a practical level, the detail required in an AIP Plan would not be available at such an early stage and it would be useful to understand the reasons behind the proposed timing. ▪ A number of the proposed triggers are not appropriate. For example, a 'production calculation' can be undertaken well before the preparation of any feasibility studies or the application for a Production License. ▪ The number of projects to be assessed would dramatically increase, many of which would be highly conjectural, consequently increasing the regulatory burden without a public benefit. ▪ The commercial viability of projects could be impacted by very early disclosure to the public, or even the Authority and its agents. Many of the above concerns would also apply to other proposed

		trigger points in Section 13(a). In its current form, the legislation is simply not practical and does not reflect the realities of the project development process.
2.7.	17	As indicated, the requirement for proponents to provide an AIP Plan before a Trigger Date, particularly when this relates to project concept design or initial production estimates, is particularly onerous.
2.8.	17	A key issue for the petroleum sector is the consistency of regulation across state/territory and national jurisdictions. In this regard, APPEA supports the recognition in the Exposure Draft of existing local content processes established at the state/territory level and efforts to reduce duplication. However, it is not clear whether the 'Minister', as referred to in Section 17, relates to the State or Federal Minister and whether the legislation therefore recognises acceptance of an AIP Plan at the State level as extinguishing obligations under the proposed legislation. Section 17 should also relate to major projects that already have an AIP Plan in place that has been approved by an appropriate authority. In its current form, the framework simply applies an additional layer of red-tape on the industry.
2.9.	18(10)	"The Authority must take all reasonable steps to ensure that a decision is made on a draft AIP plan … within 30 days." Within this context, clarification is sought on what constitutes 'reasonable' and what factors will impact how likely it is that the Authority will be in a position to make a decision within 30 days.
2.10.	21 and 35	Clarification of the point at which a project is deemed to be 'completed' would be useful, including who makes this determination.
2.11.	22	Further guidance should be provided on what the AIP Authority will require an AIP Plan summary to include.
2.12.	26(4)(b)	Guidance is sought regarding the details to be required in a compliance report and assurance that information requirements will be aligned with the RIS and not be subject to change. Reporting should also be limited to progress against an agreed AIP Plan
2.13.	34	'Opportunity to bid' should be a defined term. ▪ It is important that the objective for proponents to provide local industry with an equal 'opportunity to bid' also recognises that capability and capacity of tenders should be treated equitably. ▪ An 'opportunity to bid' does not necessarily result in a contract award and any reporting of outcomes and feedback to unsuccessful bidders should be provided with the intent of improving the quality of a tender. ▪ In this regard it is recommended that the AIP Authority's role should be limited to verification of information and must not seek justification from proponents regarding commercial decisions. ▪ Industry has reported that past discussions with government representatives have focussed on local supplier disadvantages and efforts to have proponents restructure projects to enable

		local suppliers to bid, despite the fact that this would have impacted the commerciality and engineering of the project.
2.14.	35	There is a fundamental disconnect between the scope of an AIP Plan and the detail required under the new legislation. AIP Plans are currently developed on a project basis, where as some of the measures identified would require extensive detail against specific components of a project. For example: ▪ Prequalification is ultimately against specific project scopes, and any prequalification requirements for potential bidders that would need to be published on a website would likely have to be high level and general. ▪ It is not clear how goods and services are defined and the requirement for standards to be published on a website does not take into account the fact that these are drawn from an extensive library of specifications. These are developed by project proponents, EPCMs, contractors and vendors. Many are finalised during detailed design of the particular component / scope and are therefore not available at the time the AIP Plan is initially prepared. It is simply not possible to develop a consolidated list of all applicable standards and codes for inclusion in an AIP Plan and for these to be listed on a website. ▪ A requirement to ensure each procurement entity publishes details and contact persons on a website would result in an excessively large number of listings and contact persons across a major project and into the contract chain, even where the benefit to be gained in enhancing Australian participation would be minimal. These circumstances would apply where there is limited opportunity and also where Australian content would occur regardless of this action. Proliferation of such sites would ultimately devalue the overall usefulness of other information websites (e.g. ICN) where real opportunity to enhance Australian participation exists.
2.15.	35(f) and 39(f)	The intent or motivation of this Section is unclear, given that all suppliers are provided with equal opportunity to submit a tender.
2.16.	35(g)(i)	A number of proponents have already incorporated mechanisms into internal processes to enhance the feedback provided to unsuccessful suppliers, including via bodies such as ICN. Feedback should be limited to unsuccessful tenders and not include Expressions of Interest.
2.17.	35(1)(d)	Prequalification is ultimately against a particular scope rather than for a project as a whole, and any general requirements published on a website are unlikely to be all encompassing.
2.18.	36(1) (c)	Clarity is sought as to whether the requirement for the provision of training would be restricted to the Proponent's personnel, or would cascade to all entities within the supply chain. In addition to the cost implications, it should not be a legislative responsibility of the Proponent to provide training for contractor personnel.

