Australian Jobs Bill 2013

Eugenia Karanikolas
Economics Section

Contents

Purpose of the Bill ........................................................................................................................................... 3
Structure of the Bill ........................................................................................................................................ 3
Brief Background ........................................................................................................................................... 4
  Rationale for this Bill ................................................................................................................................. 5
Regulatory Impact Statement ..................................................................................................................... 5
Committee consideration ............................................................................................................................. 6
  Senate Standing Committees on Economics ............................................................................................... 6
  Exposure Draft ........................................................................................................................................... 6
  Inquiry into the Australian Jobs Bill 2013 ................................................................................................. 7
  Senate Standing Committee for the Scrutiny of Bills ................................................................................ 7
Compatibility with Human Rights ............................................................................................................... 7
  Parliamentary Joint Committee on Human Rights .................................................................................... 8
Policy position of non-government parties/independents .......................................................................... 8
  Coalition ....................................................................................................................................................... 8
  Australian Greens .................................................................................................................................... 8
  Katter’s Australian Party .............................................................................................................................. 9
Position of major interest groups ............................................................................................................... 9
  Minerals Council of Australia .................................................................................................................... 9
  Industry Capability Network ..................................................................................................................... 10
  Australian Workers Union and Australian Manufacturing Workers Union ............................................. 10
Financial implications ................................................................................................................................. 10
Key issues and provisions.................................................................................................................................................. 11
Issues ............................................................................................................................................................................. 12
Australian Jobs Bill 2013

Date introduced: 15 May 2013

House: House of Representatives

Portfolio: Industry, Innovation, Climate Change, Science, Research and Tertiary Education

Commencement: Sections 1 and 2 commence on Royal Assent. Sections 3 to 128 commence on a day to be fixed by Proclamation or six months after Royal Assent, whichever is earlier.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose of the Bill

The purpose of the Australian Jobs Bill 2013 (the Bill) is to:

- make it a requirement that an Australian Industry Participation (AIP) plan be submitted for any projects with a capital expenditure of more than $500 million and
- establish the Australian Industry Participation Authority (the Authority), whose functions will include approving AIP plans and monitoring compliance.

Structure of the Bill

The Bill consists of 11 parts:

- Part 1 contains preliminary matters, including relevant definitions
- Part 2 contains the reporting and compliance requirements relating to the submission of AIP plans and sets out the AIP plan rules
- Part 3 sets out the notification obligations of project providers regarding plans to go ahead with major projects
- Part 4 sets out the information-gathering powers of the Authority
- Part 5 contains details about the consequences that may be faced by project providers if they fail to comply with this legislation, including publicly naming the provider or granting an injunction
- Part 6 contains information relevant to projects with more than one project provider
- Part 7 establishes the Authority and outlines its key functions, including the requirement to promote and monitor compliance with AIP plans
Part 8 contains details about the appointment of the Australian Industry Participation Advisory Board (AIP advisory board) and outlines the board’s key functions, including to advise the Authority on matters relating to the performance of its functions.

Part 9 sets out secrecy requirements and the penalties for disclosing protected information.

Part 10 deals with the review of decisions by the Authority by the Administrative Appeals Tribunal and

Part 11 contains miscellaneous provisions, in particular the requirement to review the operation of the Act within five years after it comes into effect.

**Brief Background**

The AIP National Framework is a joint program of the Commonwealth, states and territories, signed in 2001, which aims to ensure that local suppliers are given a fair opportunity to participate in major projects.

The AIP National Framework is:

- complemented by the Industry Capability Network (ICN)\(^1\) which aims to connect large project providers with local suppliers and
- supported by the Enhanced Project By-Law Scheme (EPBS).\(^2\) This is a voluntary scheme whereby a project provider can apply for a tariff concession if an AIP plan is submitted showing how Australian suppliers have been given a reasonable opportunity to bid for the project.

