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Review of the Implementation of the *Australian Jobs Act 2013*

Report prepared for the Department of Industry,
Innovation and Science

26 November 2018

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Acknowledgements

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Acronyms

AIP	Australian Industry Participation
DIIS	Department of Industry, Innovation and Science
EPCM	Engineering, Procurement, Construction Management
GA	Government Agency
ICN	Industry Capability Network
PP	Project Proponent
QCA	Quantum Consulting Australia
SME	Small and Medium-sized Enterprises
TOR	Terms of Reference
VIA	Vendor Identification Agency

Definitions and Abbreviations

Act	<i>Australian Jobs Act 2013</i>
Australian entity	A business that holds an ABN or an ACN
Full	Australian industry has the same opportunity afforded to other global supply chain partners to participate in all aspects of an investment project (e.g. design, engineering, project management, professional services, IT architecture)
Fair	Australian industry is provided the same opportunity as global suppliers to compete on investment projects on an equal and transparent basis, including being given reasonable time in which to tender; and
Reasonable	Tenders are free from non-market burdens that might rule out Australian industry and are structured in such a way as to provide Australian industries the opportunity to participate in investment projects.
The Rule	Australian Jobs (Australian Industry Participation) Rule 2014

Style

This report uses the following terms to discuss the number, or commonality, of responses.

Most	means 20 or more (or 50%+)
Many	means 10 – 19 (or 25 – 50%)
Some	means 4 – 9 (or 10 – 25%)
A few	means 3

Executive Summary

Background

The *Australian Jobs Act 2013* (the Act) commenced on 27th December 2013. The primary objective of the Act is to provide *full, fair and reasonable* opportunity to Australian entities to bid for the supply of key goods and services to major Australian projects. The Act does not mandate the use of Australian suppliers or the achievement of any particular level of Australian content. The Act requires the development and implementation of an Australian Industry Participation (AIP) plan for eligible projects in Australia with capital expenditure of \$500 million or more.

Proponents of major projects are required to demonstrate compliance with their approved AIP plan throughout the project's development and operations phases. The Act establishes a statutory position, the Australian Industry Participation Authority (AIP Authority) to administer the Act. Currently the AIP Authority is supported by staff of the Department of Industry, Innovation and Science (DIIS). Key functions and processes related to the Act and performed by the AIP Authority include:

- monitoring and ensuring compliance with the Act
- providing support and advice to major project proponents and other stakeholders
- receiving AIP Notification Forms and registering major projects
- establishing a trigger date with project proponents
- assessing and approving draft AIP plans
- assessing exceptions to the AIP plan requirement of the Act
- publishing summaries of AIP plans on the AIP Authority website
- assessing compliance reports.

Terms of Reference

The Act requires that a review of its operation be conducted within five years of its commencement. DIIS commissioned Quantum Consulting Australia (QCA) to undertake an independent review of the implementation of the *Australian Jobs Act 2013* to investigate the transparency of processes in place to ensure that major project proponents and operators meet their obligations under the Act.

The scope of the review was defined through the Terms of Reference (TOR) approved in May 2018 by the federal Minister with responsibility for AIP to consider the:

1. Impact on regulated entities of complying with the Act's administrative and reporting obligations.
2. Effectiveness of AIP plans in enhancing major project proponent and operator engagement with, and outcomes for, Australian suppliers and understanding of their capability to supply.
3. Determination of trigger events and dates for major projects and the timing for submission of AIP notification forms and draft AIP plans.
4. Development, approval and implementation of AIP plans under the Act and subsequent compliance reporting by proponents and operators.

5. Effectiveness of compliance monitoring, enforcement and sanctions available under the Act.
6. Procedures for gaining an exception from the AIP plan requirements of the Act through use of a compliant state or territory industry participation plan.
7. Availability and effectiveness of the AIP Authority information and resources to assist proponents and operators to meet their obligations under the Act.

The scope does not include review of:

- the Act’s intent or provisions or legislative change;
- Australian industry participation requirements for Commonwealth Government procurements, grants and loans; or
- state or territory government industry participation requirements beyond what is required to address term of reference six (6).

Methodology

This review was conducted between August and November 2018 and consisted of research, survey and interview methodologies.

Thirty-eight key stakeholders were consulted from across six states and territories. There have been no major projects in Tasmania and in the Australian Capital Territory (ACT) there was only one project that had gained an exception. Stakeholders were grouped into five cohorts: project proponents (20), government agencies (6), vendor identification agencies (5), industry associations (1) and suppliers (6). The map below highlights the locations at which consultations occurred (yellow) and the location of associated major projects (green).

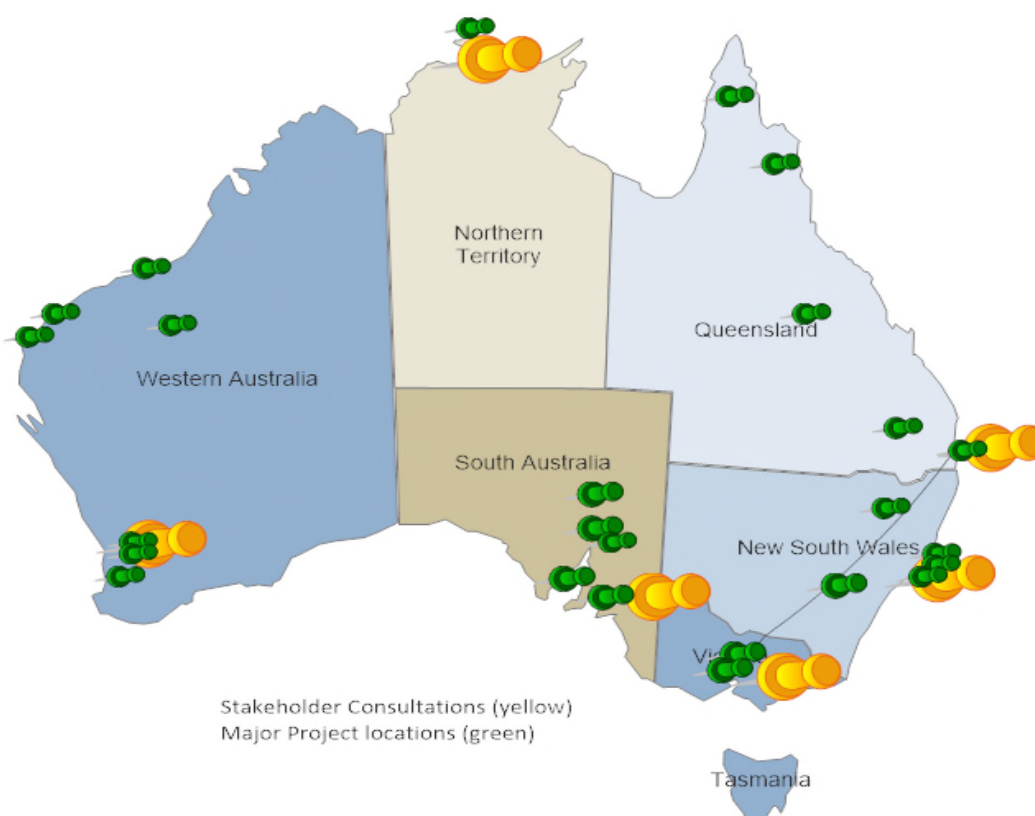


Figure 1 – Map of consultations (yellow) and associated projects (green)

Consultations occurred face to face where feasible and were preceded by an online survey tailored to each cohort's area of knowledge. Online surveys enabled stakeholders to consult internally and reflect on key questions and themes prior to engaging with QCA in person.

Following the completion of consultation, findings were collated and analysed against the TOR. Recommendations were developed based on the key themes as they related to the TOR. Key findings were assessed using factual validation and logic to ensure that recommendations being made were supported by evidence and designed for implementation.

Key Findings and Recommendations

The Australian Public Service Commission defines transparency/openness as “having clear roles and responsibilities and clear procedures for making decisions and exercising power”. This definition, from the *Building Better Governance* report of 2007¹, resonates with the overarching theme of the key findings and recommendations developed within this report.

Transparency is an important axis upon which good governance turns. Through effective, transparent processes stakeholders can understand their obligations, meet expectations and know how decisions are made that affect them. The review has found that overall, the implementation by the AIP Authority of the Act has been sound without serious flaws or omissions. Having said this, there are opportunities to bolster the administration of the Act through increasing transparency measures and process outcomes. It is incumbent upon the AIP Authority to regulate activities subject to the Act and to do so in a way that allows and enables stakeholder expectations relating to the AIP Authority's role to be managed and met. The following recommendations are made to meet this end – to measure the activities undertaken, evaluate compliance and support innovation and strategic industry engagement.

Provided below is a summary (by TOR) of the key findings and associated recommendation.

Term of Reference 1 - Impact on regulated entities of complying with the Act's administrative and reporting obligations.

The majority of project proponents felt that the burden of compliance was at an expected level. Processes were considered by some to be repetitive and at times unclear. Project proponents found that, overall, the administration processes were “OK” but identified opportunities for improvement. A review of the key templates reveals some opportunities for streamlining and further clarifying the requirements of the Act. The obligation activities themselves do not seem to be onerous in terms of schedule but the details and templates are repetitive, duplicate effort and are time consuming to complete. The most challenging aspect was the demonstration of compliance with the approved AIP plan. More specifications and guidance here could support understanding and ability to comply. Research reveals that there is not a clear link between the approved AIP plan and the subsequent compliance report template. The compliance report does not progressively and sequentially address each of the activities in the AIP plan. As the AIP plan is approved as a compliant approach, it should

¹ Retrieved from: <https://www.apsc.gov.au/building-better-governance>

then form the foundation for assessing whether it has been achieved. A move away from paper-based forms to a cloud based solution for form completion and lodgement would increase efficiency and reduce proponent time and effort.

Recommendation 1

That the AIP Authority review and improve the AIP plan template and compliance report template to streamline information administration (e.g. develop a cloud-based solution).

Term of Reference 2 - Effectiveness of AIP plans in enhancing major project proponent and operator engagement with, and outcomes for, Australian suppliers and understanding of their capability to supply.

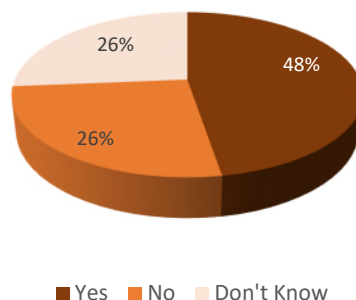
When asked whether AIP plans were effective in promoting understanding of, and outcomes for, suppliers, most stakeholders responded positively but fewer noted the capacity to enhance capability. Suppliers however, were less positive overall, with most suggesting that there had been little or no impact.²

There are several key issues highlighted through the consultation process that underpin recommendation 2. Some of these issues include:

- There was a consensus that more information is needed to support awareness of outcomes.
- The AIP Authority collects information but presently has no communication plan supporting its dissemination.
- There is no information sharing process in place with state/territory governments (see TOR 6 exceptions recommendation).
- Suppliers perceive non-compliance activities but do not see any AIP Authority activities investigating non-compliance.
- There are misconceptions regarding the purpose of the Act and the role of the AIP Authority.
- The AIP Authority's website does not supply required information and appears to be targeted at project proponents.

² See Appendix 3 – Question 17

Has the publication of AIP Authority summaries promoted industry awareness?



As indicated by the survey outcome above³, there is not a dominant view suggesting that the website publication of AIP plan summaries is effectively raising awareness. Issues such as these and those highlighted through other recommendations suggest the development of a strategy that details who is receiving what information through what mediums/methods would yield benefits.

An enhanced communication strategy will support the AIP Authority to achieve its regulatory aims through fostering engagement, collaboration and best practice.

Recommendation 2

That the AIP Authority consider enhancing its communication strategy to promote AIP plans and outcomes, and raise industry awareness through information dissemination.

Term of Reference 3 - Determination of trigger events and dates for major projects and the timing for submission of AIP notification forms and draft AIP plans.

The majority of survey respondents (60%) answered positively to questions about trigger events and dates, however there were some strong perspectives questioning the need for such early notification. For project proponents there was a level of interpretation required as to what constitutes a trigger event. Although this was addressed through communication and negotiation with the AIP Authority, further clarity of trigger definitions and how they apply would be beneficial in managing expectations.

Recommendation 3

That the AIP Authority further clarify trigger event/date definitions and trigger event/date rationale.

³ See Appendix 3 – Question 17

Term of Reference 4 - Development, approval and implementation of AIP plans under the Act and subsequent compliance reporting by proponents and operators.

Project proponents mostly felt well supported through their AIP plan development, approval and compliance processes. There was positive commentary about the level of assistance provided by AIP Authority staff. There is, however, currently an insufficient level of standardised processes within the AIP Authority. If there were to be a change in staff it is not clear if the standards that have been applied over the previous years would remain consistent in future years without the guidance of standard operating procedures. Efficiencies can be gained, and benefits yielded from processes that are consistent.

Recommendation 4

That the AIP Authority develop standard operating procedures for all AIP Authority processes.

Term of Reference 5 - Effectiveness of compliance monitoring, enforcement and sanctions available under the Act.

The review found that the AIP Authority applies an appropriate level of regulation through effective monitoring of major project activities and compliance in Australia. Commentary, however, revealed a theme of opportunities for the AIP Authority to provide/publish examples of effective compliance, increase awareness of compliance and share compliance related data. Furthermore, there is perception held by some stakeholders that the further down the supply chain the less likely that compliance activities are effective.

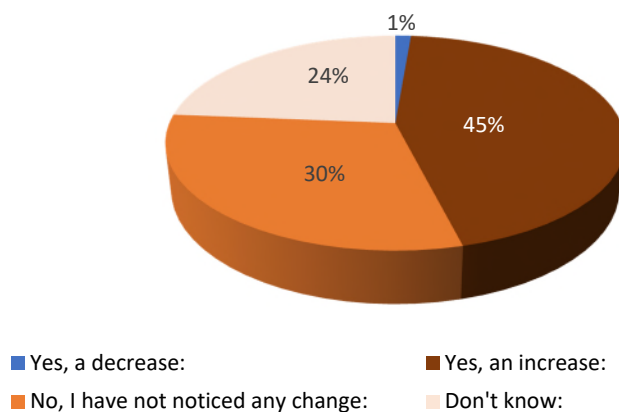
Most stakeholders perceive an absence of information and a lack of transparent outcomes in relation to the AIP processes. There are currently limited metrics being captured and fed back to industry to support the development of stakeholder knowledge and illustrate economic growth and impact. For stakeholders' expectations to be met and for the development of a culture that pursues the realisation of the Act's intent it is vital to provide information to industry that supports its strategic development.

In both these regards an enhanced monitoring and evaluation framework (together with recommendation 2) is highly recommended. The monitoring and evaluation framework would capture information through the regulatory process and feed this back to the industry to support compliance, innovation, the development of best practice and management of expectations. It will enable the measurement and evaluation of compliance and performance that can be used to solve issues, inform stakeholders, optimise business functions and provide transparency. All stakeholders would benefit from information about feedback provided, best practice, opportunities created and outcomes achieved.

As further anecdotal evidence, the graph below illustrates that less than half of stakeholders indicated they had noticed an increase in quality or volume of supplier tender submissions since the

implementation of the Act.⁴ This might suggest that information has not filtered through to suppliers to major projects leading to quality improvements in their tenders.

Noted change to the quality and volume of supplier submissions



The AIP Authority needs to develop further metrics, track developments and promote outcomes to describe the impact of the Act and positively influence stakeholders.

Recommendation 5

That the AIP Authority develop further metrics and formalise a Monitoring and Evaluation Framework to better understand AIP activities and outcomes.

Term of Reference 6 - Procedures for gaining an exception from the AIP plan requirements of the Act through use of a compliant state or territory industry participation plan.

Currently, there is no formal exceptions process and the administration of exceptions requires bespoke analysis and comparison of state/territory government industry participation plans with the Australian Jobs (Australian Industry Participation) Rule 2014 (the Rule). While there are very few exceptions, it remains important to ensure that decision making is consistent and that processes are streamlined to reduce any burden experienced by project proponents or state/territory government agencies.

Neither the Act nor the Rule specify a decision-making body for exceptions, but the AIP Authority necessarily has taken on this role.

It is accepted that the current volume of work in exceptions is low and that effort made to develop a process will not necessarily be rewarded with a net gain of efficiencies. However, the activity required to develop the process will reap significant benefits in ensuring that a consistent and fair approach to project regulation is administered, outcomes captured and communication with state and territory governments enhanced.

⁴ See Appendix 3 – Question 25

An exceptions process should be facilitated through the transfer of key data/information between the AIP Authority and the state/territory government to ensure that effective monitoring and evaluation can occur. Currently, once a plan is 'approved' for exception it then remains for the state/territory government to manage the project compliance. The AIP Authority does not play a role in compliance administration and loses the insight and oversight of equivalent major projects. In this regard data is 'lost' that could otherwise be beneficial to the AIP Authority.

Recommendation 6

That the AIP Authority develop an AIP plan exceptions process.

Recommendation 7

That the AIP Authority develop an information sharing process with the state and territory governments.

Term of Reference 7 - Availability and effectiveness of the AIP Authority information and resources to assist proponents and operators to meet their obligations under the Act.

A key finding was the overall appreciation of the AIP Authority staff as an excellent resource. Of the six resources listed for evaluation in the survey, "AIP Authority staff members" received the most positive result with 87 per cent of respondents selecting the highest rating of "very useful".

The AIP Authority website (www.industry.gov.au/aip - as updated in August 2018) provides all the basic information and templates required to support compliance with the Act. Research of the website together with feedback from stakeholders reveals that some existing information is not easy to find, and some required information is not included/available. It is recommended that the website be reviewed, commencing with establishing clarity of purpose and target audience. Feedback suggests that it is not heavily trafficked but analytics on the site can help to establish volume of traffic to each page of the site. Feedback also suggests that suppliers do not know about or do not use the site. It is therefore important for the AIP Authority to ask: What is the purpose of publishing the project summaries on the AIP Authority website? If it is to raise awareness, then it is not achieving this goal as verbal feedback indicates that it is not well used. None of the suppliers consulted are currently using the site and some were not aware of it at all.

Further considerations in a website review should include the addition of data, outcomes and statistics; a FAQ or QandA process.

Recommendation 8

That the AIP Authority review and update the AIP Authority website as a key mechanism for stakeholder communication.

Summary of Recommendations

The following table provides a summary of recommendations. Prioritisation reflects both the sequence in time for the activities to be achieved and the importance of the task.

Table 1 – Summary of Recommendations

Key

High Priority	Moderate Priority	Low Priority
Supplier		S
Project Proponent		PP
Vendor Identification Agency		(All)
Government Agency		GA
Industry Association		(All)

#	Recommendation	Effect/outcome	Stakeholder Impact & Priority	TORs
1	That the AIP Authority review and improve the AIP plan template and compliance report template to streamline information administration (e.g. develop a cloud-based solution).	Reduce stakeholder effort and increase AIP Authority oversight.	PP	1, 4, 7
2	That the AIP Authority consider enhancing its communication strategy to promote AIP plans and outcomes, and raise industry awareness through information dissemination.	Shared best practice. Capability development. Management of expectations.	All	All
3	That the AIP Authority further clarify trigger event/date definitions and trigger event/date rationale.	Stakeholder awareness, participation and compliance.	PP	3, 7
4	That the AIP Authority develop standard operating procedures for all AIP Authority processes.	Consistent regulation and business optimisation.	PP	All
5	That the AIP Authority develop further metrics and formalise a Monitoring and Evaluation Framework to better understand AIP activities and outcomes.	Ability to measure and understand outcomes.	All	2, 4, 5
6	That the AIP Authority develop an AIP plan exceptions process.	Consistent regulation and business optimisation.	PP, GA	6

#	Recommendation	Effect/outcome	Stakeholder Impact & Priority	TORs
7	That the AIP Authority develop an information sharing process with the state and territory governments.	Consistent regulation. Business Optimisation. Enhanced Communication.	PP, GA	6
8	That the AIP Authority review and update the AIP Authority website as a key mechanism for stakeholder communication.	Enhanced communication.	All	7

1. Introduction

1.1 Requirement for a Review

The *Australian Jobs Act 2013* (the 'Act'), section 127 (1) requires that:

Before the end of the period of 5 years after the commencement of this section [27 December 2013], the Minister must cause to be conducted a review of the operation of this Act.

