

EXPLANATORY STATEMENT

Australian Jobs (Australian Industry Participation) Rule 2014

The Australian Jobs (Australian Industry Participation) Rule 2014 (the Rule) is made under the authority of the *Australian Jobs Act 2013* (the Act). The Act mandates the application of Australian Industry Participation plans for all major projects with capital expenditure of \$500 million or more in Australia, and establishes a statutory position, the Australian Industry Participation Authority (the Authority).

An Australian Industry Participation (AIP) plan outlines how a project proponent or proponents of a major project will provide full, fair and reasonable opportunity to Australian industry to supply goods and services to the project; it does not prescribe local content requirements.

The Act requires an AIP plan to be prepared before a trigger date as defined in the Act. The Act specifies Australian Industry Participation plan rules that impose minimum levels of obligations on the project proponent or a facility operator to demonstrate the actions and activities they will take to ensure that Australian firms have an opportunity to bid for work on major projects. Compliance reporting will also be required on Australian Industry Participation plans during a project's construction phase and two years into the operations phase.

The Authority will administer the Australian Industry Participation plan requirements and ensure compliance with the legislation. They will evaluate, approve and publish summaries of Australian Industry Participation plans, as well as monitor and report on the implementation of plans.

The Act specifies consequences for Australian Industry Participation plan non-compliance including adverse publicity notices, naming a relevant person and the ability for the Authority to seek performance and restraining injunctions.

Under the Act the Minister may, by legislative instrument, request the Authority to administer additional schemes and programmes on behalf of the Commonwealth.

The Rule is divided into 6 Parts.

Part 1 deals with preliminary matters.

Part 2 deals with exceptions to giving a draft AIP plan to the Authority.

Part 3 contains the information to accompany a compliance report for a project proponent and operator of a new facility.

Part 4 deals with the categories goods and services are to be broken down in.

Part 5 contains the information to accompany a notification obligation.

Part 6 provides for additional schemes, programs and functions to be undertaken by the Chief Executive.

The Rule is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Rule will commence on the day after registration.

Consultation

As this Rule is minor and machinery in nature, as per section 18(2)(a) of the *Legislative Instruments Act 2003*, consultation is unnecessary.

The Act was subject to a significant level of consultation during the public exposure and Senate Committee processes.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Jobs (Australian Industry Participation) Rule 2014

This Bill/Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill/Legislative Instrument

The Australian Jobs (Australian Industry Participation) Rule 2014 (the Rule) is made under the authority of the *Australian Jobs Act 2013* (the Act). The Act mandates the application of Australian Industry Participation plans for all major projects with capital expenditure of \$500 million or more in Australia, and establishes a statutory position, the Australian Industry Participation Authority (the Authority).

The Rule provides for exceptions under the Act, information required for compliance and notification, and further functions for the Authority.

Human rights implications

This Bill/Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Bill/Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Ian Macfarlane, Minister for Industry

Part 1 Preliminary

1 Name of instrument

The title of the instrument is the *Australian Jobs (Australian Industry Participation) Rule 2014*.

2 Commencement

The Rule commences on the day after registration.

3 Authority

The Rule is made under section 128 of the Act.

Part 2 Exception to giving draft Australian Industry Participation plan

4 Exception to giving draft AIP plan to the Authority—specified conditions in relation to a plan

This section provides for certain conditions to be met, as per section 17(5) of the Act, to be eligible for an exception to giving an AIP plan to the Authority. The conditions are as follows:

- a) The plan given to a State or Territory government or agency must be based around the key objective, that is the provision of full, fair and reasonable opportunity to bid for the supply of goods or services for the project for Australian industry.
- b) The plan must not preference to suppliers of goods or services located in one State or Territory over suppliers located in another State or Territory.
- c) The plan must contain arrangements so that the Authority is notified when the plan is given to a State or Territory and when any decision is made by the State or Territory on the plan. This condition is to ensure that the Authority has the appropriate information to determine whether an exception applies to the project under section 17(5) or not.

Project proponents should discuss their situation with the Authority regarding application of this exception to their project.

5 Exception to giving draft AIP plan to the Authority—specified conditions in relation to a project proponent

If at the date of commencement of the rule, a project has an AIP plan approved by AusIndustry under the Enhanced Project By-law Scheme, they will not be required to give an AIP plan to the Authority under the Act.

Project proponents should discuss their situation with the Authority regarding application of this exception to their project.

Part 3 Compliance Reports

6 Information to accompany compliance report—project proponent

This section lists the required information that a project proponent must provide as part of their compliance report under the Act. The compliance report relates to a reporting period as defined under the Act.

7 Information to accompany compliance report—operator of new relevant facility

This section lists the required information that a facility operator must provide as part of their compliance report under the Act. The compliance report relates to a reporting period as defined under the Act.

Part 4 Categories of goods or services

8 Categories of goods or services

Key goods and services for the project shall be broken down into the most reasonable appropriate size work packages that the project proponent or any procurement entity for the project normally puts out for tender. The categories for the AIP plan reporting should be the work packages made up by the proponent or the procurement entity.

Note however that the work packages advertised must be reasonable and appropriate for the goods and services being acquired and that this should be balanced on how well the work packages align with the key objective to give full, fair and reasonable opportunity to Australian industry.

It is up to the project proponent or the operator to decide what the appropriate work packages should be for their particular project and report in their AIP plan accordingly. The Authority can assist proponents and operators to choose appropriate work packages that meet the key objective of an AIP plan.

Part 5 Notification obligations

9 Notification of preliminary trigger day for major projects

This section lists the required information that a project proponent must provide when they notify the Authority of a preliminary trigger day for a major project.

Part 6 Functions of the Authority

10 Schemes and programs administered by the Authority

Under section 68(1)(k) of the Act, the Authority is to administer schemes and programs on behalf of the Commonwealth as part of its functions. The following are those schemes and programs:

- (a) the Supplier Advocates Program; and
- (b) the Resources Sector Supplier Advisory Forum; and
- (c) the Resources Sector Supplier Envoy Program.

11 Functions of the Authority

Under section 68(1)(m) of the Act, the Authority is to perform certain functions in addition to the ones under section 68 of the Act. The functions of the Authority are:

- (a) to provide advice on the preparation of draft AIP plans and AIP plan requirements for major Government procurements, loans and grants; and
- (b) to represent the Department in relation to the Department's company membership in Industry Capability Network Limited; and
- (c) to represent the Department on Australian industry participation matters; and
- (d) to provide advice on Australian industry participation matters; and
- (e) to manage funding for the following schemes or programs:
 - (f) the Supplier Access to Major Projects Initiative;
 - (g) the National Sector Manager Initiative;
 - (h) the Industry Capability Network Limited;
 - (i) the National Coordination of the State, Territory and New Zealand Industry Capability Network;
 - (j) the Industry Capability and Project Opportunities Database.