A number of changes have been made to the AIP program in recent years, including in the:

- requirement for tenders for large federal government projects to include an AIP plan\(^3\)
- requirement for project providers who have applied for tariff concessions under the EPBS, to give more detailed evidence of the opportunities made available to domestic suppliers to be involved in the project and

---


The states and territories are currently implementing changes to their government procurement policies in an attempt to move away from explicitly stating that they provide preferential treatment to local business. Those changes will bring them in line with the federal government procurement policy. This move appears to be in part motivated by the wish to avoid the risk of breaching international and bilateral trade agreements if a government procurement policy is found to be discriminating against non-Australian suppliers.
• requirement for projects which received more than $20 million in Commonwealth grants to include an AIP plan.\(^4\)

These changes were partly in response to the recommendations made by the Prime Minister’s Manufacturing Taskforce in the non-government members’ report released in 2012.\(^5\)

**Rationale for this Bill**

As mentioned above, the recent changes to government procurement in relation to AIP reflect the intention to promote the involvement of Australian suppliers in major public projects. This comes at a time when manufacturing activity has been declining and calls have been increasing for the government to play a more active role in industry policy.

In essence, this Bill proposes that large private projects are subjected to similar processes for encouraging local content as large government projects.

This Bill’s proposed changes are in response to the report of the non-government members of the Prime Minister’s Manufacturing Taskforce and in particular its view that:

> AIP plans should be formulated as early as possible, with proponents providing clear indications of engagement with local suppliers.\(^6\)

**Regulatory Impact Statement**

A Regulatory Impact Statement (RIS) considering the Government’s Australian Industry Participation policy was prepared. In short, the RIS argued that legislating AIP plans will raise the cost of doing business, but noted that ‘these costs are marginal especially given that the project threshold is at high end of the project spectrum’.\(^7\) The RIS went on to note that legislating AIP plans is not unique to Australia, with similar programs been implemented in countries such as Canada. Details of the report can be found at the [RIS web page].\(^8\)

---

8. Ibid.

*Warning:* All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Committee consideration

Senate Standing Committees on Economics

Exposure Draft

On 21 March 2013, the Minister for Climate Change, Industry and Innovation, Greg Combet, released an Exposure Draft of this Bill. On the same day, the exposure draft was referred to the Senate Economics Legislation Committee for inquiry and report by 14 May 2013. The Committee released its report on 10 May 2013. Details of the inquiry are at the inquiry web page.9

In short, the Government’s intention to increase local supplier involvement in major projects received widespread support from stakeholders. However, some submitters to the inquiry expressed doubt that local supplier involvement could be achieved through this legislation.10 The following are some of the key concerns submitters had with the exposure draft of the Bill:

- the increase in red tape11
- the proposed $500 million capital expenditure threshold and
- the definition of a ‘trigger date’13


12. For example the Australian Steel Institute and the Industry Capability Network argued in favour of lowering the threshold to capture more investment, whilst Western Australia Chamber of Commerce and Industry argued that it should increase because too many projects will be required to submit AIP plans under the new regime. For more information on this see chapter 2 of the Senate Economics Legislation Committee, Exposure Draft of the Australian Jobs Bill 2013, May 2013, viewed 12 June 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=economics_ctte/completed_inquiries/2010-13/jobs_bill_2013/report/index.htm

13. Some submitters expressed concerns about the definition of a trigger date arguing that the requirement to submit an AIP plan 90 days before the ‘trigger date’ was ‘impracticable’ and ‘unreasonable’. See for example submissions made by the Australian Petroleum Production and Exploration Association and the WA Chamber of Commerce and Industry. Submissions to the Senate Economics Legislation Committee, Exposure Draft of the Australian Jobs Bill 2013, April 2013, viewed 12 June 2013,
In concluding the majority of the Committee, after noting the concerns of the submitters with the draft Bill, offered its support for the exposure draft of the Bill stating that it ‘will be good for Australian businesses, helping them access Australia’s strong pipeline of major projects’.

However, as set out in more detail below, the Coalition members of the Committee did not support the exposure draft Bill and recommended that it not be introduced.

**Inquiry into the Australian Jobs Bill 2013**

On 15 May 2013, Greg Combet introduced the Bill into the House of Representatives. The Bill was referred to the Senate Standing Committees on Economics on the 16 May 2013. Originally the committee was due to report on 17 June 2013 but the reporting date was moved forward to 3 June 2013. Details of the inquiry are at the inquiry web page.