Considering the requirement for a review, the Department of Industry, Innovation and Science (DIIS) commissioned Quantum Consulting Australia (QCA) to undertake an independent review of the implementation of the Act to be conducted between August and November 2018.

The purpose of the review is to assess the implementation of the Act by examining the transparency of processes in place to ensure that major project proponents and operators meet their obligations under the Act.

This review is not intended as a review of the legislation itself. It is not the purpose of this document to canvass or provision recommendations for legislative change.

1.2 The Review

This report examines the findings of the Review of the Implementation of *Australian Jobs Act 2013*. It provides an analysis and review of the processes related to the Act informed by feedback from key stakeholders and complemented by research leading to recommendations for improvement to the Act's administration.

While the review was framed by the Terms of Reference with their focus on implementation of the Act, the viewpoints of stakeholders included the impact and benefits of the Act itself. These viewpoints are reflected in the report where they contribute to the analysis of the Act's operation. While the report presents findings related to the efficacy of the Act's implementation it does not take an authoritative position on the efficacy of the Act's intent. This review is not an evaluation of the legislation and does not attempt to quantify legislative success.

The Act imposes a broad set of regulatory obligations on projects conducted in Australia with capital expenditure valued at or above \$500 million – known as major projects. The primary objective of the Act is to provide *full, fair and reasonable* opportunity to Australian entities to bid for the supply of goods and services to major Australian projects. These underpinning principles of *full, fair and reasonable* are defined within the Australian Industry Participation (AIP) National Framework as follows:

Full

Australian industry has the same opportunity afforded to other global supply chain partners to participate in all aspects of an investment project (e.g. design, engineering, project management, professional services, IT architecture).

Fair

Australian industry is provided the same opportunity as global suppliers to compete on investment projects on an equal and transparent basis, including being given reasonable time in which to tender.

Reasonable

Tenders are free from non-market burdens that might rule out Australian industry and are structured in such a way as to provide Australian industries the opportunity to participate in investment projects.

These principles can also be found throughout state and territory industry participation regulation, policy and strategy. Twelve years prior to the Act, Australian Commonwealth, state and territory governments had developed the Australian Industry Participation National Framework. The principles within the Framework remain active and relevant and the Act takes up the principles to conduct industry regulation.

The purpose of the Act is to ensure that Australian suppliers are afforded the greatest possible opportunity to develop capabilities and participate in tender processes. It is incumbent, therefore, upon major project proponents to meet the requirements of the Act and to provide full, fair and reasonable opportunities to suppliers. There are, however, no requirements to demonstrate the achievement of certain measures, adhere to percentages or any other metrics related to the provision of full, fair and reasonable opportunity. The requirement is only that project proponents maintain and demonstrate the application and retention of the Act's core principles – including the obligation to ensure that procurement agents and other businesses also adhere to the Act.

Without clear measurements for defining and understanding success, evaluating implementation requires that attention necessarily be drawn to the functions, levers, and mechanisms through which regulation occurs. The AIP Authority administers the Act through AIP plans and compliance reports with the support of DIIS staff. QCA have pursued the review of the implementation of the Act through embedding the Review TOR within survey questions and focussing attention on the mechanisms for regulatory activity and the stakeholder perceptions of compliance.

1.3 Key Themes

Three key themes emerged during consultation – Process Maturity, Procurement Practices and Business Culture. Together these themes pervade all the findings against the review's TOR.

Process Maturity

When conducting large reviews such as this, that focus on the delivery and management of regulation, it is important to understand the maturity of the processes being applied. In this instance, the implementation process was found to be immature – still developing to a point where decision making is optimised, and industry are strategically enabled. After five years of operations, 88 per cent of major projects that have commenced are still going and the workload of the AIP Authority is still growing. It is important to recognise that this review has been conducted on an immature regulatory process and a further review when process maturity is reached should be considered.

Process maturity is a term used in this context to denote both the implementation of the Act over time and the development of key process elements or components. With regard the latter, it may be helpful to consider a definition from Six Sigma modelling:

Process maturity is an indication of how close a developing process is to being complete and capable of continual improvement through qualitative measures and feedback. Thus, for a process to be mature, it has to be complete in its usefulness, automated, reliable in information and continuously improving.⁵

Process Maturity – Time

Process maturity in the context of time indicates two key features. The first is that in 2022, there will be, for the first time, the same or more completions than projects commencing. This is important as it indicates that the overall volume of work for the AIP Authority, as indicated below in Table 3 by the total number of active projects in the dark green column, finally stabilises or drops around 2022.

The second key feature of process maturity in the context of time is the ability for the AIP Authority to reflect upon the entire end-to-end regulatory cycle. The quality and volume of information will be far greater than that available today. As noted within the report and indicated below, no projects have completed an operations phase and very few are expected to over the next few years⁶.

Major investments in Australia are subject to global and domestic markets and demand, government policy settings and the business environment. It is difficult to accurately predict the volume of major projects coming through in future years but even if the forecast numbers are halved, it would still be 2022 before the AIP Authority could determine with some authority the efficacy of the complete regulatory cycle. If numbers are higher than forecast, it will not adversely affect an evaluation.

The forecast below indicates that the number of major projects, and hence AIP Authority's work, has grown rapidly over the first five years of the Act's enforcement. For the implementation of the Act to reach maturity, a further four years may be required to allow projects to move through the required monitored stages and for a maximum number of active projects to be reached.

⁵ *Process Maturity Model Can Help Give a Business an Edge*. Retrieved from <https://www.isixsigma.com/methodology/business-process-management-bpm/process-maturity-model-can-help-give-business-edge/>

⁶ An expectation held by AIP Authority and based upon their major project tracking.

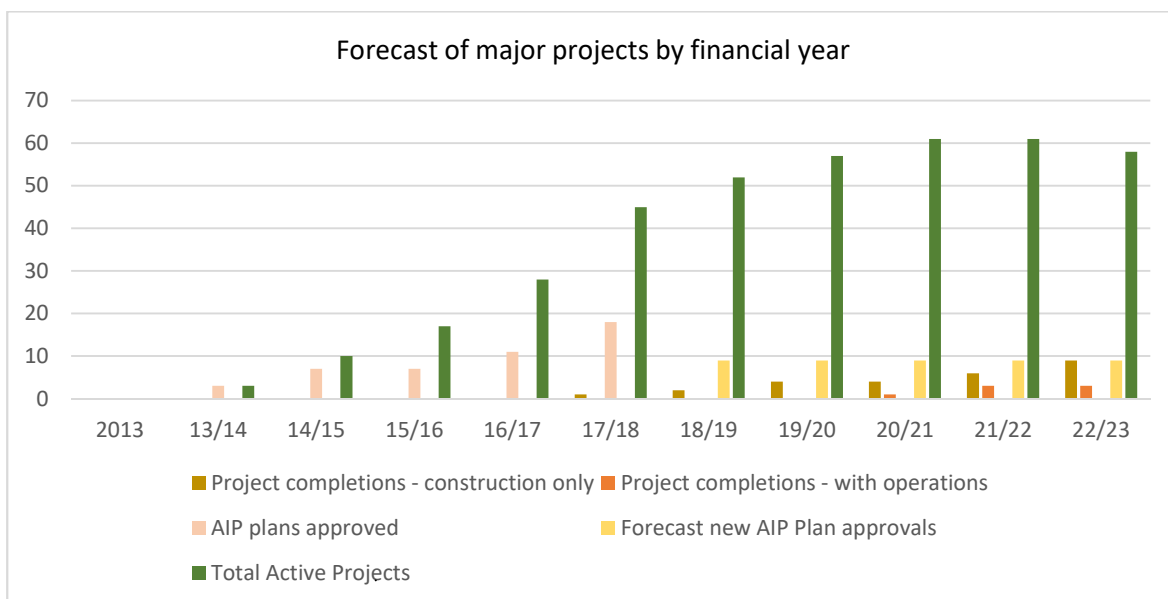


Table 3 – Forecast of major projects by financial year

Forecast Assumptions
<i>AIP plans approved</i>
The figures used for the AIP plans approved was provided by the AIP Authority.
<i>Forecast new AIP plan approvals</i>
Over the first five years of the Act's enforcement, 48 projects have had their AIP plans approved and summaries published. Only one has been completed. Although the numbers have been rising, with 18 in a single year for 2017, the forecast uses a conservative approach - the yearly average of nine.
<i>Project completions – construction only</i>
Projects in construction phase are forecasted with a five-year pipeline from start to finish - this means from AIP plan approval through to completion. It is accepted that some projects may take longer but it is not expected that many, or any, would be shorter.
<i>Project completions – with operations</i>
Currently there are 27 out of 48 projects that include an operations phase in their AIP plan. The assumption in the forecast is that 50 percent of projects will have an extra two years (operations phase) of regulatory monitoring – creating a seven-year project compliance and monitoring pipeline. For example, with seven projects commencing in 2014-15 it is anticipated that four may be completed in five years and three may be completed in seven years.

Process Maturity - Process Components

A useful way to visualise process maturity in terms of process components is to consider the departmental focus and activities. In the infographic below, based on Six Sigma, it is possible to place AIP Authority around the 3rd and 4th tiers with strong management awareness and some planning to reach a future state but not yet capturing and sharing sufficient insights with industry or developing innovative processes.

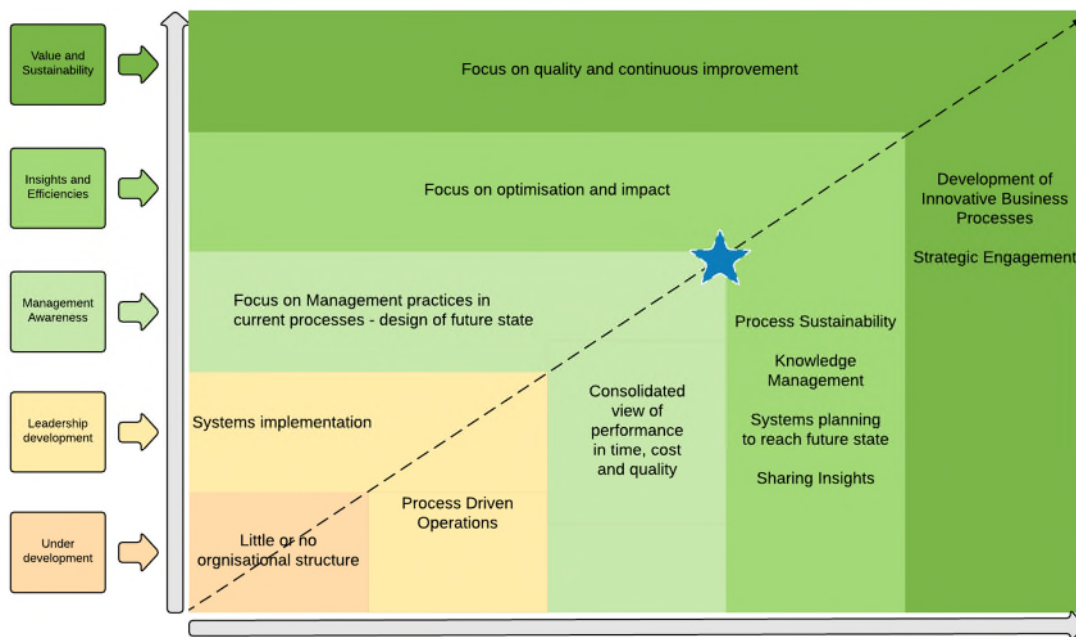


Figure 2 – Process Maturity Matrix

Although this review has not included a business evaluation of AIP Authority *per se*, the matrix above gives an idea of where the AIP Authority may be in terms of process component maturity. The blue star is the perceived level of current operations. Of note here is the opportunity for the AIP Authority to focus efforts on developing and sharing insights, optimising business processes and developing systems to support quality and innovation. Identifying, capturing, analysing and sharing information is critical for the growth of the Act’s implementation.

Procurement Practices

Figure 3 below illustrates some of the procurement avenues through which project proponents and suppliers connect. There are many different models of procurement and types of projects that may vary from the below, but they all engage with suppliers through multiple avenues – directly and/or indirectly and often through layers/levels of engagement. For the Act’s intent to be realised for all suppliers, it sometimes needs to penetrate through multiple layers of organisational process, business culture and values, and individual capacity.

It is noted that the more distant from the project proponent, the greater the challenges for regulation, monitoring and compliance. Each of the procurement and supply chain layers, while subject to the Act, is not monitored directly for compliance which relies on the relationship between the AIP Authority and the project proponent (and subsequently the project proponent and the Engineering, Procurement, Construction Management (EPCM) and so on). This is a significant challenge for the AIP Authority and one that may require further consideration of how current AIP Authority compliance activities can penetrate beneath the surface of what is akin to a procurement iceberg.

The transparency of activities occurring two steps or more away from the project proponent are difficult to monitor. The AIP Authority maintain their focus on the accountable party - the project

proponent - but decision making at or below the surface may not reflect the *full, fair and reasonable* intent of the Act.

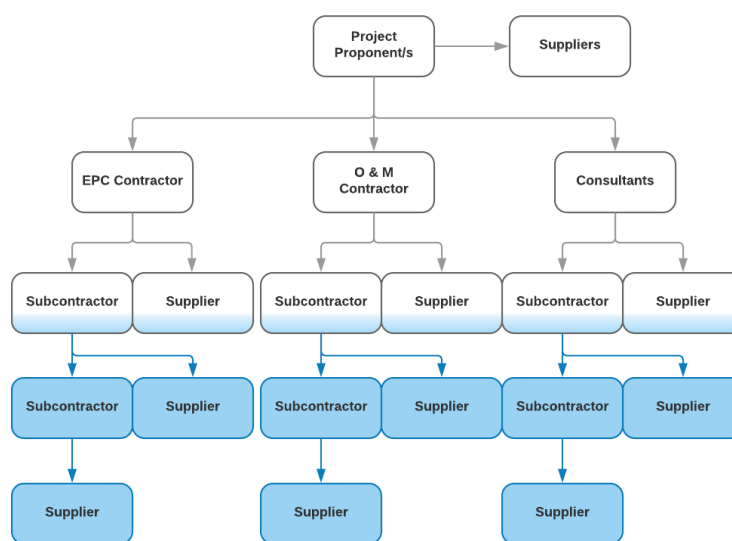


Figure 3 – The Procurement Iceberg

In some cases, for example, a project proponent will engage an Engineering and Procurement Contractor (EPC) to take care of procurement and project delivery. In this case, the project proponent, while retaining the accountability, then passes on the responsibility of adhering to the Act to the EPC. The EPC may then utilise one or more subcontractors who themselves may subcontract to others. As one project proponent expressed:

Project proponent and EPC contracting strategy behaviour is to typically bundle up mega scopes for the national and international prime contractors to bid for (who often sub-contract to larger fly-in/fly-out national or international contractors or self-perform the scopes themselves) not delivering regional contracting and associated employment and economic benefit outcomes to the regions.

The behaviour is simply driven by efficiencies. It is logically much easier to engage one business than 20 to achieve project aims and provided this is done within the realms of acceptable behaviour in terms of compliance then this will continue as common practice.

A final and related point is that suppliers delivering low-value goods or services are not supported by the Act. The Act focusses on *key goods and services* and defines these as above the *low-value contract threshold amount* of \$1 million. Project proponents are not obliged therefore to ensure that low-value goods and services are considered within the same *full, fair and reasonable* approach. In the figure above, small suppliers beneath the surface may not be considered in the full light of the Act.

Business Culture

[The Australian Jobs Act 2013] should never be viewed as a "bolt on" that can be dealt with as a compliance matter. It requires innovation, thoughtful leadership and a culture of thinking locally.

(Project proponent)

This review reveals that industry awareness and attitudes vary greatly and that the culture of an organisation plays a significant role in the uptake and treatment of compliance. Some project proponents go above and beyond requirements and others undertake the bare minimum. The quote above neatly captures the goal that needs to be achieved.

Some stakeholders literally “do what needs to be done to get the job done”⁷. For these stakeholders it is a box ticking exercise and the perception is that it is an obstacle to navigate rather than a process with a value-add purpose. Some stakeholders also feel that the AIP Authority itself focusses more on the process of compliance than the strategic attainment of the Act’s purpose through the mechanism of regulation. There was a general perception with suppliers that in many cases only lip service was being paid to the requirements and that procurement agents simply turn to their established supplier networks.

A further consideration is the large difference in business approaches between the construction and operations phases. Some stakeholders reported that the business philosophy underpinning construction projects can differ greatly from those projects inclusive of an operations element. The former has time pressures and goals that may not encourage consideration of the impact on local and regional business. In contrast, where there are long term operations planned, there is more likely to be an investment in, or consideration of, local business and community. Obtaining a social licence to operate becomes part of the business approach to ensure long term success.

Awareness raising activities could greatly enhance the perception and culture of compliance. A focus on outcomes through knowledge sharing and strategic insights to support supplier and project proponent development will go some way to change the value proposition. The AIP Authority needs to ensure that their role is known to suppliers and that suppliers see what activities are taking place. A lot of good work is clearly being done by the AIP Authority, but this is not necessarily being shared broadly across industry.

Industry need to see the actions of the AIP Authority, understand the outcomes and share best practice to develop stronger business affiliation with the Act’s intent.

⁷ Quote from project proponent.

2. Methodology

2.1 Stakeholders

The review draws on the experiences and activities of key stakeholders to analyse the implementation of the Act and review the transparency of processes administering the Act's provisions. A key component of this review was the engagement of stakeholders through consultation. Consultation occurred using targeted and open approaches, allowing for the contribution of the interested and key affected parties identified by DIIS and QCA.

Thirty-eight stakeholders from six states and territories were consulted. Tasmania and the Australian Capital Territory (ACT) were not included due to an absence of major projects. The ACT had one project (Canberra Metro), but this was previously granted an exception. Stakeholders included major project proponents, suppliers, Industry Capability Networks (ICNs), government agencies and an industry association. Feedback was also received through a publicly available website submission process.

Thirty-two stakeholders were identified by DIIS for their direct involvement in the implementation of the Act and included proponents of major projects, state and territory government agencies, ICN providers and an industry association. Seven additional stakeholders were identified by QCA – six of whom were suppliers of goods and/or services to major projects and one was the Office of the Industry Advocate in South Australia. As consultations began, several key stakeholders declined to participate in the review and, where possible, DIIS identified replacements for them. The final tally of stakeholders consulted was 38.

Stakeholders were grouped into five cohorts as follows:

- Industry Association (IA)
- Vendor Identification Agency (VIA)
- Project Proponent (PP)
- Government Agency (GA)
- Supplier (S)

Where possible interviews were conducted face-to-face, but in ten instances, this was not possible. Where face to face interviews were not possible, telephone conversations were conducted.

A webpage was published through DIIS Consultation Hub at this location:

<https://consult.industry.gov.au/industry-growth/review-of-the-implementation-of-the-australian-job>

Contact details for QCA were provided and one submission was received.

The table below shows the final number and location/s of each stakeholder cohort consulted. The Office of the Industry Advocate in South Australia is included within the Government Agencies.

