

12 April 2013

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

Dear Sir/Madam

Re: Inquiry into the exposure draft of the Australian Jobs Bill 2013

I refer to the invitation for comment on the exposure draft of the Australian Jobs Bill 2013.

Attached for your reference please find our response to the exposure draft, prepared on behalf of the Industry Capability Network (ICN), and Industry Capability Network Ltd (ICNL), on specific aspects of the draft Bill.

In that submission we recommend:

1. The adoption of "lead indicators" on a projects AIP obligations;
2. The dollar trigger limit for the requirement for an AIP plan be set at \$200 million;
3. That projects always test the Australian market for capability and capacity;
4. That a structure be adopted which does provide for an independent and accountable board;
and
5. The services currently provided by ICNL to the ICN offices be provided at least to the same level by the Authority.

Further to those specific comments ICN strongly believes that Australian companies should truly get full, fair and reasonable access to opportunities for which they have real capability and that any legislation or related instrument, to be worthwhile, must enhance that outcome.

To that end each component of an existing array of Federal, state and territory policies and programs need to dovetail together in a complementary manner. The intent of all of these are the same, to promote opportunities in major projects and to source, where commercially sound to do so, local capability to meet those opportunities.

ICN is in the best position to identify and align known capability with major project opportunities and therefore needs to be an integral partner in the day to day operations of any new Authority. In addition to our traditional project opportunity promotion and business matching services we either manage, on behalf of the Australian Government, or are closely aligned with and support a range of activities which enhance Australian Industry Participation. These include:

- Supplier Access to Major Projects
- National Sector Managers
- Supplier Advocates
- Enterprise Connect

ICN has successfully undertaken industry participation support activities, on an independent, not-for-profit basis, since 1984. An adequately resourced and properly supported ICN, including the co-ordinating company ICNL, can continue to enhance the probability of success of Australian companies. Any new Authority should work hand in hand with ICN offices around Australia.

We strongly recommend in our submission on the exposure draft attached a sound governance model for the new Authority. It is our opinion that a Board be established which can:

- monitor the outcomes of approved industry plans;
- provide commentary on existing and proposed legislative instruments;
- leverage relationships with related entities;
- provide advice on procurement trends and emerging market strategies; and
- offer guidance to the strategic direction and performance of the Australian Industry Participation Authority.

Should you have any questions or need any additional information please do not hesitate to contact our Executive Director, Derek Lark

Yours sincerely

David McLachlan AO
Chairman

Response by Industry Capability Network to the Exposure Draft of the Australian Jobs Bill 2013

12 April 2013

Response by Industry Capability Network to the Exposure Draft of the Australian Jobs Bill 2013

Industry Capability Network (ICN) welcomes the release of the exposure draft for the Australian Jobs Bill 2013. Overall we believe the proposed Bill may assist Australian companies winning more work on major projects. However we are concerned that the proposed legislation could be improved in some areas, has a dollar trigger limit which is too high, is broadly open to interpretation and lacks a strong governance provision.

Australian Industry Participation Outcomes

ICN is in favour of a 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.

We are however concerned at the reporting periods as proposed under sections 25 and 26, which proposes six month reporting periods, with reports due within three months of the close of the reporting period. Such reporting represents the potential for nine months to have expired before any official notification that the AIP proposals in the approved plan are not being met. Opportunities might be missed by Australian companies under this approach. Reporting using lag indicators rather than an approach which allows for lead indicators to be observed may not help to deliver the benefits that the Bill seeks to achieve.

ICN would propose that under any approved plan the Authority require the plan owner to publish, in detail, all available and open contracts on a public, online, web portal together with a statement detailing the successful tenderer once the contract has been awarded.

The Authority should be charged with the requirement to observe, during the reporting period, the publication of these contracts and winning tenderers and to use these observations and the analysis thereof to ensure plan owners are in compliance with their approved AIP plans. Such an approach will provide “lead indicators” on a project’s AIP obligations.

We also believe that the dollar trigger limit of \$500 million is too high. ICN offices around Australia work on many projects that would not meet this trigger point. These projects offer substantial opportunities for Australian companies to win work. ICN recommends that the dollar trigger limit be set at \$200 million. This would also assist in the prevention of avoidance of compliance by “project splitting”.

With respect to tendering from Australian suppliers for goods and services it would be preferable that projects always test the Australian market for capability and capacity rather than requiring “the procurement entity to have a broad understanding of the capability and capacity of Australian

entities ...”¹. Furthermore we would expect that tendering does not exist only at the highest tier contract levels and that companies operating at second and third tier levels also get full, fair and reasonable opportunity to bid for work.

In regards to the Initial Operational Phase of a project, we believe that the Operational Phase requirement of the AIP Plan should be included for all major projects i.e. whether the major project involves establishing a new relevant facility or not. Therefore AIP Plans should include Parts A, B and C for all major projects. This approach will maximise the opportunities for SMEs to become involved in the through life support requirements of the project.

Governance

ICNL has operated with a skills-based, independent board accountable to a Minister for over 10 years. Our experience is that a board with these characteristics provides strong outcomes, particularly in the areas of strategic planning, finance and customer services.

The proposal for an Advisory Board (Section 85) whose function is to advise the Authority on performance, if requested, has, in our opinion, significant limitations. The Authority has oversight over a large number of significant projects and as such the performance of its functions and obligations has the potential to impact investment decisions and contractual outcomes across the nation.

A strong governance model which monitors performance, sets strategies and ensures best practice outcomes would be instrumental in achieving the purpose of the proposed Legislation. The governance model as proposed is unlikely to achieve those aims. ICN recommends a formal board structure with overall responsibility for the performance of the Authority. Should this be not an available option within an Authority structure then ICN recommends that a structure be adopted which does provide for an independent and accountable board.

ICN Operational Office Support

ICNL was established in 1995 to provide the state, territory and New Zealand Industry Capability Network (ICN) operational offices with a range of supporting services and to provide leadership and coordination of national activities.

The Australian Government’s Industry and Innovation statement requested that ICNL consider transitioning ICNLs operations into the Authority. The Board of ICNL considered this request at its regular meeting held on 27 February 2013 and agreed to support the transition.

This support was conditional on a number of key issues, but in particular, on the services provided by ICNL being provided to the state, territory and New Zealand offices to the same level by the Authority. Any legislation must allow for the Authority to provide these services at least to the level currently enjoyed by the operational offices.

¹ For example Section 35 (1) (c)

Conclusion

ICN believes that the proposed Act is the basis upon which improved AIP outcomes can be delivered. However to maximise the potential benefits within the constraints that trade and associated obligations pose the Bill needs to ensure that Australian companies truly do have full, fair and reasonable opportunity to participate in major projects.

Our recommendations are:

1. The adoption of “lead indicators” on the projects AIP obligations;
2. The dollar trigger limit be set at \$200 million;
3. That projects always test the Australian market for capability and capacity;
4. That a structure be adopted which does provide for an independent and accountable board;
and
5. The services provided by ICNL to the ICN offices be provided at least to the same level by the Authority.