2.19.	36(1)(d)	A requirement for proponents to develop and publish an AIP Plan at an earlier stage will make it more difficult to identify potential opportunities. The detail required in an AIP Plan or on a website should therefore be dependent on the time the Plan is to be submitted or information is to be published. This would become more concise as a project progresses.
2.20.	36(1)(d)	Delineating categories where opportunities are expected to occur can dissuade Australian industry from responding to an invitation to tender, or putting in the effort required to be successful, on the basis that the published material does not identify a desired opportunity.
2.21.	36(1)(f)	The promotion of an Australian supplier into a global supply chain most often requires considerable effort by project personnel in Australia and overseas. This is also coupled with significant efforts by suppliers seeking entry into global supply chains, with suppliers having to demonstrate an equal commitment to the process. Making this support available on demand would dilute the project's ability to provide the necessary targeted support to suppliers with genuine/recognised opportunities for involvement in global supply chains.
2.22.	36(1)(g)	According to the media release from the Minister for Industry and Innovation (17 Feb 2013), AIP Officers would be required only on projects with expenditure of $2 billion or more that seek duty concessions under the EPBS. This would involve embedding an Australian Industry Opportunity Officer within the proponent's procurement team for major projects or global supply offices. It is noted that there is no reference in the Exposure Draft to this threshold.
2.23.	40(d)	Clarification is sought regarding the intended "legislative instrument" that will specify categories of goods and services that proponents will need to break opportunities, goods and services into.
2.24.	41	Clarification is sought regarding the formulation of a proposal in the context of "a person, either alone or in conjunction with one or more other persons, formulates a proposal for a designated project". It is not clear how this relates to the development of a project and what exactly it refers to.
2.25.	42	Requirements for the AIP Authority to be notified of pre-commencement proposals needs to ensure that these requirements are placed on the most contemporary project proposal. There may be a number of proposals that exist for a single prospective project and AIP requirements should always relate to the most recent iteration.
2.26.	45(1)	The need to provide advice on abandonment or cancellation of a major project within 14 days appears to be an unreasonable timeframe and could cause commercial difficulties for the Proponents, especially where stock exchange notification is required. The 14-day timeframe for advising when becoming or ceasing to be an Operator (Section 47 (1) and 48 (1), page 40) also appears to be an unreasonable timeframe and may also cause commercial difficulties for the Proponents, again especially where stock exchange notification is required.

2.27.	46	A template should be developed, in consultation with industry, to facilitate the provision of information in an approved form. Many of the above comments also apply to Subdivision D—Rules for Part C of the plan (Initial Facility Operational Phase), pages 32 to 35.
2.28.	50	It is not clear why the Authority would need powers to identify an individual within a company. Information gathering powers that seek information from a company would be equally effective.
2.29.	55 and 56	There would appear to be minimal benefit in providing the Authority with powers to obtain documents relating to retrospective decisions.
2.30.	57 and 58	The sections on administrative consequences of non-compliance and injunctions will escalate compliance costs without commensurate additional benefit to Australian industry. The case has not been made for this level of regulatory intervention. In addition, it appears unreasonable that the Project Proponent could be penalised where a breach occurs due to the failure of the Procurement Entity to meet obligations within timeframes.
2.31.	57	The 'Adverse publicity notice' should include a codified reference to available remedies (including compensation for financial or reputational loss) to parties that are named publicly, and that are subsequently deemed to have complied with their obligations under the Act. APPEA would also suggest that an appeal process should be established to enable review of a decision prior to the publishing of a notice.
2.32.	58	The proposed use and design of injunctions appears to be very heavy handed for a process that has worked effectively in the past without the need for legislative enforcement.
2.33.	63	While this Section appears to take into account joint venture projects, it is not clear whether this accounts for projects that are segmented, such as those that include an Operator and EPCM contractors.
2.34.	69(2)	It is important that any person appointed to the Authority should hold a formal qualification in Project management and requirements under Section 69 (2) (a) should be project management related. Similarly required qualifications should apply to the Australian Industry Participation Advisory Board proposed under Section 85.
2.35.	107	Clarification is sought regarding the term 'protected information' and its ability to capture confidential project information. It is critical that commercial information is protected against distribution.