Stakeholder Cohort	Location/s	Number
Project Proponent	Perth, Adelaide, Melbourne, Sydney, Brisbane	20

Stakeholder Cohort	Location/s	Number
Government Agency	Perth, Adelaide, Melbourne, Sydney, Brisbane	6
Vendor Identification Agency (e.g. ICNs)	Perth, Darwin, Melbourne, Sydney, Brisbane	5
Supplier	Perth, Adelaide, Port Pirie, Melbourne	6
Industry Association	Sydney	1
Total Consulted		38

Table 4 – Stakeholder location and number

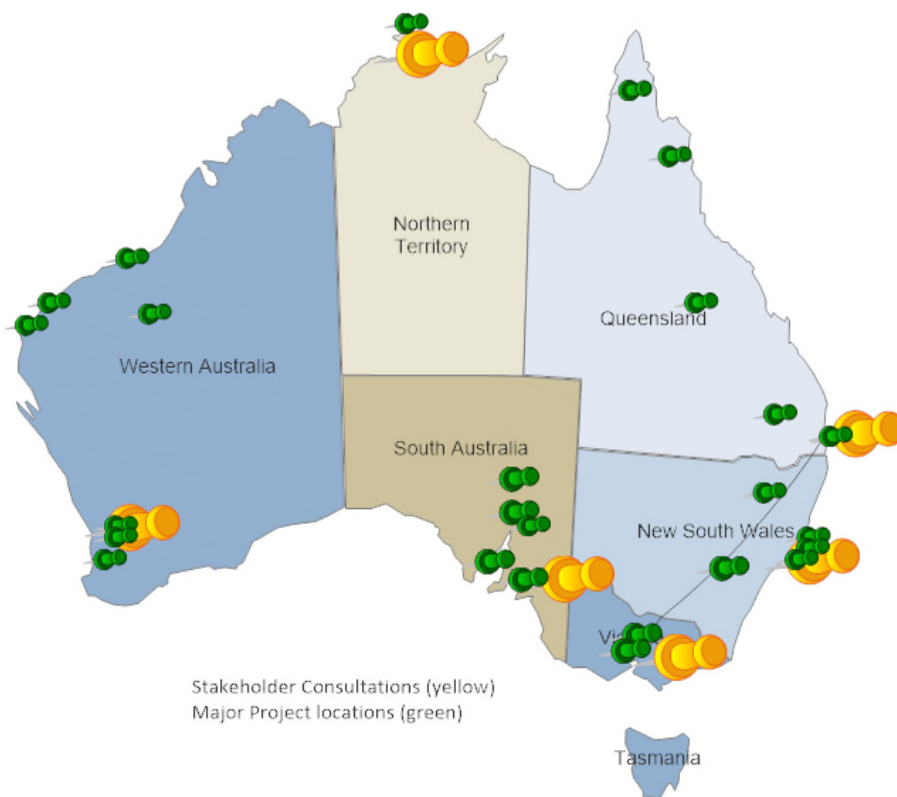


Figure 4 – Map of consultation locations (yellow) and major projects (green)

2.2 Interview Questions

A total of 29 questions were developed by QCA to explore and respond to the review’s TOR.⁸

Interview questions were provided initially by way of an online survey with a link provided to the stakeholder. This approach enabled the stakeholder to provide some initial comments/response to the questions prior to the site visit where both the consultant and the stakeholder had the added advantage of the completed survey to centre their conversation around, derive further questions from

⁸ See Appendix 5 for the TOR and their related interview questions.

and to clarify issues. Where possible, consultants from QCA undertook site visits with each stakeholder.

The consultation methodology enabled equal weighting and consideration to be afforded to all contributions. There was no differentiation made between experienced or inexperienced stakeholders.

Each stakeholder cohort had questions selected from the master set of 29 questions to address their specific experience, knowledge and compliance requirements. Selections were based on stakeholder activities and their experience with the *Australian Jobs Act 2013*. Further questions were included through each interview, to allow stakeholders to further explain or develop their responses. See Appendix 4 for question allocation.

2.3 Data Sources

The review consisted of two major approaches to data collection (primary and secondary sources) utilising qualitative and quantitative methods. Research provided a contextual, historical, environmental and legislative landscape through which perspectives could be tested and considered.⁹

Key stakeholders provided qualitative data obtained through a survey and subsequent interviews.

⁹ See Appendix 2 for Sources and Reference Materials and Appendix 6 for the TOR and their related data sources

3. Regulatory Framework and Environment

Australia has, through its states and territories and within federal legislation, a complex framework of regulation, rules, strategies and statutory positions relating to AIP and local content. Proponents of a major project in Western Australia (WA) for example may be required to meet and adhere to the *Australian Jobs Act 2013*, the *Western Australian Jobs Act 2017* and various other regulatory and compliance requirements.

Some of the legislation, strategy, policy and rules are as follows¹⁰:

3.1 The Australian Jobs Act 2013

The *Australian Jobs Act 2013* (the Act) commenced on 27th December 2013. The primary objective of the Act is to provide *full, fair and reasonable* opportunity to Australian entities to bid for work to supply goods and services to major Australian projects. The Act requires the development and implementation of an Australian Industry Participation (AIP) plan for each major Australian project with capital expenditure of \$500 million or more. Proponents of major projects are then required to demonstrate compliance throughout the project's development and operations phases. The Act also establishes a statutory position, the Australian Industry Participation Authority (the AIP Authority) and provided for the creation of the Australian Industry Participation Board at the discretion of the Minister.

3.2 The Australian Jobs (Australian Industry Participation) Rule 2014

The Australian Jobs (Australian Industry Participation) Rule 2014 (the Rule) commenced on 6 February 2014. The Rule provides further information on certain aspects of the Act including detail on exceptions to the requirement for preparing an AIP plan, notification obligations, compliance requirements, and the functions of the AIP Authority.

3.3 Australian Industry Participation National Framework

The AIP National Framework was agreed between Commonwealth, state and territory governments in 2001 to promote, develop and maintain a sustainable Australian industry capability by encouraging competitive Australian industry participation in investment projects. The key principle of the AIP National Framework is to provide Australian industry, especially small and medium sized enterprises (SMEs), with *full, fair and reasonable* opportunity to participate in major investment projects, in Australia and overseas.

The AIP National Framework supports AIP programs and initiatives that aim to encourage industry to meet world's best practice through capability building, identifying early stage opportunities for industry participation both domestically and overseas, promoting Australian capability and integration of industry into global supply chains, and enhancing project facilitation and participation.

¹⁰ This is not a definitive list of applicable regulation.

The AIP National Framework does not mandate the use of Australian industry. Rather, it is aimed at providing opportunity for capable and competitive Australian industry to participate in major projects.

3.4 Australian States and Territories

Each state and territory government has legislation, strategies and/or policy in place relevant to industry participation. Some of these include:

- *Western Australian Jobs Act 2017*
- *Industry Advocate Act 2017* (South Australia)
- South Australian Industry Participation Policy
- *Victorian Industry Participation Policy Act 2003*
- Victorian Industry Participation Policy
- Tasmanian Industry Impact and Participation Policy
- Canberra Region Local Industry Participation Policy
- NSW Government Procurement: Small and Medium Enterprises Policy Framework
- Queensland Procurement Policy
- Queensland Indigenous (Aboriginal and Torres Strait Islander) Procurement Policy
- Building Northern Territory Industry Participation Policy.

All state and territory governments, except NSW, require certain major projects to complete some form of local industry participation plan.

Under the *Australian Jobs Act 2013*, (Section 17(5)) a project proponent can gain an exception from submitting an AIP plan to the AIP Authority if a plan has been prepared for a state or territory government that complies with the conditions specified in the Rule. If an exception is obtained the project proponent will not be required to submit an AIP plan or any compliance reports to the AIP Authority.

The *Industry Advocate Act 2017*, noted above, provides for a statutory authority in South Australia. Its function is to increase the number and diversity of locally based businesses winning government work and to drive local investment, create strong value chains from the state's portfolio of major projects and to support the development of the advanced services sector and leverage opportunities for innovation.

4. Governance and Process under the Act

4.1 The Australian Industry Participation Authority

The AIP Authority promotes and monitors compliance with the Act.

The AIP Authority is appointed by the Minister with responsibility for the Act for a period not exceeding five years. Since inception of the Act the role has been filled through a rotating acting appointment of a senior DIIS official as per Division 2, Section 71 of the Act.

The AIP Authority's role is largely to evaluate and approve AIP plans, publish summaries of AIP plans and monitor and report on the implementation of AIP plans. In 2017–18, the AIP Authority approved 18 AIP plans for projects with total capital expenditure of more than \$32.1 billion. The AIP Authority is supported by staff from DIIS to administer regulatory responsibilities. The AIP Authority's annual report is included within the DIIS annual report. The AIP Authority conducts an annual self-assessment as part of the Australian Government's Regulator Performance Framework and publishes the findings.

Proponents, operators and other entities which contravene the Act may be subject to the enforcement actions available to the AIP Authority under part five of the Act. These include naming responsible entities as non-compliant, requiring them to take out adverse publicity notices and imposing restraining or performance injunctions.

According to the Guidelines for *Australian Jobs Act 2013* (the Act) Compliance Monitoring and Enforcement:

there are several actions available to the AIP Authority to remedy non-compliance with the [...] Act. Initially the AIP Authority will attempt to contact the responsible entity (proponent, operator or other party) and seek an explanation for the non-compliance. This will assist the AIP Authority to determine if a contravention without reasonable excuse of Parts 2, 3 or 4 of the [...] Act has occurred. Initially in all cases the AIP Authority will consider providing the responsible entity with the opportunity to make good the breach without resort to enforcement action. If there has been a contravention of the [...] Act without reasonable excuse, there are sanctions that the AIP Authority can impose. These include naming the responsible entity, adverse publicity notices and seeking restraining or performance injunctions.¹¹

The Act also specifies that the AIP Authority must take all reasonable steps to approve or refuse AIP plans within 30 days of submission (Section 18 (10)). The 30-day timeframe is publicised in the AIP guidance documentation available on the website and is easily accessible to stakeholders according to the assessment survey. A review of AIP plan submissions indicates the AIP Authority approves AIP plans well within the legislated time frame.

¹¹ Retrieved from: <https://www.industry.gov.au/sites/g/files/net3906/f/guidelines-for-jobs-act-compliance-monitoring-and-enforcement.pdf>

Administration

The AIP Authority administers the Act with the support of a small team of DIIS staff based in Canberra and Perth. The AIP Authority liaise directly with stakeholders for all aspects of their compliance obligations from notification of a major project through to AIP plan approval and compliance reporting.

Administrative activities include:

- Monitoring major project activity and alerting project proponents to their potential obligations under the Act.
- Providing guidance to project proponents on meeting their obligations.
- Receiving, assessing and registering AIP notification of major projects.
- Approving AIP plans.
- Publishing the AIP plan summaries at www.industry.gov.au/aip.
- Monitoring compliance.
- Reviewing compliance reports.

DIIS utilise several avenues and databases to scan for major projects and proactively contact project proponents that may be subject to the Act. Some of the avenues for monitoring include:

- Deloitte Access Economics' Investment Monitor.
- Australian Securities Exchange notices.
- Office of the Chief Economist's Resources and Energy Major Projects listings.
- Mining Intelligence Centre website.
- Construction Intelligence Center website.
- AusIndustry's state and territory managers' reports.
- Announcements in the national media.

4.2 The Australian Industry Participation Advisory Board

The Act provides for the establishment of an AIP Advisory Board (the Board) at the discretion of the Minister. The purpose of the Board is to provide advice to the Minister and the AIP Authority. Since inception of the Act the Board has not been formed.

4.3 The Australian Industry Participation Plan and Compliance Report

Australian Industry Participation Plan

The key mechanism through which the Act is administered is the AIP plan – a requirement imposed upon on all eligible major projects with a capital value of \$500 million dollars or more.

AIP plans apply the AIP National Framework principles and describe how a project proponent will provide *full, fair and reasonable* opportunity to Australian entities to supply goods and services to a project.

AIP plans detail expected opportunities for the supply of goods and/or services to the project, describe how these opportunities will be communicated to potential suppliers, describe the standards that will be applied to the project, detail how Australian businesses will be assisted in longer-term

participation, including encouraging capability development and integration into global supply chains, and outline the internal resources and procedures to implement the plan. Major project proponents are expected to apply AIP plan principles to all levels of the project's supply chain—from procurement entities to lower tier suppliers.

An executive summary of each AIP plan is developed by the project proponent and published on the AIP Authority's website. The summary includes a project description, list of anticipated key goods and services, procurement contact details and AIP activities to be undertaken by the project proponent and its procurement entities. The summaries are published when the project proponent submits its AIP plan for approval and remain on the website until the project is completed or withdrawn. The AIP plans themselves are not published.

Compliance Report

The Act requires compliance reporting on each AIP plan during the project's construction phase and for the first two years of its operations phase (for new productive facilities). Compliance reports are submitted every six months to demonstrate compliance with the Act and the approved AIP plan. Compliance reports are required to include:

- A project update on AIP plan activities
- Australian Industry Participation
 - AIP activities undertaken by the project proponent
 - AIP activities undertaken by the procurement entity
 - promotion of the AIP plan and/or suppliers
 - upcoming AIP activities
- procurement of key goods and services
 - procurement sourcing decision during the reporting period
 - supplier performance
 - ongoing commitment summary (\$ to all entities)
 - adjustments to previously reported commitments
 - forecast major contracts.

Compliance reports are not required to be published.

5. Terms of Reference

5.1 Term of Reference 1 – Impact of Compliance

Impact on regulated entities of complying with the Act's administrative and reporting obligations

Context

Proponents of major projects are required to submit several forms/documents to the AIP Authority to comply with the Act. Examples include the submission of a notification form, an AIP plan and compliance reports. This TOR explores the impact of compliance administration on project proponents.

Key Findings

The majority of project proponents felt that the burden of compliance was at an expected level. More respondents (six) rated the burden of the compliance process at 8/10 than any other single rating¹². This represented 32% of all responses when all seven N/A responses are excluded. Fifty-eight per cent (11) of responses felt that the burden was ranked 5/10 or lower. Responses indicate a relatively high burden is felt across a large section (42%) of stakeholders who rated the level of burden at six or more. Interview commentary is revealing here, where it was noted that other compliance requirements (state government obligations, Traditional Owner Agreement obligations, etc.) add to the overall burden felt by project proponents, that the burden was expected, and the compliance process overall was difficult and repetitive.

When asked about the weaknesses of AIP plans, the second most cited response after the lack of scrutiny of compliance (receiving 12 responses) was that they were time consuming, repetitious and a resource drain. A review of the key templates reveals some opportunities for streamlining and further clarifying the requirements under the Act. The obligation activities themselves do not seem to be onerous in terms of schedule but the details and templates are repetitive, duplicate effort and are time consuming to complete. For example:

- Compliance questions do not guide the project proponent to fulfil the commitments made within the AIP plan – questions are open ended and not tied back effectively to the sequence of questions in the AIP plan.
- The very first page of the notification form, the AIP plan and the compliance report templates all include similar information, requesting name, project title, ABN etc. If there was a reference number established at the outset presumably this could be retained and referenced to prevent repetition.
- Compliance report declaration could be significantly reduced in detail, noting instead the commitment already made with regard to information management and reporting within the AIP plan.

¹² Question 13 of the survey.

- Completion of Part C too early (years in advance of requirements) means that Part C will most likely require completing again when the actual plan is confirmed closer to the time.
- Gas projects find it hard to separate Part B and Part C – construction and operations phases are entwined in their internal business practices.
- Some instructions disappear when text is entered into fields. Templates need to be updated to ensure instructive information remains visible once a form has been completed. This allows for the effective review of information entered against the field requirements/instructions. This should reduce time spent by AIP Authority and stakeholders seeking clarity on information supplied and the exact requirements of that field.

There are also, according to DIIS, some standard operating procedures but not for all processes. It is crucial this be developed to standardise approaches and mitigate risk with key staff departure.

Recommendation

Recommendation 1

That the AIP Authority review and improve the AIP plan template and compliance report template to streamline information administration (e.g. develop a cloud-based solution).

Compliance can be separated into two components - process compliance (adherence to administrative and time requirements) and purpose compliance (achievement of the Act's intent). This recommendation refers to reducing the impact of process compliance on stakeholders and enhancing AIP Authority compliance administration.

Templates utilised through the stages of notification, AIP plan and compliance reporting need to be streamlined to remove repetition, increase awareness of evidence required, reduce stakeholder effort and enhance administration. Further, if there is no AIP activity to report it would be beneficial if stakeholders could declare easily and simply that there was no activity.

Currently there is a disconnect between what is requested initially in the AIP plan and what is requested subsequently in compliance reporting. In establishing an approved plan, the AIP Authority is suggesting that the detail of the plan meets the standards within the Act. A compliance report therefore should illustrate how the plan has been met. However, the structure does not guide a project proponent to sequentially address, and provide evidence for, each aspect of the plan. Instead it asks more open questions.

For the AIP Authority this means that the process of determining compliance relies upon a deep understanding of the Act, the Rule and the individual AIP plan initially submitted¹³. This presents a risk in relation to key staff changes and presents a burden in terms of effort for all parties. A determination by the project proponent submitting the compliance report or the staff member reviewing it is swayed by the experience and knowledge of the viewer/decision maker.

¹³ Explanation of all regulatory legislation and related mechanisms is provided in Section 2.

A low effort - low reward solution is to simply revise content of each template by:

- reducing repetition
- alignment of AIP plan with compliance
- allocation and use of a reference number from notification (remove need to repeat details)
- provide further guidance on how to meet requirements
- consider delaying requirement to submit part C¹⁴ with initial plan.

A better solution but with higher costs and higher rewards is to move to an online process. There were two suggestions from stakeholders to move to a cloud-based submission process and we support this recommendation as an effective business optimisation approach. For example, an online process could include various features such as:

- broad government application/utility
- data capture and reporting
- workflow approvals (for both the AIP Authority and project proponents)
- automated notifications/reminders/FAQs/examples
- save and resume functionality
- personalised pages and tailored requirements
- quick and effective exceptions analysis
- collaboration.

The application could be developed to include provisions for broader government application advancing its utility to support and monitor many types of private and public projects. It is understood that the AIP Authority has recently implemented a Smart Form for use within other industry participation plans and is considering replicating its use for AIP plans under the Act.

5.2 Term of Reference 2 – Outcomes and Capability

Effectiveness of AIP plans in enhancing major project proponent and operator engagement with, and outcomes for, Australian suppliers and understanding of their capability to supply.

Context

The Act, through the AIP plan, requires that project proponents detail the opportunities available for Australian suppliers, promote opportunities through a website and ensure that procurement entities support and maintain understanding of Australian supplier capability. This TOR explores the effectiveness of AIP plans in raising awareness of supplier capabilities and enhancing outcomes for suppliers.

Key Findings

It was agreed by most that, to some degree, awareness of opportunities through major projects had grown over the last 5 years but it was unclear as to whether this could be attributed to the AIP plans. It was also understood by many that the reach of the Act was relatively short in comparison to the

¹⁴ Part C of the AIP Plan is the section that relates to the operational phase of the project.

depths of supply chain procurement practices. In order for outcomes to be achieved for suppliers there needs to be effective feedback and *full, fair and reasonable* opportunities provided. According to most stakeholders, neither of these are thought to be occurring sufficiently. One project proponent suggested feedback “could be better” and procurement entities simply default to their established networks.

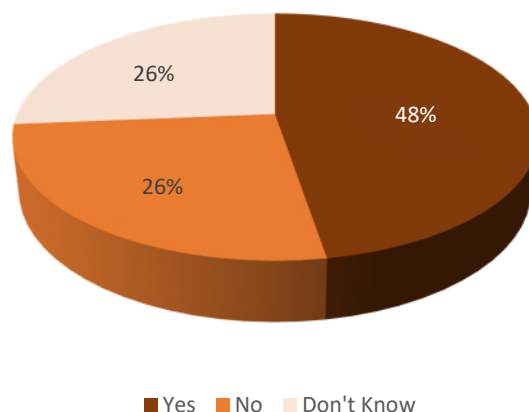


Figure 5 - Has the publication of AIP plan summaries promoted industry awareness?

Most suppliers did not think that AIP plans promoted *full, fair and reasonable* opportunities. ICNs, government authorities and the industry association felt that the terms *full, fair and reasonable* were not well understood when it came to operational application. In theory, it was thought to be quite “powerful if entrenched in contractual requirements”. However, there was no indication in the summaries published as to how those principles were applied.

Nine stakeholders noted that AIP plans were largely unknown to the public, that there was generally low awareness levels of non-compliance and no visibility of outcomes. This was the third most popular response when asked about AIP plan weaknesses.

Feedback

Within Subdivision C of the Act, section 35 (1) (g) under “Primary obligations of the project proponent” it states that:

[...] the procurement entity will:

- (i) provide feedback to Australian entities whose bids to supply key goods or services for the project have not been successful; and
- (ii) ensure that such feedback includes recommendations about any relevant training and any relevant skills capability and capacity development;

The development of capabilities is a core component of the Act and feedback is a key mechanism through which suppliers can understand and improve upon their capabilities. Currently, suppliers feel that feedback is either absent or could be more effective. Some project proponents indicated that feedback was onerous, that sometimes it was avoided through fear of litigation, and often it was delivered via a third party.

The AIP Authority's ability to support feedback could be developed further. Although the AIP plan includes section B.5 Facilitating Future Opportunities, the follow up to this through the compliance report does not effectively assess feedback compliance. The compliance report only requires that supplier performance information is submitted detailing strengths and weaknesses of suppliers. An example of weaknesses in one compliance report highlighted:

- Some local pricing for certain products is high, but does not balance when considered against lead-times and Total Cost of Ownership models from non-local suppliers.
- Tendency for smaller packages to be priced competitively, however larger packages were priced uncompetitively.
- Lack of local specialist trade availability.