In summary, notwithstanding the changes made to the Bill by the Government, issues raised by some of the submissions remained the same as in the first inquiry. The majority of the Committee recommended that the Senate pass the Bill, with the Coalition Senators dissenting and urging that the Bill not be passed.

**Senate Standing Committee for the Scrutiny of Bills**

At the time of writing this Bills Digest, the Senate Standing Committee for the Scrutiny of Bills had not considered the Bill.

**Compatibility with Human Rights**

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible, as it does not raise any human rights issues.

However, the Government did highlight that the Bill engages the following Human Rights:

---

**Notes:**


15. Ibid., pp. 27-29.


---

**Warning:** All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
• equality and non-discrimination
• protection from arbitrary and unlawful interference with privacy and
• presumption of innocence.18

Parliamentary Joint Committee on Human Rights

The Parliamentary Joint Committee on Human Rights has published comments about the Bill. The Committee’s comments are directed at:

• sharing of protected information with a broad range of bodies and
• the reverse onus of proof provisions.19

Policy position of non-government parties/independents

Coalition

Dissenting reports for both Senate inquiries into this Bill were prepared by the Liberal Party Senators, who sit on the Senate Economics Legislation Committee. The Liberal Senators argued that this legislation is ‘unnecessary’ and ‘poorly conceived’.20

The Shadow Minister for Industry, Sophie Mirabella confirmed that the Coalition will not be supporting this Bill arguing that it is ‘bad for Australian competitiveness’.21

Australian Greens

The Australian Greens support this Bill and have stated that they:

... commend the government on taking, at least, some small steps to deal with some of the problems that have arisen and the pressures on industry...22


Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Katter’s Australian Party

The Member for Kennedy, Bob Katter, also expressed his support for this Bill, commenting that:

It is very seldom and rare for me to give any praise to either side of this parliament but in this case, with this bill, at least the Australians will be able to have a go.

...

Far be it for me to say anything good about this government, but there is a tiny bit of light, of opportunity, that will be provided to my contractors, the people that I grew up with, went to school with and who are my friends. 23

Position of major interest groups

Minerals Council of Australia

In its submission to the inquiry into the Bill, the Minerals Council of Australia (MCA) expressed concerns relating to a number of provisions, including:

- trigger arrangements. The MCA argued that the:
  
  ... new two-tiered arrangement still puts considerable administrative burdens on proponents to devise plans and draft proposals on projects which may not proceed or may be significantly modified before the procurement stage. 24

- disclosure provisions. The MCA is of the view that the secrecy provisions of the Bill are not sufficient to prevent the disclosure of commercially sensitive information

- indexation. According to the MCA:

  The removal of the indexation arrangements for liable projects means that over time more and more projects will be roped in requiring ever greater resources for the [Authority]. 25

25. Ibid.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Similar concerns were raised by the Australian Petroleum Production and Exploration Association (APPEA), the Chamber of Commerce and Industry of Western Australia and the Business Council of Australia (BCA).\textsuperscript{26}

**Industry Capability Network**

The Industry Capability Network expressed its support for the Bill’s

... strengthening of the rules for Australian Industry Participation (AIP) so that this policy and the associated programs ensure major projects, both public and private, implement processes which truly provide full, fair and reasonable opportunity to Australian companies who are capable of and wish to bid for work on these projects.\textsuperscript{27}

**Australian Workers Union and Australian Manufacturing Workers Union**

In their joint submission to the Senate Committee inquiry into the draft Bill, the unions stated that:

The Australian manufacturing sector needs this legislation to be passed immediately. This legislation is essential in securing the future of manufacturing sector and the millions of Australian jobs it directly and indirectly supports. \textsuperscript{28}

**Financial implications**

According to the Explanatory Memorandum:

The Government has committed $98.2 million over five years for the *Opening Up Opportunities through Australian Industry Participation* reforms. The funding is allocated in the following financial years:\textsuperscript{29}

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$m</td>
<td>1.1</td>
<td>21.7</td>
<td>19.7</td>
<td>27.8</td>
<td>28.1</td>
</tr>
</tbody>
</table>


As is noted in the Explanatory Memorandum the cost of the jobs plan measures including the setting up of the new Authority are to be funded, in part, through the $1 billion savings realised by the cessation of the R&D tax breaks for large companies.\[30\]

**Key issues and provisions**

Due to time constraints, a complete examination of the Bill’s provisions has not been possible. The following discussion summarises the fundamental elements of the Bill and the most contentious issues raised in consultations.

