

28 May 2013

Secretary
Senate Standing Committees on Economics
P.O. Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Sir/Madam

INQUIRY INTO THE AUSTRALIAN JOBS BILL 2013

The Law Council of Australia welcomes the opportunity to make this submission to the Senate Standing Committees on Economics' inquiry into the Federal Government's Australian Jobs Bill 2013.

This Submission was prepared by members of the Law Council's International Law Section. The Law Council is the peak national representative body of the Australian legal profession – it represents some 60,000 legal practitioners nationwide. **Attachment A** provides a profile of the Law Council. **Attachment B** provides a profile of the International Law Section.

The Law Council supports efforts to raise the participation of Australian suppliers of goods and services in major projects in Australia provided that they are competitive and can meet the requirements of the project.

The Law Council of Australia notes that other submissions to the Committee have identified an absence of evidence that Australian suppliers are not being considered in major projects. However, the Regulatory Impact Statement accompanying the Bill suggests that more often than not they are considered.

The Law Council is concerned that the Bill, if enacted, will impose additional regulatory requirements on proponents of major projects in Australia, thereby adding additional costs to such projects and such additional costs, together with increasing governmental involvement in the selection of suppliers, may adversely affect and discourage investment in Australia. The Law Council is also concerned with the Australian Industry Participation Authority, a new Federal Government agency, becoming involved in and effectively over-seeing how proponents of major projects are complying with their obligations to prepare and implement Australian Industry Participation (AIP) plans, not only by reporting

obligations of a proponent throughout the course of a project, but also by having extensive information gathering powers.

Given both issues, the Law Council submits that the costs of the Bill may need to be considered in greater detail against its perceived benefits. The submissions to the Committee that the Law Council has reviewed would suggest that further industry consultation may be appropriate.

The Law Council also notes the comments in the Explanatory Memorandum that the implementation of AIP Plans is less likely to give rise to issues under the World Trade Organisation (WTO) than, for example, mandating local content requirements. However, the Law Council is unclear on the extent to which the Department of Foreign Affairs and Trade (DFAT) has already provided advice to the Government identifying whether the Bill is compliant with Australia's international treaty obligations.

The Law Council recommends that the Senate Standing Committee investigates this issue and seeks express confirmation from DFAT that no material risks for Australia arise. Specifically:

1. whether the Bill is consistent with Article III.4 of the General Agreement on Tariffs and Trade, with Article 2.2 of the Agreement on Technical Barriers to Trade and with Articles II and VI.5 of the General Agreement on Trade in Services;
2. whether the Bill, if enacted, may in practice result in Australian domestic suppliers of goods and services being treated more favourably than foreign suppliers; and
3. further, if, as stated in the Explanatory Memorandum, that an objective of the Bill is for project proponents to take into account Australian industry capabilities and capacity in setting standards for a project so that Australian industry is not "designed out" of the project, whether this, in practice, could be a technical barrier to trade and, again, result in Australian suppliers receiving more favourable treatment.

The International Law Section would welcome any opportunities to discuss this further. In the first instance please contact the Chair of the ILS Trade & Business Committee, Mr Andrew Percival

Yours sincerely

Martyn Hagan
Secretary-General

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian state and territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 60,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the Constituent Bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12 month term. The Council's six Executive are nominated and elected by the board of Directors. Members of the 2013 Executive are:

- Mr Joe Catanzariti, President
- Mr Michael Colbran QC, President-Elect
- Mr Duncan McConnel, Treasurer
- Ms Fiona McLeod SC, Executive Member
- Mr Justin Dowd, Executive Member
- Ms Leanne Topfer, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

Attachment B: Profile of the International Law Section

The International Law Section (ILS) provides a focal point for judges, barristers, solicitors, government lawyers, academic lawyers, corporate lawyers and law students working in Australia and overseas, who are involved in transnational and international law matters, migration and human rights issues.

The ILS runs conferences and seminars, establishes and maintains close links with overseas legal bodies such as the International Bar Association, the Commonwealth Lawyers' Association and LAWASIA, and provides expert advice to the Law Council and its constituent bodies and also to government through its Committees.

Members of the 2013 ILS Executive are:

- Dr Gordon Hughes, Section Chair
- Dr Wolfgang Babeck, Deputy Chair
- Ms Anne O'Donoghue, Treasurer
- Mr Fred Chilton, Executive Member
- Mr John Corcoran, Executive Member
- Mr Glenn Ferguson, Executive Member
- Ms Maria Jockel, Executive Member
- Mr Andrew Percival, Executive Member
- Dr Brett Williams, Executive Member.

The ILS Committees are:

- The Alternative Dispute Resolution Committee (Ms Mary Walker, Chair)
- The Migration Law Committee (Mr Erskine Rodan, Chair and Ms Katie Malyon Vice-Chair)
- The Human Rights Committee (Dr Wolfgang Babeck and Mr Glenn Ferguson, Co-Chairs)
- The Trade & Business Law Committee (Mr Andrew Percival, Chair)
- The Comparative Law Committee (Dr Wolfgang Babeck and Mr Thomas John, Co-Chairs).