It is unclear how this information is then used by the AIP Authority to support capability development.

Recommendation

Recommendation 2

That the AIP Authority consider enhancing its communication strategy to promote AIP plans and outcomes, and raise industry awareness through information dissemination.

Section 68 of the Act details the key functions of the AIP Authority. Of note here is the fact that the AIP Authority is required "to promote compliance with the Act" - (1)(d). To raise industry awareness, promote the Act's intent, influence the culture of compliance and share process outcomes it is recommended that the AIP Authority review and enhance its communication strategy for information dissemination. The revised communication strategy would include aspects such as:

- attendance at industry events
- running a roadshow event
- revision of the AIP Authority website (see TOR 7)
- development of resources:
 - best practice compliance activities
 - infographics of process, measures, metrics
 - report outcomes
- commendations – promotion of best practice
- promote measures and metrics being captured to support the industry
- sharing outcomes from regulatory activities
- survey suppliers to better understand feedback and industry compliance
- enhance feedback quality and mechanisms through the addition of expectations within the compliance guidelines and compliance report.

For example, a roadshow reproduced in short promotional materials could assist international businesses commencing or considering conducting business in Australia. One international stakeholder noted that they had been unsure of the degree to which they should go to meet the compliance requirements, recruiting lawyers as their first activity.

The timing of a roadshow should also be considered carefully to ensure industry activities are included where appropriate, existing trade forums are used and other Australian trade activities considered to maximise impact.

5.3 Term of Reference 3 – Trigger Events

Determination of trigger events and dates for major projects and the timing for submission of AIP notification forms and draft AIP plans.

Context

The Act requires a project proponent to notify the AIP Authority of its major project and then provide a draft AIP plan to the AIP Authority 90 days before the project's trigger date. The trigger date is the project's earliest trigger event as defined in the Act (such as preparation of technical specifications, request for bids or project planning).

Key Findings

Most stakeholders indicated that the current requirements of the Act concerning trigger events was appropriate. However, approximately one third of stakeholders considered that, according to the Act, minor planning activities could be considered to be a trigger for notifying the AIP Authority of a project. The definitions of a trigger event are considered too broad and forces notification too early.¹⁵

Review of the Act and website reveals the inclusion of information relating to preliminary trigger days, trigger events and trigger dates. However, most stakeholders felt that trigger definitions could be better explained.

For project proponents there was a level of interpretation required as to what constitutes a trigger event. Although this was addressed through communication and negotiation with the AIP Authority, further clarity of trigger definitions and how they apply would be beneficial in managing expectations and allow project proponents greater ability to self-assess.

Furthermore, a few project proponents felt that the early investment of time and effort may be wasted if the project did not go ahead. These findings also relate to TOR 7.

Recommendation

Recommendation 3

That the AIP Authority further clarify trigger event/date definitions and trigger event/date rationale.

This recommendation is aimed at guiding the requirements for notification. Consider:

- Provision of explanatory notes to definitions in the Act.

¹⁵ Some stakeholders were of the view that trigger dates can result in a requirement to submit an AIP plan before a decision on constructing the project has occurred and before there is enough details to make the AIP plan useful.

- Provision of rationale for timing of notification (how does the information provided support compliance?).
- Highlighting/promoting the AIP Authority's confidentiality policy to encourage early notification.
- Highlighting the process for updating an AIP plan and summary if project changes occur.

5.4 Term of Reference 4 – AIP Plans and Compliance Reporting

Development, approval and implementation of AIP plans under the Act and subsequent compliance reporting by proponents and operators.

Context

Project proponents are required to develop an AIP plan for approval by the AIP Authority. Every six months during the construction and operations phases, the project proponents are then required to provide the AIP Authority with a compliance report. This TOR explores the process of AIP plan development and compliance reporting.

Key Findings

It must be noted that none of the project proponents have entered an operations phase (part C of the AIP plan) and therefore all compliance commentary from project proponents related to part B of the AIP plan - the construction/development phase - and not part C unless noted.

One of the most consistent themes to come from this review was the large amount of positive commentary made regarding the AIP Authority staff. Undoubtedly achieving their goals in terms of stakeholder support, advice and guidance, the AIP Authority has engaged the industry well.

According to 24 of 27 responses to question 11¹⁶, the AIP Authority's expectations and decisions were consistent with the legislation, easily understood and transparent. Three respondents felt this was not true and 11 selected N/A. Overall 89 per cent responded positively.

Project proponents mostly felt well supported through their AIP plan development, approval and compliance processes.

However, and as noted elsewhere in this report, feedback from most stakeholders also indicates:

- a desire for more information about the process and its outcomes
- low levels of awareness about outcomes
- inability to understand achievements under the Act
- misconceptions held by suppliers about the role of the AIP Authority and the Act.

Research and discussion with the AIP Authority reveals opportunities to further develop internal process documentation to standardise and streamline operations.

¹⁶ Question 11 asked "The AIPA makes decisions to approve AIP Plans and Compliance Reports based on the requirements in the Act and the Rule. Do you feel that the AIPA's expectations and decisions are consistent with the legislation, easily understood and transparent? Please comment on specific and relevant examples". Respondents could respond yes, no or not applicable and were asked to comment on their response.

Recommendation

Recommendation 4

That the AIP Authority develop standard operating procedures for all AIP Authority processes.

The review notes that the AIP Authority does not have a full suite of standard operating procedures.

If there were to be a change in staff it is not clear if the standards that have been applied over the previous years would remain consistent in future years without the guidance of standard operating procedures. Procedures that should be documented include:

- AIP plan exceptions process
- AIP plan approval process and checklist
- checklist/determination of sufficiency of evidence to support claim of compliance in part B
- checklist/determination of sufficiency of evidence to support claim of compliance in part C
- determination of trigger event and date
- process for updating an approved AIP plan, and
- process for assuring information security and release of information.

Through standardising procedures, new staff will be able to be trained consistently and effectively, administration will be more consistent, and the AIP Authority will have less reliance on key staff.

5.5 Term of Reference 5 – Compliance Monitoring and Enforcement

Effectiveness of compliance monitoring, enforcement and sanctions available under the Act

Context

Central to the role of the AIP Authority, compliance monitoring and enforcement are business critical activities that underpin regulation. This TOR explores the effectiveness of current AIP Authority compliance activities.

Key Findings

The review found that the AIP Authority applies an appropriate level of regulation through effective monitoring of major project activities and compliance in Australia. Commentary however revealed a theme of opportunities for AIP Authority to provide/publish examples of effective compliance, increase awareness of compliance and share compliance related data. Furthermore, there is perception held by some stakeholders that the further down the supply chain the less likely that compliance activities are effective.

Sanctions

The AIP Authority has not identified an instance that has required the use of the sanctions available to it under the Act. In this regard it is not possible to sufficiently review the effectiveness of the

sanctions. It could be said that the approach taken by the AIP Authority to work closely with every stakeholder, providing support and advice has had a positive effect on compliance. Most stakeholders noted the excellent support from AIP Authority staff.

AIP Authority feedback and actions

All respondents that had received feedback from the AIP Authority regarding their draft AIP plan or compliance report thought that the feedback was reasonable, transparent and appropriate. In this regard the AIP Authority has developed an excellent process for maintaining effective relationships with key stakeholders.

Some stakeholders, primarily suppliers and ICNs/industry association, perceive a lack of action being taken to address non-compliance. QCA believes that two reasons are driving this response. The first is that it could be a perception encouraged by an absence of information - a lack of transparency in the AIP Authority's activities that has led to a perception of inaction. There is truth to this statement and it is addressed elsewhere in this report through recommendation 2. The second is that procurement processes are only indirectly monitored and there may be truth to the perception of non-compliance occurring through procurement entities.

Monitoring - Compliance Reports

It is apparent on review that the agreed and approved AIP plan does not dictate the requirements outlined within the compliance report template. The compliance report template correctly utilises the Rule but does not sufficiently relate back to the details agreed upon within the AIP plan. The questions asked are open and give little explicit guidance as to how the reader is to meet the requirements, to what lengths they need to go to demonstrate compliance and the sufficiency of information provided as evidence of compliance. It is assumed that this results in a large variety of responses and types of evidence. Furthermore, as reported by some project proponents, it contributes to a resource allocation burden.

As we have noted previously, there is a disconnect between what is requested initially and what is requested subsequently. For the AIP Authority, this means that the process of determining compliance relies upon a deep understanding of the Act, the Rule and the individual AIP plan initially submitted. A determination by the project proponent submitting the compliance report or the staff member reviewing it is swayed by the experience and knowledge of the viewer/decision maker. Decision making therefore cannot be made transparently.

Templates sometimes include instructive information within the text boxes – this means that the instruction disappears when you fill in the box. The issue with this is that the person who has written it and returns later may not recall the instruction or the senior staff member reviewing the content, has no guiding note to evaluate whether the information matches the expectation.

Compliance reports do not include who is filling in the form, only who is submitting it. It may be helpful to understand if project proponents are relying on external consultants, engineering procurement contractors or other businesses to support their compliance activities. This will help the AIP Authority to focus information and support activities to the right people.

It is unclear as to why the AIP plan requires an ‘other project proponents and/or operators’ declaration but the compliance report does not. It may be useful (to support an inclusive and transparent process of accountability) to include the signature of the ‘other project proponent...’ in the compliance report.

Monitoring - Environmental Scanning

The AIP Authority utilise several approaches/methods to monitor the landscape for new eligible major projects and to alert new projects to potential obligations under the Act. This approach was found to be successful. Project proponents have appreciated this proactive approach as it enables them to meet compliance requirements in a timely manner.

Monitoring – Procurement

Some stakeholders, predominantly suppliers, feel that not enough is being done to enforce compliance and that the Act and/or the AIP Authority’s actions were not strong enough. The most cited response when asked “what are the weaknesses of the AIP plan” was “not tough enough” or words to that effect. Nineteen of the 71 responses received through the survey made this remark.

Some respondents (including most suppliers) felt quite strongly that there was little repercussion to non-compliance and that they had no evidence or insight into actions taken by the AIP Authority to enforce compliance. This comes back to the procurement process discussion in the key themes section. With sanctions already available in the Act, it remains that compliance monitoring by the AIP Authority are made more transparent and incentives put in place to encourage compliance.

Recommendation

Recommendation 5

That the AIP Authority develop further metrics and formalise a Monitoring and Evaluation Framework to better understand AIP activities and outcomes.

This recommendation relates directly to the functions of the AIP Authority as described in the Act, section 68 parts (e) and (h):

(e) to collect, analyse, interpret and disseminate information relating to AIP matters

(h) to support, encourage, conduct and evaluate research about AIP matters

When asked to comment on one aspect or another of the implementation of the Act we were often told “I have no information on that” or “what are the measurements”? Or simply “I don’t know”. Most stakeholders expressed a desire to have more insight into achieved outcomes and compliance activities. Without specific measurements and quantifiable data captured over time it is difficult for stakeholders (and the AIP Authority) to develop knowledge, make decisions and continually improve. It is important that the AIP Authority has a framework in place that aims to generate credible information to measure progress toward achieving outcomes and for regulatory improvement, learning and accountability.

The AIP Authority needs to further develop a framework through which its compliance activities are aligned and evaluated. This commences with the concept of success and how you measure it. In formulating a framework, it may be important to ask:

- Is the Act having any impact on Australian jobs? How do we know?
- Has there been any growth in the volume of suppliers joining global supply chains? How do we know?
- Is the Act reaching down the supply chain?
- Have supplier capabilities improved? How do we know?
- What measures will inform a future vision of success?
- What are the economic measures in the context of AIP plans and compliance?

Broadly, the Monitoring and Evaluation Framework would capture information through the regulatory process and feed this back to the industry to support compliance, innovation, the development of best practice and management of expectations. All stakeholders could benefit from information about feedback provided, opportunities created, outcomes achieved, best practice etc.

The first important step is to identify timely, relevant and objective measures – the best available at the most reasonable cost to the AIP Authority and stakeholders. The second step is to establish baselines or benchmarks to monitor changes in measures over time.

Sample approaches could include the development of an outcomes framework that scaffolds the AIP Authority's understanding through articulating long term outcomes, intermediate outcomes and defines specific indicators of those outcomes. These indicators then form the foundation for tracking, enabling insights to develop through recording key metrics.

As process maturity will not be reached for some years to come and, if the recommendations within this report are adopted, significant developments in information capture will greatly enhance future evaluation. Introduction of indicators now will assist in creating a baseline from which to measure progress. Once process maturity has been reached, together with information/data repositories, deep insights should be possible to further enhance the purpose of the Act.

It is unclear how outcomes can be measured for those projects that are granted an exception (as discussed below). Once granted, the project proponents then only deal with the state/territory government. Oversight of project planning, implementation and compliance becomes the task of the states/territories and any metrics are then lost to the AIP Authority. If a framework is put in place it must include information capture from those that have been granted an exception as they have been deemed to be equivalent.

5.6 Term of Reference 6 – Exceptions

Procedures for gaining an exception from the AIP plan requirements of the Act through use of a compliant state or territory industry participation plan.

Context

The Act provides for an exception to providing an AIP plan to the AIP Authority if the project proponent has provided an industry participation plan to a state or territory government and that industry

participation plan complies with the conditions specified in the legislative rule. This TOR explores the processes currently employed to achieve exceptions.

Key Findings

To gain an exception to providing an AIP plan using a state or territory government process implies that the state or territory industry participation plan sufficiently meets or aligns with the Rule. It also implies that there are some common parameters or criteria found in each industry participation plan through which a comparative analysis could yield an affirmation of likeness. An exception process therefore must be able to measure and equate industry participation plans against the requirements of the Act. Consultation and research reveal two perceived issues here.

Issue One

To provide an exception there must be a determination of equivalence. Each state and territory government has their own regulatory approach to industry participation based on the AIP National Framework and the state or territory government's own strategic goals. In general, there is a common focus on regional economic development that in most cases transpires through industry participation plans as a requirement to support or buy local or similar obligations. For example, South Australia requires that, for major projects over \$50 million, there is a minimum 15 per cent economic contribution to South Australia¹⁷. At the regional level, it is generally incumbent upon major project proponents to prioritise their economic contribution to the state or territory within which they operate.

In contrast, the Act does not stipulate any measure or weighting of Australian suppliers that project proponents must meet in order to maintain compliance. In fact, quite the opposite is true. The Act specifically notes that "Trade [is] to be absolutely free" (Section 119 (2)) and the "Commonwealth [is] not to give preference":

A function or power conferred by this Act must not be performed or exercised in such a way as to give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.¹⁸

In order to gain an exception, project proponents must comply with the Act which states they must meet conditions specified within the Rule. The Rule under Part 2, Section 5 highlights:

- (2) The key objective of the plan must be to ensure that Australian entities have *full, fair and reasonable* opportunity to bid for the supply of goods or services for the project.
- (3) The plan must not give preference to suppliers of goods or services located in one State or Territory over suppliers located in another State or Territory.

Project proponents therefore have the difficult task of conducting free and open trade at the same time, in some instances, of prioritising regional goods and services.

¹⁷ For definition of economic contribution see: <https://industryandskills.sa.gov.au/industry/south-australian-industry-participation-policy>

¹⁸ Australian Jobs Act 2013, Section 119 (1)

Issue Two

Currently there is no formal uniform exceptions process and the administration of exceptions requires bespoke analysis and comparison of state/territory industry participation plans with the Rule. Neither the Act nor the Rule specify a decision-making body for exceptions, but the Authority necessarily has taken on this role.

With regard to the provision of an AIP plan and gaining an exception, the Act simply notes that an AIP plan¹⁹:

[...] does not apply to the project proponent if the project proponent has prepared a plan that:

- (a) has been given to a State or Territory; and
- (b) complies with the conditions specified in the legislative rules.

Once an industry participation plan has been approved it then forms the foundation of compliance. If an industry participation plan gains an exception then that foundation, in terms of structure, approach and information, is different for each state/territory industry participation plan. Having a uniform exceptions process would enable the AIP Authority to ensure that data captured later is consistent with metrics required for monitoring and evaluation.

As each state and territory government has their own well-established administrative processes, templates and guides associated with industry participation, there may be an opportunity to further define the process by which each state and territory government industry participation plans are assessed to support an effective exceptions process.

Recommendation

Recommendation 6

That the AIP Authority develop an AIP plan exceptions process.

The establishment of a more formal process will also enable greater understanding of the regulatory burden on project proponents, allow the synergies between levels of government to be exploited and mitigate the risk of losing corporate knowledge through staff turnover. Furthermore, a standard process enables efficiencies to be achieved and communication enhanced.

¹⁹ Australian Jobs Act 2013 - Part two, division one, section 17 (5).

Recommendation

Recommendation 7

That the AIP Authority develop an information sharing process with the state and territory governments.

An exceptions process should be facilitated through the transfer of key data/information between the AIP Authority and the state/territory government to ensure that effective monitoring and evaluation can occur. Further benefits of this collaborative exercise will be the development of a shared knowledge base, business process optimisation and shared best practice.

It is accepted that the current volume of work in exceptions is low and that effort made to develop a process will not necessarily be rewarded with a net gain of efficiencies. However, the activity required to develop the process will reap significant benefits in ensuring that a consistent and fair approach to project regulation is administered, outcomes captured and communication with states and territories enhanced.

5.7 Term of Reference 7 – Resources

Availability and effectiveness of the AIP Authority information and resources to assist proponents and operators to meet their obligations under the Act.

Context

This TOR explores the breadth and depth of resources provided by the AIP Authority to assist stakeholders to meet their obligations under the Act.

Key Findings

A key finding was the overall stakeholder appreciation of the AIP Authority staff as an excellent resource. Of the six resources listed for evaluation in the survey, “AIP Authority Staff members” received the most positive result with 87 per cent (20 of 23) of respondents selecting the highest rating of “very useful”. This sentiment is also reflected elsewhere in the survey, with many positive remarks on the service and support delivered by the AIP Authority staff.

The key resource administered by the AIP Authority is the website: www.industry.gov.au/aip - as updated August 2018.

The website provides all the basic information and templates required to support compliance with the Act.

Research of the AIP Authority website together with feedback from stakeholders reveals that some existing information is not easy to find, and some required information is not included/available. For example, key documents such as the AIP plan summaries are under “read more”, resources are not accessible together in one location and there is no information about AIP Authority activities and outcomes.

The following resources are available on various pages of the website:

- [Guidelines for Australian Jobs Act 2013 compliance monitoring and enforcement](#)
- [AIP Notification Form](#)
- [Major Project Australian Industry Participation Plan Summaries](#)
- [AIP plan template](#)
- [User Guide for developing an Australian Industry Participation plan](#)
- [AIP Plan summary template - project phase](#)
- [AIP Plan summary template – operations phase](#)
- [Compliance report template – project phase](#)
- [User Guide for developing a compliance report for Project proponents](#)
- [Compliance report template – operations phase](#)
- [User Guide for developing a compliance report for facility operations](#)

Further links are also included directing users to external sites:

- Australian Industry Participation National framework: <https://www.industry.gov.au/sites/g/files/net3906/f/australian-industry-participation-national-framework.pdf>
- The *Australian Jobs Act 2013*: <https://www.legislation.gov.au/Details/C2016C00165>
- The Australian Jobs (Australian Industry Participation) Rule 2014: <https://www.comlaw.gov.au/Details/F2014L00125>

The review is of the opinion that there could be benefit in providing a repository or list of resources on a single page.

Furthermore, there is merit in clarifying who the intended target audience is of the website and ensuring that the website responds to the requirements of the stakeholder cohorts.

Recommendation

Recommendation 8

That the AIP Authority review and update the AIP Authority website as a key mechanism for stakeholder communication.

It is recommended that the website be reviewed, commencing with establishing clarity of purpose and target audience. Feedback suggests that it is not heavily trafficked but analytics on the site can help to establish volume of traffic to each page of the site. Feedback also suggests that suppliers do not know about or do not use the site. This leads to the question: What is the purpose of publishing the project summaries on the AIP Authority website? If it is to raise awareness, then it is not achieving this goal as verbal feedback indicates that it is not well used. None of the suppliers consulted are currently using the site and some were not aware of it at all. Some project proponents use it to review other major projects and others only refer to the site for templates.

