

Chapter 1

Introduction

The Australian Jobs Bill 2013

1.1 On 21 March 2013, the Minister for Climate Change, Industry and Innovation, the Hon. Greg Combet, announced the release of an exposure draft of a bill titled the Australian Jobs Bill 2013. The same day, the Senate referred the exposure draft of the Australian Jobs Bill 2013 to the Senate Economics Legislation Committee for inquiry and report by 14 May 2013.

1.2 The committee handed down its report into the exposure draft on 10 May 2013.

1.3 On 15 May 2013, Minister Combet introduced the Australian Jobs Bill 2013 [Provisions] (the bill) into the House of Representatives. On 16 May 2013, the Senate referred the bill to this committee for inquiry and report by 17 June.

1.4 The broad thrust of the bill remains the same as the exposure draft. Section 4 of the bill provides the following simplified outline:

- An Australian Industry Participation plan (*AIP plan*)¹ is required for a major project to establish, expand, improve or upgrade a facility.
- An AIP plan will deal with:
 - (i) the project phase of a major project; and
 - (ii) if a major project involves establishing a new facility—the new facility’s initial operational phase.
- The key objective of an AIP plan is that Australian entities should have full, fair and reasonable opportunity to bid for:
 - a) the supply of key goods or services for the project; and
 - b) if the project involves establishing a new facility—the supply of key goods or services for the new facility’s initial operational phase.
- This Act sets up the Australian Industry Participation Authority.
- The Authority's functions include:
 - a) approving AIP plans; and
 - b) monitoring compliance; and
 - c) other functions relating to Australian industry participation matters.

1 Emphasis in original

- The Minister may establish the Australian Industry Participation Advisory Board.

1.5 There are, however, amendments that have been made in response to the department's consultation process around the exposure draft and this committee's previous inquiry.

1.6 The committee's previous report provided contextual information about the Australian Jobs Bill 2013, a brief history of Australian Industry Participation, and an overview of the Australian manufacturing sector.

1.7 This report will not repeat that information. Rather, this report will focus on the amendments made to the exposure draft and examine the views of submitters in relation to those amendments.

1.8 This chapter will consider the amendments in detail. Chapter 2 will canvass the views of submitters on the amendments.

The inquiry process

1.9 The inquiry was advertised in *The Australian* on 22 May 2013 and on the committee's website. Invitations to make submissions were sent to more than fifty relevant organisations.

1.10 The committee received five submissions which are listed in Appendix 1. The committee thanks these submitters and all those who contributed to this inquiry.

The bill's key differences from the exposure draft

1.11 Fourteen amendments have been made to the original exposure draft and are now included in the current bill. These amendments are listed below.

Object of the Act (Section 3)

1.12 In the exposure draft the main object of the bill is to support the creation and retention of Australian jobs by requiring an AIP plan for major projects. This object has been amended by including a reference to AIP plans ensuring that Australian entities have full, fair and reasonable opportunity to bid for:

- a. the supply of key goods or services for the project; and
- b. if the project involves establishing a new facility—the supply of key goods or services for the new facility's initial operational phase.

1.13 The Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (DIICCS RTE) argue that this change better reflects the intention of the bill and is consistent with the Australian Industry Participation

National Framework signed by Commonwealth, State and Territory Governments in 2001.²

Person responsible for carrying out the project (Section 9)

1.14 Section 9 includes a new provision to provide for the Authority to declare that, for the purposes of the bill, one or more persons are taken to be the person or persons responsible for carrying out a specified project, and no other person is responsible for carrying out the project. Such a declaration under this section will be subject to review by the Administrative Appeals Tribunal (AAT).

1.15 DIICCS RTE argue that this addresses perceived concerns raised for potential ambiguity concerning responsibility for carrying out a project.

Trigger Date (Section 13)

1.16 The bill has redefined the trigger date and list of trigger events for a project. The trigger date for a project will mean:

- a. if a trigger event for the project happens during the interim period—the first or only day during the interim period on which a trigger event happens; or
- b. if the earliest trigger event for the project happens on a day after the interim period—that day; or
- c. if the Authority, either on its own initiative or on application made to the Authority by the project proponent, specifies another day—that other day. This decision by the Authority will be subject to review by the AAT.

1.17 Each of the following is a trigger event for the project:

- a. block diagrams for the project are developed;
- b. process flow diagrams for the project are developed;
- c. a project proponent enters into a contract with another person under which the other person becomes a procurement entity in relation to the project;
- d. a request for bids for the supply of key goods or services for the project is made;
- e. technical specifications for the project are prepared;
- f. a project proponent determines which standard or standards will apply to any of the key goods or services that are to be acquired for the project;
- g. an equipment list for the project is prepared;

2 The list of amendments discussed in chapter one of this report is taken from the DIICCS RTE summary of changes between the exposure draft and the final version of the Australian Jobs Bill 2013
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=economics_ctte/aus_jobs_bill_2013/info.htm (accessed 20 May 2013)

- h. a project proponent first contacts a supplier with a request for pricing details for any of the key goods or services for the project;
- i. a construction and contracting methodology for the project is developed;
- j. an environmental submission is made in relation to the project;
- k. a detailed schedule for the project is prepared; and
- l. a high-level scoping of the goods and services for the project is conducted.

1.18 The interim period means the period beginning immediately after the end of the 90th day after the commencement of the bill, and ending 2 years after the commencement of the bill.