**Establishment of Authority**

**Part 7** of the Bill establishes the Australian Industry Participation Authority (the Authority). The primary functions of the Authority are:

- to provide assistance to companies to meet their obligations under the Bill
- to monitor compliance with the Bill
- to support, encourage, conduct and evaluate research relating to AIP
- to advise the Minister on matters relating to AIP and
- to administer AIP schemes in accordance with the requirements of the Bill.

**Authority’s powers**

**Part 4** of the Bill establishes the Authority’s power to request information that is of relevance to the operation of the Bill. **Part 5** sets out the consequences of non-compliance with the requirements of the Bill, which, in the first instance, is the public naming of the company. **Clauses 58-62** set out the Authority’s powers to ask a court to impose an injunction on project providers who refuse or fail to comply with the legislation.

**Disclosure of information**

**Part 9** deals with the obligations of secrecy and permitted disclosure of information by Commonwealth government officers. Penalties, up to a maximum of two years imprisonment and/or 120 penalty units, are provided for failure to comply with the legislation’s requirements.\[31\]

**Notification obligations for project proponents**

**Part 3** sets out the obligations of project proponents to notify the Authority when a major project is being considered.

---

30. Ibid.
31. Under section 4AA of the *Crimes Act 1914* (Cth), a penalty unit is $170. The maximum monetary penalty that may be imposed under Part 9 of the Bill is $20 400.

*Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.*
Issues

This Bill has been subject to an extensive public consultation process, including through an exposure draft and two Senate Committee inquiries. During this consultation process, the following issues were raised:

Regulatory impact of this legislation

A number of submissions received by both Senate Committee inquiries pointed out that the Bill will add to the cost of doing business.

For instance, Chevron argued that the company already makes a ‘considerable effort’ to promote local participation and could not see the need to legislate on the issue. The company argued that the cost of complying with the AIP plan requirement would be well in excess of the estimate of $145 000 over five years, given in the RIS. It also claimed that Australia ‘is currently the most expensive place that Chevron does business in its global portfolio’ and this type of legislation may adversely affect future investment.32

The need to have a new regulatory authority

Both the BCA and the Coalition have criticised the Government for proposing to establish the new Authority. In particular, in its submission on the draft Bill the BCA questioned the need for:

... a costly new regulatory authority at time when Australia has numerous other regulatory agencies engaging with projects and when the budget is in deficit.33

A similar view was taken by the Coalition Senators in their dissenting report on the Senate inquiry into the Bill, arguing that the decision to establish a new government agency, and some of its proposed functions, are:

... anathema to the objective of increasing the international competitiveness of Australian businesses.34

In response, the Government stated that the new Authority is necessary as it will:

Improve coordination between the Buy Australian At Home and Abroad initiative and Supplier Advocates and other relevant parts of AusIndustry and Enterprise Connect. It will be a one-stop-shop for Australian entities seeking to build capability and capacity and link into new business opportunities.35

**Trigger day**

The provisions relating to the notification obligations of the project proponents and in particular the definition of ‘trigger day’\(^{36}\) have been the most controversial aspect of this Bill.

Notwithstanding the changes\(^{37}\) to the definition in the final Bill, submitters still argued that the notification requirements are set too early in the life cycle of the project. They claim that it will add unnecessary burden on business to submit an AIP even for a project which may not in the end go ahead.\(^{38}\) The oil and gas industry body, APPEA argued in its submission that, rather than being automatically activated by specified events, it would be more appropriate for the ‘trigger date’ to be identified by agreement between the project proponent and the Authority.\(^{39}\)

---

\(^{36}\) The Bill lists the events which will be considered as triggering the beginning stages of the proposed project, including the development of block diagrams, and the preparation of an equipment list and an environmental submission.


\(^{38}\) See for example the Minerals Council of Australia (MCA), Submission to the Senate Economics Legislation Committee, *Inquiry into the Australian Jobs Bill 2013*, op. cit.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2500.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.