Considerations in a review and update of the site include:

- clarify target reader/audience
- add a list or single location containing all resources (existing and new)
- add location for historical, completed projects
- add visual representations or infographics facilitating quick understanding
- add FAQs or targeted Q and A click through process to determine eligibility or next steps
- add information relating to outcomes and major projects with AIP plans
- make AIP plan summaries easy to find
- add confidentiality statement from the AIP Authority tied to requirement to notify AIP Authority of major projects
- add reasons for requiring early notification or demonstration of understanding of project lifecycle and the often-preferred point of FEED for trigger date for an AIP plan, and
- additional links to useful sites, state/territory government agencies.

6. Further Considerations

The review has identified other matters that may be of interest to the AIP Authority in performing its regulatory duties. The following considerations do not specifically relate to any one term of reference.

6.1 Consideration 1 – Capability and Feedback

Context

Feedback to unsuccessful suppliers was viewed by some project proponents as something they could do better and by most of the suppliers as insufficient. Two key issues emerged for project proponents. The first was that feedback was onerous and the second that fear of litigation impacted on timing and content of feedback. Project proponents could be better informed through the dissemination of information being captured by the AIP Authority.

Key Findings

As noted in Recommendation 1, compliance can be separated into two components - process compliance (adherence to administrative and time requirements) and purpose compliance (achievement of Act's intent). This consideration refers to reducing the impact of purpose compliance on stakeholders and enhancing supplier capability.

Leveraging information captured within compliance templates could lead to the provision of effective capability development recommendations. If this information is then further enhanced with industry expertise, a resource in the form of a guideline could be created to support capability development.

Feedback provided to suppliers is not going to be unique in every instance. Themes, issues, resources and approaches are currently known within each industry sector and generic guidelines could be developed to enhance supplier awareness. Information such as supplier performance is currently required/captured within every compliance report²⁰ and should be drawn upon to develop an understanding of issues. The compliance report template currently indicates that this is the purpose of gathering the information.

Suppliers needed to know why they were unsuccessful, what they can do to be more competitive and where they can access resources/information to support their business development.

This resource could support the capability development of suppliers and reduce the burden on project proponents. It is envisaged that such a resource could be developed by, or with support from, the ICN, with contributions from key stakeholders including states and territory governments.

²⁰ From the Act's enforcement/enactment in 2013 through to 30 July 2018, 80 compliance reports have been accepted by the AIP Authority

Another alternative is to capture and provide the relevant data to existing programs (e.g. the Entrepreneurs' Programme) or resources to further enhance their offering.

Consideration 1

Create an Industry Capability Development Guideline or provide data to existing programs/resources.

6.2 Consideration 2 – Project Proponent and Supplier Connectivity

Context

There are currently many databases and businesses being used to promote suppliers and support project proponent awareness of Australian entities, for example:

- ICN Gateway
- EconomX
- Unscrabble
- ProjectConnect
- ePilbara

Most of the databases are regionally based and to some degree this provides for a focused, localised system enabling connections with regional resources. However, they all vary in their ability to target and filter companies by product and business specifications, experience, size etc. They also vary in the database content – some businesses appear on one database and not another.

Key Findings

Feedback received through consultation highlighted the benefit that could be gained from consolidating some of the current resources into a national database to support procurement processes inclusive of Australian entities.

A project proponent advised it had conducted a review and evaluation of systems that could “increase [their] understanding of Australian entities”. They reviewed three systems/databases, decided on one and committed to adding their manual database to the chosen system (not ICN Gateway), thus gaining access to over 2,000 suppliers. This indicates a need and drive within industry to have a comprehensive and enhanced ability to find and connect with Australian suppliers.

If a data base contained detailed business specific information for filtering searches, the outcomes could be conveyed automatically to suppliers to raise their awareness of procurement processes and their ability to meet criteria. Automated feedback is currently the focus of a least one business previewed through this review.

Consideration 2

Support the development or enhancement of a national database of suppliers that enables detailed filtering/search criteria.

7. Appendices

7.1 Appendix 1 – Stakeholders Consulted

Stakeholder	Cohort Type	Location
Department of Transport (NSW)	Government Agency	NSW
Australian Steel Institute	Industry Association	NSW
Industry Capability Network (NSW)	Vendor Identification Agency	NSW
Crown Sydney Hotel Resort (Developer) Lendlease (Builder)	Project Proponent	NSW
Sydney Motorway Corporation	Project Proponent	NSW
WorleyParsons	Project Proponent	NSW
Industry Capability Network (NT)	Vendor Identification Agency	NT
Dept. of State Development, Manufacturing, Infrastructure and Planning (QLD)	Government Agency	QLD
Industry Capability Network (QLD)	Vendor Identification Agency	QLD
Adani Australia	Project Proponent	QLD
Australian Rail Track Corporation (ARTC)	Project Proponent	QLD
Destination Brisbane Consortium	Project Proponent	QLD
RIO Tinto (QLD)	Project Proponent	QLD
Shell Australia	Project Proponent	QLD
The Industry Advocate (SA)	Government Agency	SA
Century Group (CENMAN)	Supplier	SA
S J Cheesman	Supplier	SA
Industry Capability Network (SA) (Dept. for Industry and Skills)	Vendor Identification Agency	SA
Iron Road Limited	Project Proponent	SA
OZ Minerals Carrapateena Pty Ltd	Project Proponent	SA
Dept. of Economic Development, Jobs, Transport and Resources (VIC)	Government Agency	VIC
Keppel Prince	Supplier	VIC
NHP Electrical Engineering Products	Supplier	VIC
Wilson Transformer Company Pty Ltd	Supplier	VIC
Industry Capability Network (VIC)	Vendor Identification Agency	VIC
Stockyard Hill Wind Farm Pty Ltd	Project Proponent	VIC
Tilt Renewables	Project Proponent	VIC
Department of Jobs, Tourism, Science and Innovation (WA)	Government Agency	WA
Dynapumps - Dynamic Pump Solutions	Supplier	WA
Industry Capability Network (WA)	Vendor Identification Agency	WA
Albemarle Lithium Pty Ltd	Project Proponent	WA
BBI Group	Project Proponent	WA
BHP Billiton Iron Ore Pty Ltd (WAIO)	Project Proponent	WA
Chevron Australia	Project Proponent	WA
Civil & Allied Technical Construction Pty Ltd (CATCON)	Project Proponent	WA
Fortescue Metals Group	Project Proponent	WA
Rio Tinto (Perth - Growth & Innovation)	Project Proponent	WA
Woodside Energy Ltd	Project Proponent	WA

7.2 Appendix 2 – Sources and Reference materials

Source documents (not exhaustive)

- The *Australian Jobs Act 2013*
- Australian Jobs (Australian Industry Participation) Rule 2014
- Australian Industry Participation National Framework
- 2016 Defence Industry Policy Statement
- *Western Australian Jobs Act*
- Western Australian Industry Participation Strategy (WAIPS)
- Building Local Industry Policy
- Buy Local Policy
- South Australian Industry Participation Policy (SAIPP)
- *Industry Advocate Act (SA)*
- Victorian Industry Participation Policy (VIPP)
- NSW Government Procurement: Small and Medium Enterprises Policy Framework (NSW SME Framework).
- Queensland Government Procurement Strategy
- *Strong and Sustainable Resource Communities Act 2017 (QLD)*
- Queensland Procurement Policy
- Queensland Indigenous (Aboriginal and Torres Strait Islander) Procurement Policy
- Tasmanian Industry Impact and Participation Policy
- Canberra Region Local Industry Participation Policy
- Building Northern Territory Industry Participation Policy
- Australian Industry Participation Notification Form
- Australian Industry Participation Plan template
- User Guide for developing an Australian Industry Participation Plan
- Compliance Report Template
- User Guide for developing a Compliance Report for Project Proponents
- Guidelines for the *Australian Jobs Act 2013* Compliance Monitoring and Enforcement
- DIIS supplied:
 - Sample compliance documents and AIP plans
 - Sample correspondence and feedback to project proponents
 - Process map
 - Summary of State/territory policies
- Regulator Performance Framework - Self Assessment Report - Australian Industry Participation Authority 2015-16
- Regulator Performance Framework - Self Assessment Report - Australian Industry Participation Authority 2016-17
- Building Better Governance

Websites (not exhaustive)

Department of Industry, Innovation and Science

<https://www.industry.gov.au/regulation-and-standards/australian-industry-participation>

The Department of Industry, Innovation and Science are the administrators of the compliance process and are the first port of call for industry liaison with the AIP Authority. DIIS promote regulation and compliance through their site and publish AIP Plan summaries of major projects.

Parliament of Australia (including library)

Various sites such as second reading speeches:

<https://www.aph.gov.au/en/Parliamentary%20Business/Bills%20Legislation/Bills%20Search%20Results/Result/Second%20Reading%20Speeches?BillId=r5031&Page=2>

Australian Register of Legislation

<https://www.legislation.gov.au/Details/C2013A00069>

Main site to retrieve legislation

Major Projects Facilitation Agency (MPFA)

<https://www.business.gov.au/Advisory-Services/Major-Projects-Facilitation-Agency>

The Major Projects Facilitation Agency provides a single-entry point for major Project proponents seeking tailored information and facilitation of their regulatory approval requirements.

ICN and ICN Gateway

<https://gateway.icn.org.au/>

ICN are an independent organisation supported by Australian and NZ governments. ICN helps bring suppliers and project owners together by giving access to an online database (directory) and network of business growth consultants. ICN provide consultation services to industry.

ProjectConnect

<http://www.projectconnect.com.au/>

A website from the Chamber of Commerce and Industry of Western Australia (Inc). The website hosts several directories, some of which are Government owned and some such as the Aboriginal Business Directory are sponsored by Industry.

ePilbara – The Pilbara Business Capability Register

<http://www.epilbara.com.au/home.asp?cmd=register&CID=>

ePilbara is one example of many business directories that support regional development around Australia. ePilbara is linked to Project Connect.

Supply Nation

<https://supplynation.org.au/>

A national directory of indigenous businesses.

7.3 Appendix 3 - Consultation Findings

Analysis

Questions in the survey sometimes had two parts such as 1a and 1b. Analysis below does not distinguish subsections and collapses each into question one, question two etc. Quotations within this section are usually displayed in italics and indented in bullet points. Quotations may also be in quotation marks within paragraphs.

Question 1

38 Responses

Stakeholders selected the classification that best suited their organisation:

Cohort	Number	Percentage of respondents
Project Proponent (Developer of Major Project)	19	50%
Industry Association	1	2.5%
Government Authority (State/Territory)	5	13%
Vendor Identification Authority (ICNs)	6	16%
Supplier	6	16%
Other*	1	2.5%
TOTAL	38	100%

**Other in this case refers to an Engineering Procurement Company (EPC) and has been combined with project proponent numbers throughout this report.*

Question 2

26 Responses

Please indicate if you (your organisation) have undertaken any of the following activities.

- *Notify the AIP Authority of a major project as defined under the Jobs Act Apply for an Exception to an AIP Plan*
- *Prepare and submit to the AIP Authority a draft AIP Plan for the project Comply with Part B of the approved AIP Plan*
- *Submit to the AIP Authority six monthly compliance reports against the AIP Plan*
- *For new facilities in operations phase: comply with Part C of the approved AIP Plan (Section 24)*

- For new facilities in operations phase: submit to the AIP Authority six monthly compliance reports against its AIP plan (Section 26)

Key Findings

No respondents have entered the Operations Phase
(Part C of AIP Plan).

Very few stakeholders are utilising an exceptions process.

Of note, none of the respondents indicated that they had submitted compliance plans within a project's operations phase (for new facilities), nor any experience complying with part C of the AIP Plan (for new facilities). As such it must be noted that compliance commentary within this report relates only to compliance with Part B of the AIP plan – the Project Phase. There are currently 27 Major Projects approved by the AIP Authority that include a Part C.

Although the Act has been in force for almost five years, the response data above indicates the relatively short time that this represents in the life of major projects. Currently there are 27 major projects (out of 48) that include new facilities and hence a Part C within their AIP Plan. However, none of these projects have progressed far enough to transition to the operations phase. The implications of this for AIP Authority are that if new major projects continue to commence at a sustained rate, and existing projects continue to mature through to operations reporting, the AIP Authority's workload will continue to increase for some years. The pipeline or cycle of regulatory activities could be as long as 10 years and process maturity is yet to be reached. Process maturity would be realised when as many or more Major projects are completed as are commencing and operations have matured to strategically engage with industry.

Only one project, Queensland Gas Company's Charlie Gas field Development, has reached completion since the Act came into force in 2013. There are 48 major projects at various stages of the project development phase.

Respondents noted that it could take years for projects to move from AIP Authority notification through to Front-End Engineering Design (FEED) and a Final Investment Decision (FID).

Comments were requested – 7 received. However, all commentary was of a basic nature and no comments were thought to add value to findings.

* All six of the ICNs selected N/A.

* Suppliers, Government Agencies and the Industry Association were not asked this question.

* Respondents could select more than one answer.

Question 3

26 Responses

Were there any issues determining if your project was classified (eligible) as a "Major Project" and had to comply with the Jobs Act?

Key Finding

Determining how, and if, a major project is to be accountable under the Act can be difficult.

The vast majority (62%) of respondents selected N/A to this question with a few noting within commentary that there were no issues. While this indicates that the majority did not have any issues determining if their project was a major project, it could also indicate inexperience in the various issues that were highlighted. This view is also supported by the fact that some of the more experienced respondents were also the ones highlighting the most issues. One experienced respondent selected every issue and another experienced respondent selected three – together they accounted for 8/12 issues flagged.

Comments were requested – 10 received. The key themes, comments were:

- A few comments noted “There were no issues”
- Issues were not about whether the Act applied but “around familiarizing ourselves as to the obligations and activities we would need to understand and pursue. The Authority was very helpful and supportive at that time.”
- *Awareness of need to notify was absent*
- *Wording of Act and Guidelines is not helpful in determining when AIP Notification Form needs to be submitted, especially given uncertainties about whether project will proceed and in what form [it will proceed] at the time [the] form ostensibly needs to be submitted.*
- Unclear at times how to determine new facility versus an upgrade or whether the project is a “productive” facility or not and hence whether the Act applies or not.

* Suppliers, Government Agencies and the Industry Association were not asked this question.

* Respondents could select more than one answer.

Question 4

26 Responses

If you notified the AIP Authority of your project using the AIP Notification Form, please rate and comment on the form and the process including determining when to lodge it.

Key Finding

Notification form acceptable to most and easy to use.

Overall there was a positive response to this question. Of the 13 respondents that found this question to be applicable, eight (8) felt that the notification form and related process including when to lodge the form were “very good”.

Only one respondent selected the highest rating of “excellent” and four selected “average”. No-one selected “below average” or “poor”.

A further 13 respondents selected N/A.

Comments were requested – 14 received. The following themes and comments emerged:

- *It is merely another form to us*
- *Wording of Act and Guidelines is not helpful in determining when AIP Notification Form needs to be submitted, especially given uncertainties about whether project will proceed and in what form at the time Form ostensibly needs to be submitted.*
- *A few comments noted that “AIP Authority was very helpful” or “[...] extremely helpful”*
- *“Easy to complete”, “easy to use”*
- *One noted that they used a consultant and another was notified by email from AIP Authority.*

*Suppliers, Government Agencies and the Industry Association were not asked this question.

Question 5

26 Responses

Trigger Dates and Events are defined within the Act. It states that the AIP Plan must be submitted 90 days prior to the project’s Trigger Date. Was the process of establishing a Trigger Date for your project with the AIP Authority, appropriate and effective?

Key Findings

Definition of Trigger event is too broad, forcing notification too early.
AIP Plan required before project funding approved and complexity is understood.

11 respondents out of 26 selected N/A to this question. Of the 15 that selected Yes/No, nine (or 60%) responded positively. Of the six that responded negatively, the key issues were about timing of requirement to notify even when funding not approved, issues unclear and project complexity not understood well enough at such an early stage.

Comments were requested – 15 received. The following themes and comments emerged:

- *A few comments noted that trigger dates were confusing and ineffective:*
 - *extremely confusing and difficult to adhere to*
 - *Totally ineffective. As per the definition of a trigger event - drawing a diagram on the back of beer coaster could technically be a trigger!*
 - *[...] unclear as to exactly what phase in the Financial Close process, the trigger has been reached....*
 - *Some additional explanation and understanding was required and then defended internally.*

- Some comments related to bad timing, noting that the:
 - *Time period [is] too short for private developments*
 - *trigger dates can result in a requirement to submit a plan before we have made a decision on constructing the project and before there is enough details to make the plan useful*
 - *The more complex a project is, the more time required to determine a number of the key assumptions required to develop a competent AIPP -e.g. design, project delivery methodology, etc*
 - *[...] Project commencement was and still is dependent on funding*
- There were some positive comments also:
 - *The guidelines for establishing the Trigger Date were clear*
 - *No issue with submitting AIP Plan on time*
 - *I was a little confused about the trigger date initially, but it's become clearer as I do more of these AIP Plans*
 - *[...] the AIP Authority was very helpful in understanding timings*
 - *Discussion with AIP Authority determined that appropriate Trigger Date in general coincides with [our] approach to minimising project risks ahead of significant capital outlay, that is ahead of entry into Front End Engineering & Design (FEED) / Phase 3 (Develop Preferred Alternative).*

*Suppliers, Government Agencies and the Industry Association were not asked this question.

Question 6

26 Responses

Please rate your experience completing an AIP Plan for your project according to the criteria below:

- Understanding the requirements
- Meeting the requirements
- Gaining approval from the AIP Authority

Key Findings
<p>Inclusion of Part C in initial AIP Plan is too early in process.</p> <p>Templates/questions are repetitive.</p> <p>AIP Authority Staff are very helpful.</p>

Most respondents indicated that their experiences were OK for each of the areas. Combine this with the respondents that found the experience easy and you find 65% of all respondents thought the experiences were OK or easy.

If we remove all those that selected N/A, we find 100% understood the requirements; 85% felt that meeting those requirements was OK or easy and 95% felt that gaining approval was also OK or easy.

Only 3/26 noted that meeting the requirements of an AIP Plan was hard. It is worth noting that 2/3 of these were Engineering Procurement and Construction Management (EPCM) firms. One of these EPCM's also felt that gaining approval from AIP Authority was hard.

So while the results are relatively positive there were challenges noted that included the repetition of information required in templates, the requirement to include details that are not yet known and the difficulty completing a plan for part C that could be years away.

Comments were requested – 22 received. The following themes and comments emerged:

- Criticisms included:
 - *[...] reflecting the complexity of the different stages of the project [is difficult].*
 - *Understanding how you will support local jobs, opportunities and develop local know how is complex in and of itself.*
 - *Questions are similar in nature, having to repeat [...] is extremely time consuming/ costly for business.*
 - *Very difficult to draft [Part C] considering operations could be 5+ years away at the time the AIPP is submitted.*
 - *Understanding requirements and meeting requirements to [...] comply with and be deemed acceptable to the AIP Authority*
 - *That is was “Only OK because we had the help of a consultant.*
- Positive remarks included:
 - The AIP Authority were thought to be “very collaborative”, “always prompt and clear”, “very concise”, “very helpful and generous” and provided “excellent support”
 - *The process [was] relatively straight forward.*
 - *We went through the VIPP process and we were then able to use this to get an exception for the AIP. Was useful to not have to repeat efforts.*
 - *In general, the requirements of the Australian Jobs Act coincide with [our] established [...] practice with respect to Australian Industry Participation.*

Previous experience was noted as helpful by two respondents who found all experiences OK. One reflected that “I can imagine it would be hard the first time”.

- Suggestions included:
 - *An FAQ or quick answer page on the website.*
 - *Consideration should also be given to the proponent's track record - e.g. Australian firms who have worked in the region for decade's vs international firm with no local experience.*

* Suppliers, Government Agencies and the Industry Association were not asked this question.

Question 7

26 Responses

Please rate your experience completing a Compliance Report for your project according to the criteria below:

- Understanding the requirements
- Meeting the requirements

- Gaining approval from the AIP Authority

Key Findings

Meeting requirements is the hardest element of a compliance report.
Focus of AIP Authority appears to be compliance with process rather than outcomes.

Roughly a third of respondents chose N/A across each of the questions. This was mainly noted as not applicable due to the ICN not participating in the process or project proponents not yet engaged in the compliance stage.