1.19 This amendment addresses, according to DIICCSRTE, concerns expressed by stakeholders about the trigger date in the exposure draft being too early in the project cycle to sufficiently inform an AIP Plan. This would decrease the value of the AIP Plan, and potentially breach company disclosure requirements. The change also addresses the possibility that projects reaching triggers after the commencement date would have inadvertently been excluded.

Summary of the specified steps (Section 22)

1.20 The exposure draft of the bill provided that if a draft AIP plan is approved, the summary of the steps taken to fulfil the plans obligations may be published on the Authority's website. This requirement has been changed so that the Authority must ensure that the summary is available on the Authority's website for 15 days beginning on the day after the summary was received by the Authority. This, argues DIICCSRTE, will allow the general public to be aware of the proposed major project prior to the AIP Plan approval.

Notification of estimated completion date for new facility (Section 22A)

1.21 A new provision has been included that the project proponent for a major project must notify the Authority, in an approved form, of the estimated date of completion for the establishment of the facility at or around the same time that a draft AIP Plan is submitted to the Authority.

Compliance Reports (Section 25)

1.22 In regards to the submission of a compliance report by a project proponent, this section now provides that the Authority may determine an alternative reporting period to the one required by the bill for a specific major project. A decision by the Authority to determine an alternative reporting period will be subject to review by the AAT.

Primary Obligation regarding Standards (Sections 35(e) and 39(e))

1.23 The exposure draft provided that, if neither Australian standards nor internationally recognised standards are used by the major project, the project proponent or operator of a new relevant facility will take all reasonable steps to ensure that the procurement entity will publish on its website a statement explaining why neither Australian standards nor internationally recognised standards are being used. The bill will no longer require that international standards be internationally recognised standards. DIICCSRTE explains that concerns raised during the public exposure period argued that the term ‘recognised’ international standards was ambiguous and that it would be easy to contend that all standards are internationally recognised.

Primary Obligation regarding Feedback (Sections 35(g) and 39(g))

1.24 The exposure draft provided that when feedback is given to Australian entities whose bids to supply key goods or services for the project have not been successful, the project proponent or operator of a new relevant facility will take all reasonable steps to ensure that the procurement entity gives feedback which includes recommendations about any relevant training and any relevant skills development. DIICCSRTE notes that this has been changed so that the recommendations about skills development will relate to skills capability and capacity development.

Other Obligation regarding Global Supply Chains (Sections 36(f) and 40(f))

1.25 The exposure draft provided for information to be given to suppliers about global supply chains of project proponents or operators upon request. This is changed in the bill so that, if the project proponent or operator has a global supply chain, the proponent or operator must encourage Australian entities that are supplying, or have supplied, key goods or services for the project to develop the capability and capacity to supply key goods or services to the global supply chain, and to integrate into the global supply chain.

Notification Obligations (Part 3)

1.26 The exposure draft provided for the Authority to be notified upon the formulation of a proposal for a major project. This rule has been replaced by a rule that provides that the Authority is to be notified of a preliminary trigger day for a major project, so long as that day occurs after commencement of the bill. If the proponent is aware that the project is reasonably likely to be major project, notification must be given within 60 days. If the proponent is not aware on the preliminary trigger day that the project is likely to be a major project, notification must be given within 14 days after the proponent becomes aware that the project is likely to become a major project.

1.27 The preliminary trigger day for a project means the day on which the earliest of the following events happens:

- a. the project concept design begins;
- b. an environmental assessment begins to be carried out by a project proponent;
- c. a project proponent enters into a contract with another person to carry out an environmental assessment of the project;
- d. the raw materials for the project are estimated;
- e. the utility consumption for the project is estimated.

1.28 The exposure draft provided for a number of other matters to be notified to the Authority within 14 days. This has been changed to 60 days.

1.29 DIICCS RTE explains that this reduces earlier concerns from stakeholders about perceived ambiguity when a project is formulated, and extends the time periods for notification to avoid conflict with company reporting requirements.

Liability for damages (Part 11)

1.30 The exposure draft provided that members of staff assisting the Authority are not liable for damages for acting in good faith in relation to the performance of functions and the exercise of powers under the bill. This provision has been extended to secondees whose services are made available to the Authority.

Legislative Rules (Part 11)

1.31 The exposure draft provided for certain matters to be dealt with by regulations. This has been changed so that those matters are dealt with by legislative rules made by the Minister. Legislative rules will be legislative instruments. In addition, existing legislative instruments made by the Minister will be known as legislative rules, and the Minister will have power to make legislative rules necessary or convenient to be prescribed for carrying out or giving effect to the bill.

AIP Advisory Board (Section 88)

1.32 In the event that the Minister appoints an AIP advisory board, the bill now provides that the Minister must ensure that the members of the AIP advisory board collectively possess experience or knowledge in all of the following fields: economics, industry, project management and procurement of goods or services.

Indexation

1.33 The bill no longer provides for threshold amounts for major projects and low-value contracts to be indexed annually by the Consumer Price Index. This is, according to DIICCS RTE, because changing thresholds annually may create uncertainty for project proponents on whether their project or low-value contract will be captured under the bill. It was noted by stakeholders during the public exposure stage of the consultation process, that many project proponents 'round' the project value as, in the early stages, less detail is known. In future years, projects rounded to

\$500 million or contracts rounded to \$1 million would not be captured if the indexation provisions were kept.

1.34 Chapter two of this report examines submitters' views about the amendments.