Of the 18 that rated their experience “understanding the requirements”, no one felt that it was hard, 72% felt it was OK and 28% found it easy. In “meeting the requirements” and “gaining approval” there were roughly only 12% or two in each case that felt it was easy and the remaining 88% acknowledging the processes were OK with one exception. One respondent rated the experience of meeting the requirements as hard “due to the early phase of the project and the protracted approvals process”.

In both questions six and seven, there was a noticeable trend illustrating that meeting requirements was the hardest activity, followed by gaining approval from AIP Authority and the easiest aspect was understanding the requirements.

The following themes and comments emerged:

- Criticisms included:
 - *[the] AIP is about demonstration of process rather than achievement of local content percentages.*
 - *[...] duplicating a lot of responses during each report [...] can [we] refer to previous reports?*
 - *We consider this as just another compliance report we undertake for our projects and have to dedicate resources to complete.*
 - *The level of evidence required seemed onerous for some sections. For example, the need to provide a screen shot of a website when the link has already been provided seems unnecessary. There is a lot of repetition between the 'Project Proponent' section and 'Procurement Entity' section.*
- Positive remarks included:
 - *The process [...] was again well supported by our AIP representative with positive constructive feedback [...] which enabled us to submit and gain approval.*
 - *It was fairly straightforward to follow and to respond to.*
 - *AIP Authority staff are prompt and clear in their responses.*
 - *The first Compliance Report was a little more onerous than expected. Further reports have been easy now we have understanding of the report and support documentation.*
 - *We believe we are pursuing a very high standard of engagement and therefore meeting the requirements will never be easy. AIP Authority engage an appropriate level of scrutiny*

into our report and therefore we don't expect nor experienced gaining approval as an easy process.

*Suppliers, Government Agencies and the Industry Association were not asked this question.

Question 8

26 responses

How useful are the following resources to help you understand your obligations and develop your AIP Plan and Compliance Reports?

- AIP Authority website (www.industry.gov.au/aip)
- AIP Authority staff members
- AIP Plan User Guide
- AIP Plan Template
- Compliance Report User Guide
- Compliance Report Template

Key Findings

Stakeholders value the useful and timely support of AIP Authority staff.

Templates could be improved.

A strong outcome of this question was the stakeholder appreciation of the AIP Authority staff as an excellent resource. Of the six resources listed for stakeholder evaluation, "AIP Authority Staff members" received the most positive result with 87% (20/23) of respondents selecting the highest rating of "very useful". This sentiment is also reflected elsewhere in the survey, with many positive remarks on the service and support delivered by the AIP Authority staff.

The next best resource was the compliance report template with 13/23 ranking it "very useful" and 9/23 indicating that it was "somewhat useful".

The lowest score was achieved by the AIP Plan template with more stakeholders considering it "somewhat useful" (13/24) than "very useful" (10/24) and one respondent indicating that it was not useful at all.

Overall the results were positive with only 3/118 total rating indicating a negative "not useful" selection. The negative responses were indicated by two different respondents for the AIP Authority Website (1), AIP plan template (1), compliance report template (1).

The following themes and comments emerged:

- Positive remarks included:
 - Many commented on AIP Authority staff – the excellent support and advice "better than the guides".
 - *The AIP website, templates and User Guide provided guidance to what was required and key factors in compliance.*
- Some commented that "Documentation and help links can be improved",
 - A few noted that "the website could be better".

- *The templates are generally clunky and difficult to use in terms of set-up and when populating data. We found it difficult to format the document, again requiring a specialist resource to ensure the presentation was acceptable.*
- *The Compliance Report Template could be improved. The first report submitted was relatively straight forward to complete. What we have found is that the subsequent reports which provide layered responses, makes the report cumbersome and repetitive and it could be improved so that subsequent information added to the report is easily compiled.*
- *Key issue is not regarding understanding requirements of Australian Jobs Act but rather potential for duplication of / conflicting requirements in approvals and differing interpretations of reported outcomes between State and Federal jurisdictions.*
- **Suggestions included:**
 - *...liaise with an industry body such as ICNWA to assist with discharge of AIP obligations” (suggestion was not from ICN).*
 - *there is a limited amount of resources available nationally. Potential again for the likes of ICN assist the AIP Authority in supporting proponents (suggestion from ICN).*

*Suppliers, Government Agencies and the Industry Association were not asked this question.

Question 9

26 Responses

If you have received feedback from the AIP Authority about your draft AIP Plan or Compliance Report, was the feedback reasonable, transparent and appropriate with regard to the following:

- *The Draft AIP Plan*
- *The Compliance Report*

Key Finding

Stakeholders value the useful and timely support of AIP Authority staff and consider feedback received from the AIP Authority to be reasonable, transparent and appropriate.

100% of respondents that had received feedback from the AIP Authority regarding their draft AIP plan or compliance report thought that the feedback was reasonable, transparent and appropriate. Roughly one third of respondents answered with N/A to both parts of the question indicating that they had not received feedback.

Commentary was requested - 18 responses were received, all of which expressed positive commentary and gratitude for helpful, useful and timely feedback. There was one comment that noted “sometimes [information was] requested that seemed onerous. For example, the need to provide a screen shot of a website when the link has already been provided seems unnecessary.”

Another was not concerned with feedback but with the “potential for duplication of [or] conflicting requirements in approvals and differing interpretations of reported outcomes between State and Federal jurisdictions.”

*Suppliers, Government Agencies and the Industry Association were not asked this question.

Question 10

38 responses

The AIP Authority collects and uses confidential information for the purpose of conducting its regulatory duties. How confident are you that the AIP Authority handles your confidential information appropriately?

Key Finding

Stakeholders trust the AIP Authority and expect high standards but do not know how the AIP Authority handles their information.

28 of the 38 responses indicating some level of confidence in AIP Authority's handling of confidential information, with the majority of 22 noting they were "very confident". The remaining 10 respondents selected "not sure" and no one indicated little or no confidence. While two thirds of responses indicate a positive response, commentary attached to the question reveals themes of stakeholder expectations, trust and lack of knowledge. Stakeholders felt that the highest protocols would and should be in place and that they trusted that they were there. Comments however also reveal that there is not enough data available or stakeholder knowledge of AIP Authority processes to provide useful commentary. Stakeholders trust the Authority, but transparency is lacking and there is not an accessible evidence base to support stakeholder trust.

Positive comments included

- *Good relationship between the Department and DIIS in discussing projects that fit within the Australian Jobs Act 2013, and the participation rule.*
- *No concern about confidentiality.*
- *This is expected and based on trust (2 others also noted the expectation of high standards)*
- *We trust that the AIP Authority handles the information confidentially and have no reason to suggest otherwise.*
- *No reason to suggest any issue with respect to confidentiality.*

Further comments included:

- *We have no visibility on the processes or procedures which AIP Authority have in place to manage data security. We assume that the appropriate governance is in place.*
- *Would hope they are confidential, but have no evidence to form an opinion either way*
- *Don't have reason to complain*
- *We have nothing to base a response on.*
- *I understand the information is only viewed by a small number of people in the AIP Authority. I am not sure how the information is used when conducting regulatory activities.*

Question 11

38 responses

The AIP Authority makes decisions to approve AIP Plans and Compliance Reports based on the requirements in the Act and the Rule. Do you feel that the AIP Authority's expectations and decisions are consistent with the legislation, easily understood and transparent?

Key Findings

The AIP Authority's expectations and decisions are perceived to be consistent with the legislation, easily understood and transparent.

Opportunities provided by project proponents are sometimes perceived by suppliers to be unfair or unreasonable.

It must be noted at the outset, as noted elsewhere in this report, that none of the respondents have entered an operations phase (part C of the AIP Plan) and therefore all compliance commentary relate to Part B of the Plan, the construction/development phase.

24 of the 27 responses indicated that AIP Authority's expectations and decisions are consistent with the legislation, easily understood and transparent. Three respondents felt this was not true and a further 11 selected N/A. Overall 89% responded positively.

Of those that responded negatively, two were suppliers who noted that:

- *We are offered RFT that require a level of investment and resource that only a multi-national company can provide*
- *Proponents of projects mostly did not provide appropriate opportunities for Australian suppliers*

The third negative response came from a Government Agency that felt there was:

- *No transparency for proponents going through the process of what plans are typically accepted or rejected. No visibility for us concerning proponents who have started but not completed the process and whether they have been engaged.*

A further comment to note came from an ICN who responded positively but also noted:

- *Based on our feedback, the process is lengthy and could be shortened through less iterations*

Question 12

38 responses

The AIP Authority has sanctions at its disposal to support compliance with the Act. Are the available sanctions an effective response to non-compliance?

Key Findings

Suppliers perceive/witness non-compliance but are not privy to sanctions/response.

Stakeholder awareness of compliance and sanctions is low.

Most responses to this question (53%) indicated they did not know if the available sanctions were an effective response to non-compliance. 33% overall felt that the sanctions were effective and 16% (or six) responses indicated that the sanctions were not an effective response to non-compliance. When you take only the YES/NO responses, exactly two thirds responded positively (12) and one third negatively (six).

Commentary revealed a theme of opportunities for AIP Authority to provide/publish examples of effective compliance, increase awareness of compliance and share compliance related data.

Two suppliers noted that they had not seen any evidence of sanctions being applied (one voting “no” and the other “don’t know”). Two more suppliers separately noted that if overseas contractors are used “then local content gets abandoned” and the “overseas project consultants [turn] to their preferred overseas suppliers”. All six suppliers voted “no” or “don’t know”.

Positive comments included:

- *Provides consequence to non-compliance*
- *The sanctions available to the AIP Authority should effectively deter non-compliance.*

Critical or Neutral comments included:

- *[...] the penalty mechanism in place [is] not stringent enough to have the effect needed for compliance*
- *If a project contract has been awarded to an overseas contractor (EPCM) the local content gets abandoned – these companies (or end-user in Australia) do not seem to be held accountable at all*
- *No visibility of these being used, or of changing the behaviour of a purchaser.*
- *I am not aware of any sanctions being applied*
- *They don't appear to be to me. I know some projects take them seriously but I don't know for all.*
- *Our experience was we were ruled out by overseas project consultants who in the main went to their preferred overseas suppliers.*
- *The sanctions carry no real penalty which means that compliance is optional.*

Suggestions included:

- *The AIP Authority may wish to consider incentives as well as sanctions*
- *Stronger sanctions should be considered for non-compliance.*
- *Would love to see examples used in practice previously to see the outcome*
- *Naming and shaming and injunctions are useful if enforced. If the offending company values its reputation and is a publicly listed company on the ASX then these may be effective. If not then fines and other measures may need to be considered.*
- *Provided the AIP Authority provides support and considers (acting reasonably) why compliance may not have occurred and responds appropriately then yes, the sanctions are relevant. Without sanctions, it is hard to see how compliance can be effectively managed. The flip side of sanctions is incentives. This is something that the AIP Authority may wish to consider.*

How much of a burden to your organisation is the compliance process overall, on a scale of 1 to 10 where 1 is "no burden" and 10 is "extremely burdensome"?

Key Findings

Compliance is just a box ticking exercise that is seen as an inconvenience.

Compliance is onerous and requires extra resources.

More respondents (six) rated the burden at 8/10 than any other single rating. This represented 32% of all responses when all seven N/A are excluded. 58% of responses (or 11) felt that the burden was ranked 5 or lower. This response indicates a relatively high burden is felt across a large section (42%) of stakeholders who rated their response 6+. Commentary is revealing here, where it is noted that internal processes do not align with external AIP Authority requirements; that other compliance requirements (State Government obligations, Traditional Owner Agreement obligations, etc) add to the overall burden felt and the compliance process was difficult and repetitive:

Positive comments included:

- *Compliance is low on the scale of other construction project compliance requirements.*
- *Process is easy enough to complete after first report and having understanding of documentation required to be maintained.*
- *The compliance process provides minimal burden as the information required to populate the report is taken from existing project generated sources.*
- *Development of the AIP Plan and ongoing compliance reporting does not take a large amount of time or effort at this stage. This will likely change as the project progresses into construction and operational phases.*

Criticisms included:

- *The burden is mostly internal. Our SAP financial reporting occurs in a collated fashion. It is a very painstaking exercise to pull out invoices and costs for the 'construction' or 'project' components of our operation. Construction and operation is very blended in the CSG environment; it's not simple as with mining*
- *The process itself is not difficult. However, this is another layer that companies need to consider in addition to; existing company policies and processes, State Government obligations, Traditional Owner Agreement obligations, etc.*
- *The reporting requirements are very detailed and can be repetitive, particularly between the Project Proponent and Procurement Entity sections.*
- *Compliance is hard as it means searching the market for ways in which we support and meet the plan under the Act. It's imperative that the AIP Authority promotes the AJA so that all developers/builders understand that compliance with the Act is at a material cost and should be genuinely considered as part of any budget formation. It should never be viewed as a "bolt*

on" that can be dealt with as a compliance matter. It requires innovation, thoughtful leadership and a culture of thinking locally

- Key concern is regarding duplication of State and Federal regulation and reporting.
- Based on ICN experience as indicated before, the burden for compliance is not stringent enough to ensure that compliance is strictly adhered to
- At the moment an inconvenience. Suspect this could become a significant burden once the project commences.
- Again, we see this reporting just another compliance report among many others we deal with in the course of running our company and delivering national scale projects. We have to have dedicated and skilled staff members complete the work. It's just another added overhead cost to our business.

* Suppliers, Government Agencies and the Industry Association were not asked this question.

Question 14

26 responses

Was meeting the compliance requirements more or less burdensome than you anticipated? (Responses on 5 point scale)*

Key Finding

The burden of compliance is at a level that is expected

This question, when considered in light of the previous responses to question 13, could indicate that the burden of compliance, the view that it is a box ticking exercise, is one that is held by stakeholders *before* the actual experience.

The clear majority here are indicating that the burden was one they expected with no one finding that the process was easier than they expected it to be. Question 13 shows that a large number (8, or 42%) felt that the process was a burden. Four of those are the same respondents as the four here that are indicating it was more burdensome or much more burdensome than they expected. The misalignment with their compliance expectations has led them to rate the process as a burden on their organisation.

There were two others that previously rated the burden as 8/10 and here they indicated that the level of burden was expected. Their commentary to question 13 reveals that this is not because the process itself is poor but that it is "another layer that companies need to consider [in addition to other regulatory requirements]" and that the "initial effort comes at a very busy time for project managers". These factors are beyond the control of AIP Authority but further transparency of process and process requirements may go some way to alleviate the burden of expectation.

*Suppliers, Government Agencies and the Industry Association were not asked this question.

What improvements could be made to the processes and procedures for meeting the compliance requirements?

Key Findings

Use a cloud-based approach to compliance reporting online and utilise a better format inclusive of greater guidelines (FAQs, Links).

Allow later submission of Part C.

Quote

“[...] our philosophy is "you do what you have to do to get the job done””

This question largely targets project proponents but ICN were included to provide them an opportunity to comment based on their experience. One ICN suggested that there should be “consideration of mandated local content targets” and another felt that compliance was “not stringent enough”.

Project proponents felt that compliance processes could be more streamlined, with further examples of supporting evidence, access to FAQs and an online process that they could start and return to as convenient.

Suggestions included:

- *A suggestion could be to implement a cloud based electronic compliance form with the ability to save and return periodically to update the compliance information.*
- *Removal of some reporting obligations for early phase projects.*
- *More assistance/ help links on the website.*
- *Possibility for annual reporting Ability to submit part C of the AIPP upon commencement of operations or seek exemptions if sufficient company policies and processes are in plan and the proponent has a proven track record*
- *Consideration of mandated local content targets.*
- *A more streamlined approach to reporting would lessen the burden borne by the business.*
- *As stated the Compliance Report Template does need improvement from a format and readability point of view. I think greater introductions with agencies would be good and better focus from the AIP Authority as to which industries it believes require the most support.*
- *The report could identify all supporting documentation a little better as it was not fully understood when submitting first report.*

Criticisms included:

- *Timing of submission of Notification Form is a concern as in general it requires notification about a project to AIP Authority when Proponent lacks confidence about timing and scope and viability of the project.*

- Based on ICN experience as indicated before, the burden for compliance is not stringent enough to ensure that compliance is strictly adhered to.

Other comments included:

- AIP Authority has helped streamline things for us, by allowing us to contemplate the next 5 years of construction in one plan, rather than in 5 different projects. So this has helped. However, our main struggle is the untangling of contractor and SAP data as explained above. We cannot do this with 100% accuracy, so there is always a margin of error.”
- We understood the requirements and just complete what is required - our philosophy is "you do what you have to do to get the job done.”

* Suppliers, Government Agencies and the Industry Association were not asked this question.

Question 16

38 responses

The Act provides for the establishment of the Australian Industry Participation Authority. The role of AIP Authority is currently held by a senior departmental person acting in the position. Do the current arrangements work? Do you have an opinion on permanently filling the Authority’s position?

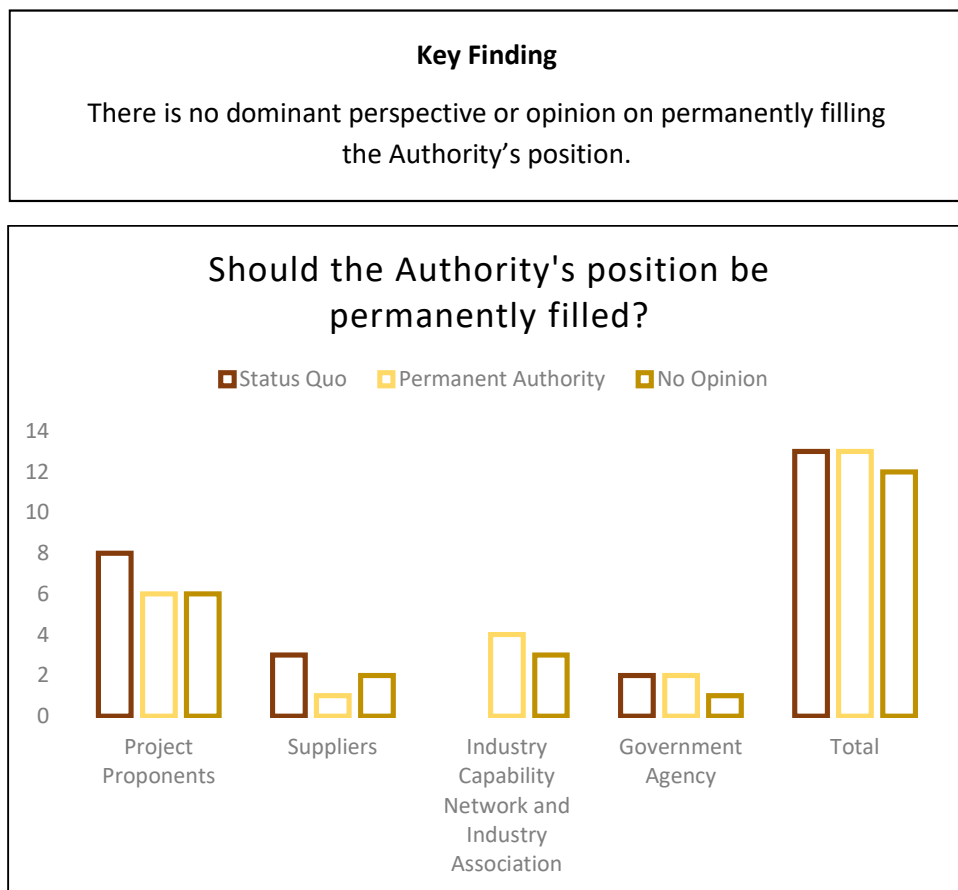


Table 8 – Should the Authority’s role be permanently filled?

This question has been analysed by cohort as it was felt important to understand the various views by group.

Overall there was no clear finding with essentially equally weighted responses. There were 13 responses indicating that there should be a permanent Authority and the same number who felt that the Status Quo worked well. 12 respondents had no opinion on the matter. Given that almost one third had no opinion and at least three indicated that they did not have enough knowledge, an hypotheses could be that there is not enough industry awareness of the Authority's role.

Six project proponents thought the position should be filled permanently. Eight felt that the current Status Quo works well and six had no opinion.

Three of the ICN's feel that a permanent Authority is a good idea as it would provide certainty for the AIP Authority, more support for the "serious requirement for compliance" and send a strong clear message to the sector. Another ICN felt that greater collaboration with the ICN or similar organisation would better enable the AIP Authority to meet its obligations.

Suppliers provided a variety of responses. Collectively they felt that the AIP Authority does not understand industry well enough, that there needs to be more assurance given to the compliance process (more power afforded in follow up) and an Authority permanently appointed. However, two of the six suppliers did not know the answer or were not aware of the Authority's position. One supplier felt that there should not be a permanent Authority.

Two Government Agencies thought the current arrangements worked well, two felt that the Authority should be permanent, and one had no opinion.

Another stakeholder felt that:

If the Government is serious about supporting Australian Industry, there should be a full-time staff with personnel in each State. The management of the process, reporting on the use of, compliance and effectiveness of the Act should be open to public scrutiny.

Question 17

38 responses

In your experience, has the publication of Project Summaries on the AIP Authority website promoted industry awareness of major projects and/or supplier engagement? Please comment on any perceived issues (timing of publication, confidentiality etc.)?

Key Finding

AIP Authority website has some, but limited, impact raising industry awareness

Quotes

As a supplier we often get work through contractors, subcontractors and procurement agents - not directly to projects but down the supply chain. We employ a sales team to look for opportunities.

If the AIP Authority were serious about assisting Australian firms in gaining work there would be dedicated staff making contact with potential bidders prior to

tender release with sufficient information to enable local firms to submit winning bids.

Has the publication of AIP Authority summaries promoted Industry Awareness?

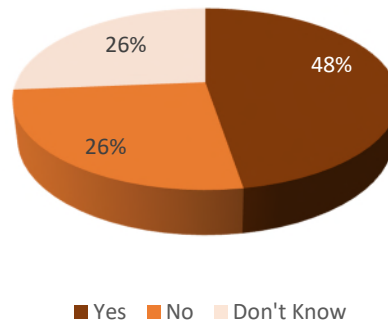


Figure 6 – Has the publication of AIP Authority summaries promoted Industry Awareness?

There were 38 responses (100%) to this question. Less than half (48%) of the responses to this question indicated that the publication of Project Summaries on the AIP Authority website had promoted industry awareness of major projects and/or supplier engagement. An equal number each felt that it had either not made a difference (26%) or they did not know (26%).

A lack of awareness and understanding is a common theme throughout commentary and suggestions include the need to promote awareness and traffic to site.

Comments were requested – 31 received.

Criticisms and comments about lack of understanding/awareness included:

- *Lack of awareness of local suppliers of this requirement to publish.*
- *One potential issue is that projects by their nature evolve over time and the scope of the project published may not always be the final scope for the project and has the potential to be somewhat misleading.*
- *In our experience industry are not aware of the webpage, or of the policy. From our perspective, we check the site periodically looking for Queensland-based projects that fit the Queensland policy. Publication occurs after approval which does not assist us to engage with proponents.*
- *Suppliers are not aware of the AIP Authority website as far as I know.*
- *Yes. Timing did result in enquiries too early for the project since funding has still not been secured.*
- *While the summaries help, I don't know of any mechanism alerting people that summaries have been posted.*
- *I don't review or view the AIP Authority website*
- *I'm not sure. We have not found that any suppliers contact us directly because of these summaries - so we haven't noticed that it's increased awareness.*
- *The information provided is in the public domain and less than is available from media and project reporting services. If the AIP Authority were serious about assisting Australian firms in*

gaining work there would be dedicated staff making contact with potential bidders prior to tender release with sufficient information to enable local firms to submit winning bids.

- *we do not use the website*
- *Our business did not engage well enough with the authority and likewise the authority from our perspective was not pro-active enough in its role.*

Suggestions included:

- *The publication of the project summary is in general ahead of entry of project into FEED/Phase 3 (Develop Preferred Alternative). As a result there can be uncertainty about timing and scope and viability of the project. Consideration could be given to publication of summaries after entry into Phase 3. The date of publication could be open to negotiation between AIP Authority and Proponent, in a similar fashion to negotiations on the Trigger Date.*
- *ICN have yet to hear a supplier say that they have been made aware of opportunities through the AIP Authority website. Typically suppliers would reference websites such as ICN for major project opportunities, and ICN believe that this should be enforced more stringently on proponents to utilise a public platform such as ICN to promote these opportunities.*
- *Further improved communications to direct users to view summaries required on the website.*
- *I have not noticed that industry is particularly aware of the AIP Authority website and the detail of both projects and expectations under the Act. It may require additional promotion on a combined level by Federal, State and Territory Governments alongside industry associations as it is important that industry does understand the obligations of the proponents.*

Question 18

38 responses

The Act and The Rule use full, fair and reasonable as principles to underpin industry engagement with Suppliers. Please comment on the overall ability and effectiveness of AIP Plans to promote full, fair and reasonable opportunity for Australian Suppliers.

Key Findings

Suppliers do not think AIP Plans promote Full Fair and Reasonable.
Free trade seen as impairment to Full Fair and Reasonable opportunities for suppliers.

Quote

I think it's sometimes easier and cheaper to go offshore, so [the AIP Plan] provides the only legal mechanism we have to keep things local.

Overall, the responses to this question indicate that much can be done to promote *full, fair and reasonable* opportunities for Australian Suppliers.

Suppliers did not think that AIP Plans promoted *full, fair and reasonable* opportunities. They felt that:

- *there is no accountability to the client if local content is abandoned*

- *Anything significant is sourced not from us or Australia but overseas*
- *we do not believe there was enough opportunity for Australian suppliers*
- *The Act and the Rule in my experience do not satisfy the principles because it appears that the content of some RFTs are not scrutinised...*

ICNs, government Agencies and the Industry Association felt that the terms full fair and reasonable were not well understood when it came to operational application. In theory it was thought to be quite “powerful if entrenched in contractual requirements”. However, there was no indication in the Summaries published as to how those principles were applied. One ICN noted that they were often told by suppliers that “there is not a level playing field due to required working conditions in Australia, quality, government regulations and free trade agreements”. Another observed “numerous opportunities which are contestable [are] going offshore with no challenge from the Authority”.

It was noted that:

- *The project proponent may have every intention of providing full fair and reasonable opportunity for Australian suppliers, and regularly present this intention to the marketplace, but their Tier one contractors and the rest of the supply chain may - intentionally or unintentionally - counteract the project owner's intentions. For projects with overseas investment, sometimes this includes the international investor supplying plant and equipment - thereby excluding opportunities for Australian suppliers*

Further comments from ICN’s, Government Agencies and the industry Association included:

- *From our observation, again we stress the need for more stringent assistance in developing AIP Plans, as well as compliance monitoring. In our observation we have seen numerous opportunities which are contestable going offshore with no challenge from the Authority in this regard.*
- *AIP policy could be stronger with the use of some additional data and implementation of genuine local content activity.*
- *The biggest challenge in measuring effectiveness is global tendering. Australian suppliers who bid on globally tendered work often believe that they are not given full, fair and reasonable opportunity when the work goes offshore. Suppliers often comment there is not a level playing field due to required working conditions in Australia, quality, government regulations and free trade agreements.*
- *The plans can be effective but can be treated as token actions in some instances.*
- *AIP Plans have failed to provide full, fair and reasonable opportunities for local firms. The process does not measure the organisational legitimacy in terms of social, environmental and economic credentials of competing countries and firms. The existence of free market conditions is questionable and not addressed. It is interesting to note that Commonwealth Procurement Rules seem to exceed the standard applied by AIPPs.*

Project proponents felt overall that AIP Plans had promoted full fair and reasonable opportunities for contracts over \$1 million in value. Below this amount there are no regulatory obligations and packages are often bundled, preventing access to small contracts.

One project proponent also felt that AIP Plans had promoted the use of the ICNs which in turn had developed a significant database for project use.

Further comments from project proponents included:

- *The Plans are an important part of Government and Industry commitments to Australian suppliers in addition to services to such as the ICN.*
- *The \$1million threshold provides full, fair and reasonable opportunity to larger national / international contractors but not small, regional and Indigenous contractors who should also be benefiting from these sources of global investment.*
- *We use internal AIP Plans to communicate requirements/ establish common understanding within projects and across our business. In that sense AIP Plans are helpful. These internal AIP Plans are however developed as one of the standard suite of project plans, in a format consistent with those other plans. Reproducing elements of the internal AIP plan in the AIP Authority template is unnecessary and runs counter to developing a common understanding. In that sense the AIP Authority AIP Plan template is not helpful.*
- *We have found the AIP Plan to be positive. It has provided a solid framework which we have flowed down the obligations into our major contracts which has resulted in a focus on local engagement and support of South Australian labour and businesses.*
- *I think the plans are effective in doing this, as they provide government and industry alike with a legal mechanism to ask our Contract and Procurement personnel to properly consider Australian capability. I think it's sometimes easier and cheaper to go offshore, so it provides the only legal mechanism we have to keep things local.*
- *The AIP Plan has enabled the Project's contracting and sub-contracting opportunities to be broadcast to Australian suppliers. This has prompted a broader range of Australian suppliers to register their interest in the Project and in turn provide capability statements to the wider Australian market.*
- *I think the plans meet this intent. Amongst stakeholder groups the definition of "local" creates fierce debate. Perhaps a more practical approach can be taken - e.g. allowing proponents to specify a framework of community, region and/or state and national as subsets of local.*
- *It most definitely helps. I doubt we would have run with the ICN Gateway (and its associated costs) without the AIP requirement. This has provided an extensive database of Australian Suppliers for the project.*
- *Reasonably effective. Difficult to comment on overall effectiveness of AIP Plan to promote full, fair and reasonable opportunity as we have not yet executed contracts where we have had to monitor a major contractor's compliance with our AIP Plan in their own sub-contracting opportunities. Theoretically it appears to be an effective means of achieving objective and will require management on behalf of the Proponent.*

Question 19

38 responses

Please rate the effectiveness of AIP Plans to:

- Enhance outcomes for Australian Suppliers

- Promote project proponent understanding and development of Australian Supplier capabilities

Quotes

Key Finding

AIP Plans are at least somewhat effective in enhancing both the outcomes for suppliers and project proponent understanding and development of supplier capabilities.

I know first-hand that we have created a culture of Australian supplier engagement on our project and that is directly attributed to the AJA and the good work of the AIP Authority.

(Project proponent)

I am not sure, I have no evidence that the AIP Plans have any outcome for my company or those of my competitors. Nor do I think they promote the understanding of Australia Supplier capabilities

(Supplier)

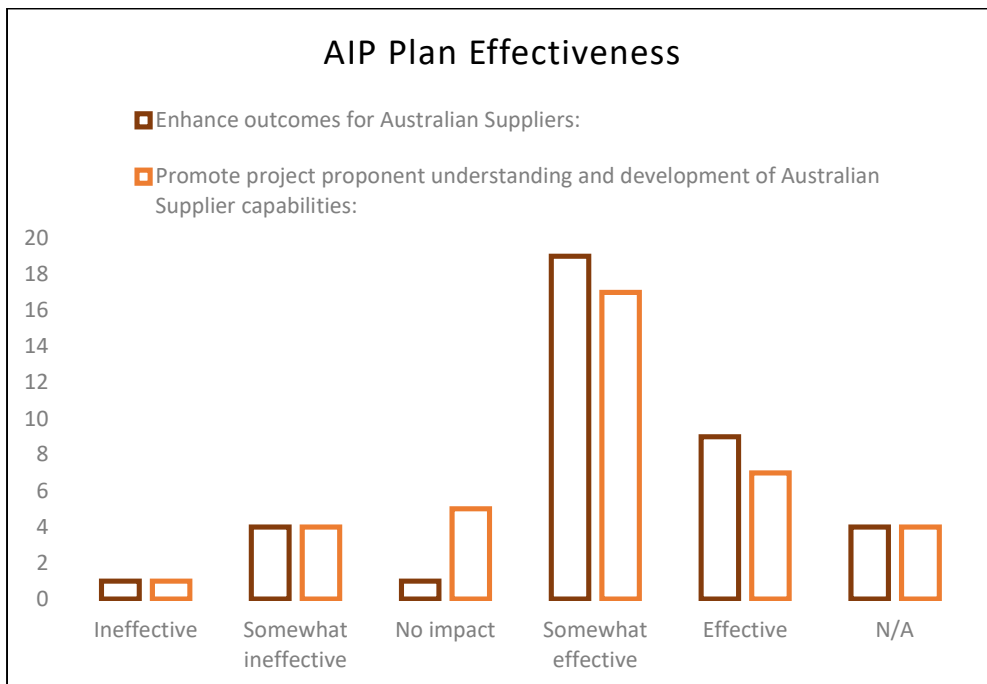


Table 9 – AIP Plan Effectiveness

A clear majority overall felt that AIP Plans were at least somewhat effective in enhancing both the outcomes for suppliers and project proponent understanding and development of supplier capabilities. The responses were consistent for both questions with one key difference in the responses under “no impact” that will be discussed.

When considered by cohort, and with consideration of commentary, further insights can be gleaned. Below are the responses for each question articulated by cohort.

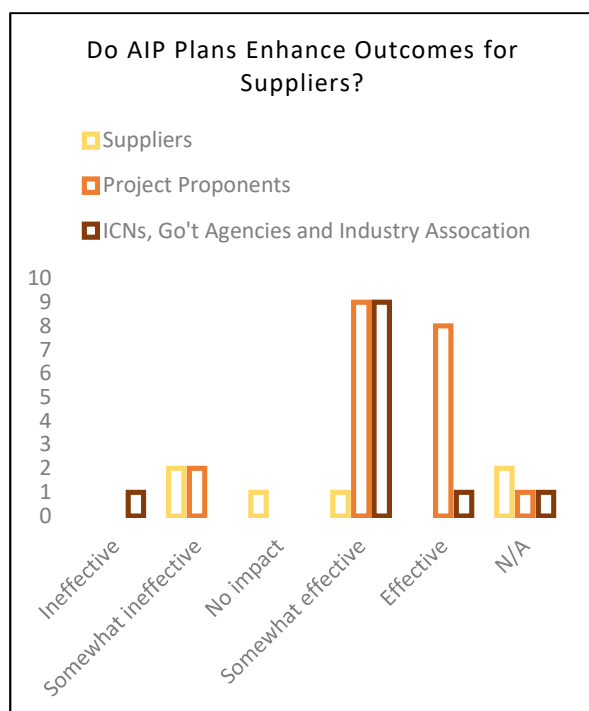


Table 10 – Do AIP Plans enhance outcomes?

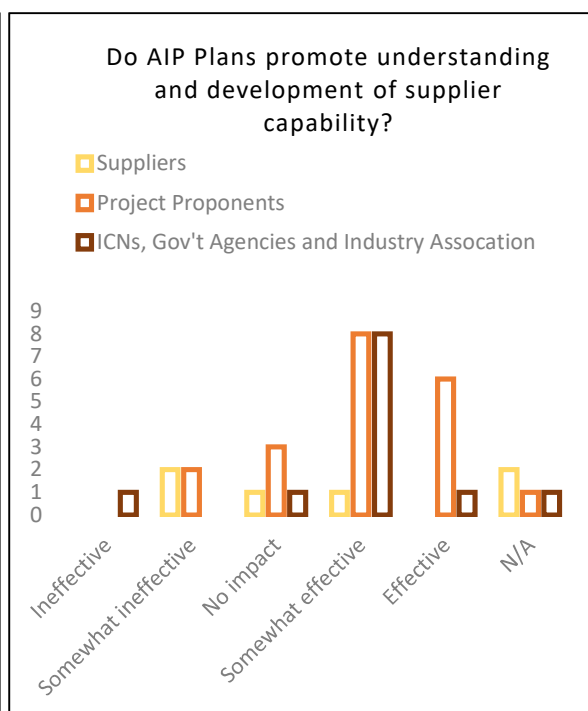


Table 11 - Do AIP Plans promote understanding?

Project Proponents

Effectiveness when considered by cohort (see Table 10 and Table 11) reveals that fewer project proponents (when compared with “enhanced outcomes”) perceive AIP Plans to be effective in promoting their understanding and development of supplier capabilities. Commentary from project proponents indicates that while the Act provides a pathway to enhance suppliers, the “AIP Plan itself has no impact on project proponent understanding and development of Australian supplier capabilities.” Furthermore, project proponents felt that “the activities in our AIP Plan are undertaken because we believe they are good business. Any additional benefit resulting from the AIP Plan for Australian suppliers is minimal” and that “developing capabilities is not always possible given timing and budget restraints”. Comments such as this reveal a focus on business and compliance processes that in and of themselves do not promote understanding and capability development. This sentiment is again mirrored by another “project proponent”:

- *[...] AIP Plans can concentrate on compliance with provisions of the Act / providing full fair and reasonable opportunity with respect to the adopted contracting strategy/package. This can distract resources from early consideration of opportunities to develop capability and shape contracting strategies and packaging to suit Australian capability.*

Some comments provided further insight into challenges and opportunities:

- *With no full, fair and reasonable opportunity requirements for work scopes below \$1m in value there is no compliance requirement for large prime contractors and tier 2 contractors to*

advertise smaller scopes of work for smaller regionally based contractors to participate. Only organisations benefitting are the larger national and international companies who need the least compliance intervention assistance.

- *I still find it to be quite a challenging internal exercise to get people to understand the criticality of providing full fair and reasonable opportunity. i.e. the need to make all scopes visible and accessible. It is easier for them to go to existing suppliers. So this is a difficult message for some to swallow. Information sessions held directly by the AIP A or other govt. authority would really help add weight to the message.*
- *Mandatory requirements would obviously be better. It is a little unclear in my mind as to what exactly is an "Australian Supplier" given most Australian Companies have significant overseas shareholdings.*

There were some positive remarks also:

- *The plans do provide increased awareness and context of Major project opportunities*
- *AIP makes projects consider early what services / materials can be sourced from Australia. [...]*
- *The AIP Plan is a good framework for effective implementation [...]*
- *I believe the Meet the Constructor events that we have established as a result of AIP requirements provides a closer relationship with local suppliers - giving them the opportunity to meet key personnel face to face to understand more about the project and the likely supply chain requirements in advance. We believe this gives better opportunity for the suppliers to become more tender ready/meet supply requirements at a later stage.*

Suppliers

Given that these questions are specifically asking about outcomes and benefits for suppliers, supplier response should be a key marker for understanding efficacy. Only one supplier out of six felt that there was any level of effectiveness considering both questions. Three suppliers felt that the AIP Plans were somewhat ineffective or had no impact.

Commentary from Suppliers shows a lack of awareness ("I am not aware of the plans" and "N/A"), a perception of no impact based on absence of data/information ("I have no evidence that AIP Plans have any outcome") and an opinion that "there is no impact on supplier outcomes in terms of getting more work. We cannot compete with Vietnam, China etc in terms of labour costs". A further perspective revealed frustrations:

- *We endeavoured to work with a couple of Australian LNG project suppliers who were belligerently uncooperative. Their only interest was in appearing cooperative, but in reality were following their biased consultants.*

Overall suppliers did not see AIP Plans as effective instruments that were having an impact on their operations.

ICNs, Government Agencies and the Industry Association

The group of ICNs, Government Agencies and the Industry association had a variety of responses. Three felt that there was insufficient data/information available to assess efficacy and one of them asked "what is the benchmark?". How is success being measured?

Another noted that success was relative to process: “Outcomes for Australian suppliers depend on their level in the supply chain - direct engagement with project proponents has resulted in good outcomes but not necessarily when dealing with Tier 1's (EPC's)”. This perspective is also reflected independently elsewhere in this report. Research, surveys and interviews revealed that the Act and the AIP Plan has limited “reach” down the supply chain.

The process of bundling was also thought to impact on supplier outcomes:

- *The bundling of tender packages often results in limited opportunities for Australian suppliers. Bundling leads to packages of greater value requiring larger organisations to carry out the work at larger facilities than that available in Australia. Bundling has also led to Australian suppliers of packaged type items e.g. safety showers, pipe supports, light poles having to deal with contractors based offshore.*

One solution was offered suggesting that obligations “must be entrenched in contracts. Otherwise it will be seen as an “additional” rather than mandatory requirement.” It was thought by another that the “process suffers from lack of strategic thinking on what is required in order to position Australia's domestic capabilities to best support nationally important outcomes and future needs.”

One positive comment noted:

- *Proponents understand their obligations and the AIP intent re Australian Supplier engagement. In putting together their AIP Plans they are doing so whilst putting their compliance procedures together. Those procedures deliver for local industry.*

Question 20

38 responses

Project proponents are obligated by the Act to have “a publicly accessible website”. Please rate the effectiveness of project websites to facilitate supplier engagement with major projects (i.e.: suppliers accessing project information and pre-qualification requirements, viewing work packages, submitting expressions of interest, etc.)?

34 comments were received.

Key Findings

Project websites (including ICN) are highly effective in the eyes of project proponents but only moderately so for Suppliers.

A single site/portal (such as ICN) is thought to be more effective than multiple/varied approaches.

Quotes

Proponents have different websites, different methods of engagement, and these are not consistent. The effect is that local suppliers must continually search for these sites, register multiple times, without necessarily understanding what the project requirements and timings will be.

(Government Agency)

Placing opportunities on the ICN Gateway has resulted in over 31,000 suppliers look at Project opportunities.

(Project proponent)

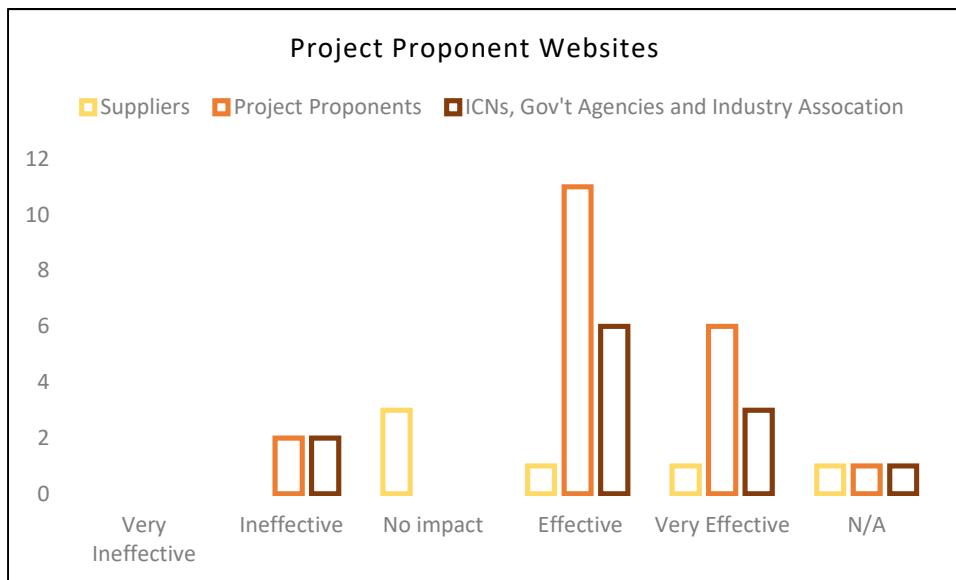


Table 12 – Project Proponent Websites

The data above in table 12 clearly demonstrates that stakeholders overall feel that project proponent websites effectively facilitate supplier engagement with major projects. Many stakeholders felt that the ICN were the most effective method of unifying and standardizing procurement.

Overall 18% of the respondents, from all cohorts, felt that the project websites were either ineffective or had no impact. When viewed by cohort we find that 50% (or three) of the suppliers felt that the websites had no impact with a fourth supplier choosing not to answer, selecting N/A. Although this is a small sample size of suppliers there is a disproportionate number rating negatively when compared with all others. Reasons from Suppliers are provided that indicate searching for work through other means (“through other contractors”) and insufficient information on websites that “did not provide work packages or places to submit expressions of interest”. In contrast there was one supplier who thought that there “was a reasonable level of detail to enable suppliers to understand projects [-] the issue I believe is policing the engagement with Australian suppliers”.

One project proponent noted that it was “difficult to get contractors to do this [create a website]. They don't want to alter their websites, and they don't want individual contact details displayed. Again, some direct information sessions from the Authority (talking about the consequences of not doing this) would help us to get our procurement entities to do this.”

A common perception is that websites vary greatly in volume of information and process required and do not provide enough technical information. One project proponent noted:

- *There are [...] practical difficulties in providing on these websites the copious amounts of prequalification information that an unrealistic interpretation of [the] Act might entail. Prequalification/tender documents include voluminous specifications, standards and guidance documents which ultimately determine vendor suitability. To date AIP Authority has adopted a sensible approach in this regard.*

As well as individual site difficulties there are other issues. Another project proponent as quoted above notes that “Proponents have different websites, different methods of engagement, and these are not consistent. The effect is that local suppliers must continually search for these sites, register multiple times, without necessarily understanding what the project requirements and timings will be.” Agreement can be found with ICN, one of whom noted: “Often use of multiple websites causes confusion. Websites such as ICN Gateway allows for single point of entry and access to opportunities within the project, as well as national opportunities”. Further ICN comments included:

- *ICN Gateway is a highly effective way for project proponents to connect with local suppliers, given its charter to focus on Australian businesses and provide a mechanism for local businesses to register their interest in projects free of charge.*
- *We believe the ICN Gateway could be more effectively utilised by project proponents.*
- *This can and should be linked with the ICN Gateway site, which will alert appropriate industry about the project.*
- *In my experience with major projects in the Northern Territory the ICN Gateway portal has been the website of choice and has fulfilled the proponent’s commitments. Because the ICN’s primary objective is to promote capability and opportunities, it becomes the primary ally in delivering AIP objectives.*

The ICN may be promoting their capabilities but these comments were echoed positively by others who also felt that the ICN were an appropriate single point of contact:

- *The ICNWA website provides a very user-friendly platform for vendors and suppliers seeking to engage with a major project*
- *[Effective -] Especially if assisted by the likes of ICN*
- *The project website and project profile on the ICN website are the main portals for supplier engagement.*
- *we have found the ICN Gateway web site portal successful in us winning some good projects.*
- *There are currently numerous "portal" products in the market place - this is causing supplier frustration. ICN should be the "go to" product of choice.*
- *suppliers have easy access to information that is in consistent format across multiple packages, together with high level project information and timings. Facilitation through a third party such as ICN greatly assists with pre-qual review and individual queries.*

Question 21

38 responses

Section 35 of the Act states that “the procurement entity will provide feedback to Australian Entities whose bids to supply key goods or services for the project have not been successful; and ensure that such feedback includes recommendations about any relevant training and any relevant skills capability and capacity development”. Comment on the effectiveness of procurement entity feedback to unsuccessful bidders.

Has the feedback included recommendations about any relevant training and relevant skills capability and capacity development?

38 comments were received.

Key Findings

Frequency and content of feedback to suppliers is not enough to support capability development.

Project proponents acknowledge the resources required to provide feedback and subsequently outsource the process.

Quotes

This area is one where there needs to be a greater focus by project proponents, it is something that we acknowledge we could do better.

(Project proponent)

What procurement feedback?

(Supplier)

When combined with other insights gleaned from question 19 a picture emerges of processes that are non-existent, do not support capability development or are not fit for purpose. Project proponents feel the burden of providing feedback and commonly outsource the process, but suppliers and other comments indicate little activity undertaken.

Project Proponents

Feedback is a critical stage in the procurement process, as it provides suppliers with the opportunity to develop their capabilities. This is generally recognised by project proponents, but as quoted above it is “something that we acknowledge we could do better”.

Seven project proponents were yet to deliver any feedback, four of them noting simply “not to date” and three others indicating they were “not at this stage yet”. The remaining 17 had delivered feedback but many through a third party such as an ICN, EPC contractors or EconomX.

Issues for project proponents included concern that “if 20,000 companies register an interest, it is impractical to respond to all in detail. A hierarchy approach should be taken [where 1:] Expression of interest lodged and no progression [then supplier] notified unsuccessful [and 2: if] Invited to bid/RFP/Tender [then] feedback [provided] on why the company did not progress”. Another agreed saying that “this is a difficult and time-consuming process for a business”.

Other comments of interest were:

- *Contractors who make it to the tender stage are generally required to meet training and skills requirements to engage in the tender process. If this was the reason a contractor was unsuccessful in winning a tender, this feedback would be provided.*
- *This is more problematic at the higher end of the market where we are, on this project, asking for incredibly complex and world class supplies. Because the benchmark is so high often the "thing" that might separate two suppliers is on matters that don't necessarily mean their offering requires further refinement, training or development. This is the paradox of chasing Australian suppliers in major developments where the spend is \$500m +.*

Suppliers

One supplier "had timely and effective feedback from failed bids", four had not had any feedback and one had a bad experience:

- *The specific feedback that particularly riled me was the very early advice we were not going into the final bidding round which only included overseas suppliers for power transformers.*

ICNs, Government Agencies and the Industry Association

These groups had "limited evidence [that feedback was] occurring" and one was "not aware of a single instance in which a supplier [had] been referred to [our business capability improvement workshops] via feedback mechanisms under the Act". But they do "see great benefit in [feedback] being enforced to allow for suppliers to increase their capability through constructive feedback from proponents, and suggestions of Gov't programs that could assist them with improving their capability. It would be good to see all projects under the AIP requirement adhering to this."

Further comments included that "feedback is often lacking", there is "room for improvement" and that "this aspect of the Act has [not] been overly effective". One comment observed that "no record of feedback has been reported". As supplier feedback can be of a confidential nature it is presumed that this means there is no publicly available record of feedback related information.

Reflecting on general supplier issues, one stakeholder specifically noted that the "major issues are the size of the package, modularisation and limited Australian suppliers are global exporters."

On a positive note, ICN have supported feedback for some project proponents "to all unsuccessful suppliers, including providing an offer of a telephone debrief. The letters include general information on shortlisting criteria (e.g. Quality Management Systems) as well as referrals to other programs (e.g. Local Buying Program, Entrepreneurs' Programme) that can assist suppliers enhance their capabilities.

Further positive comments included:

- *Debriefs to unsuccessful tenderers address all evaluation criteria including sustainability and workforce development*
- *Feedback to unsuccessful bidders when the work has gone overseas is provided.*

In your opinion, what are the strengths of Australian Industry Participation Plans?

Key Findings

There were five key themes identified, with Australian Industry Participation Plans considered to:

1. Be transparent through the online promotion and publication of major projects (24)
2. Ensure that regional development, local suppliers and industry capability are considered (21)
3. Provide uniform structure, support clear process and effective communication (17)
4. Provide legal foundation upon which work can progress (16)
5. Encourage *full, fair and reasonable* engagement with Suppliers (7)

A total of 85 strengths were identified by 32 respondents.

When reviewed by cohort, Suppliers appreciated the awareness raising and the requirement to consider local content. One also commented on the value of the ICN qualification system and website which (as the question is about AIP Plans) perhaps indicates that the AIP Plan is not understood very well.

ICNs, Government Agencies and the Industry Association valued the emphasis on *full, fair and reasonable*, the legislative requirement to consider local suppliers and the government support symbolised through the AIP Plan's existence. They also highlighted the communication and early planning fostered through the requirement to have an AIP Plan.

Project proponents also saw the AIP Plan's strength in fostering *full, fair and reasonable* opportunities for Suppliers and the transparency of compliance requirements conveyed through the plan. They also utilised the AIP Plan to support internal communications and appreciated its use to raise awareness in general.

In your opinion, what are the weaknesses of Australian Industry Participation Plans?

Key Findings

There were six main themes identified, with Australian Industry Participation Plans considered to be:

1. Not tough enough – inadequate scrutiny of compliance, lack of monitoring and no evidence of enforcement (19)
2. Time consuming, repetitious process felt as an administrative burden and resource drain. (12)
3. Unknown to the public, low awareness levels of non-compliance and no visibility of outcomes and benefits (9)
4. Lacking adequate feedback support. (5)
5. Major jobs still go overseas and more than an ABN should be required to count as local (4)
6. Bundling and \$1 million Threshold are prohibiting access to opportunities (2)

A total of 71 weaknesses were identified by 32 respondents.

There were a further 20 individual comments that could not be grouped or included within the above themes.

When considered by cohort, two suppliers felt that “major jobs still go overseas”, and others felt that AIP Authority is “not tough enough on big business” and “minimal feedback [is given] to local suppliers”. Furthermore, one remark indicated that end users, or clients, abandon AIP Plans altogether.

They felt that what was required was to “legislate buying local”, “go further to support local” and ensure “better feedback and [a] reason why” is provided.

ICNs, Government Agencies and the Industry Association felt that there were “limited penalties for non-compliance”, “no visibility of outcomes and benefits” and a “lack of knowledge across the industry”.

Two also perceived that obligations “don’t cascade down the supply chain” and the AIP Authority need to ensure that “Tier 1 EPCs implement the intentions [of the AIP Plan]”.

Solutions were thought to include motivations and punitive measures such as the addition of “reporting against AIP plans with fines mechanism”, “demonstrate the benefits [of compliance] using examples” and “promote accountability measures”. Publication of outcomes and evidence of enforcement were also included within commentary.

project proponents feel the administrative burden of the AIP Plans, declaring them “repetitive”, “onerous” and “time consuming” with one indicating that in terms of Part C: you “cannot predict [the

project specifications] years out”. For another it is “difficult for gas to split construction from ops” and this adds an administrative burden to their AIP Plan requirements.

Further issues were highlighted through the AIP Plan’s “lack of support for small, regional & Indigenous” businesses and that “International businesses [were] counted as local business”.

Solutions were offered that included expanding the definition of Australian business to include “more than an ABN”, and that the “AIP Authority speak directly” to project proponents and their contractors to promote awareness and streamlined less onerous plans and reports.

Question 24

38 responses

Do you think that the requirement to complete an Australian Industry Participation Plan has led to any change in the volume of tenders/ submissions coming from Australian Suppliers?

Key Findings

AIP Plans have raised awareness of opportunities.

Release of information/data on AIP process outcomes would support industry awareness.

Quotes

Yes, we believe it has been a catalyst for an increase in the volume of tenders from Australian suppliers and has given us something to hold ourselves accountable against.

(Project proponent)

Global engineering centres, global procurement centres particularly in developing countries drive contracting outcomes from their host nations.

(Project proponent)

Overall there was a perception that the requirement to complete an AIP Plan has led to an increase in the volume of submissions coming from suppliers. Increases were attributed to the publication of information through ICN and AIP Authority and the running of project events (“the AIP Authority drives the need to engage in these ways”). One respondent felt that the increase was not to do with the AIP Plan but with the way they ran their project, creating a short list of suppliers that considers “the traffic coming from our AIP Authority website and also encourage[s...] support [for] Australian entities”.

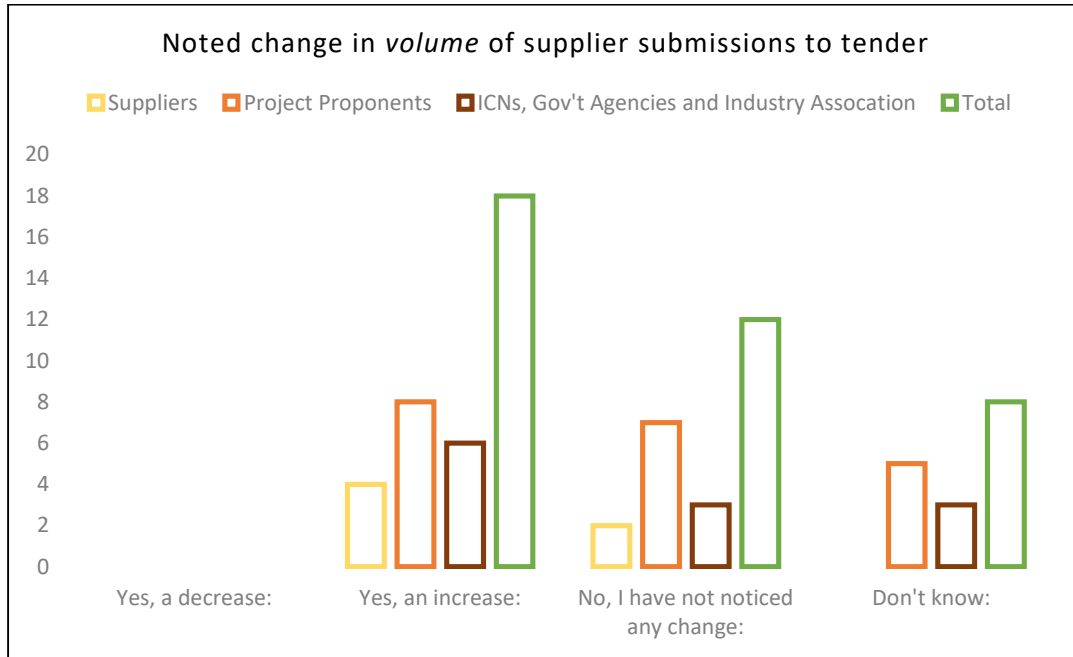


Table 13 – Volume of Supplier submissions

However, the total number affirming this view of increased volume was only 18, representing 47% of the total ratings. More than half either did not know or had not noticed any change.

Commentary from those that did not know or had not noticed any change highlighted “low awareness and access to information on outcomes is not available, therefore it is difficult to determine whether there is a material change in behaviour for industry development purposes”. Others agreed with this sentiment noting “no published data” as a key factor and that a “lack of measurement of outcomes should be addressed by the AIP Authority”.

Awareness was also thought to be lacking for suppliers with one Engineering Procurement Contractor noting that “Most Australian suppliers (especially smaller operations) are still not aware of the AIP process”.

Question 25

38 responses

Do you think that the requirement to implement an Australian Industry Participation Plan has led to any change in the quality of tenders/ submissions coming from Australian Suppliers?

Key Findings

AIP Plans have positively, but not significantly, influenced the quality of submissions from suppliers.

Release of information/data on AIP process outcomes would support industry awareness.

Quotes

Minimal increase (the exception being [one proponent] who supported Australian participation strongly)

(Supplier)

We are not involved in the detailed procurement of the downstream suppliers

(Project proponent)

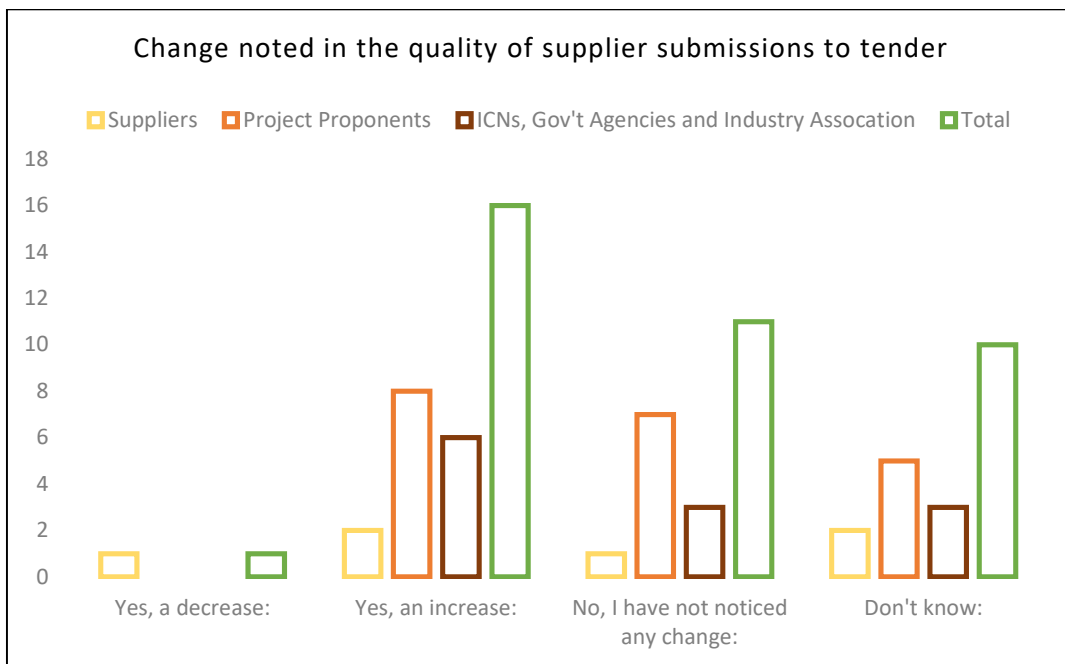


Table 14 – Quality of Supplier submissions

Less than half of the respondents elected to offer commentary. 17 comments were received.

One government agency noted that they “had received no feedback on this from proponents” and others also cited a lack of information to base a decision on, simply stating: “no published data” and “no access to this data at this time”.

Of the two suppliers that nominated “yes, an increase”, one commented that the increase has been minimal. Project proponents that noted an increase said that “overall tender quality has improved”, “specifically from some smaller entities”.

One ICN noted that this was “an issue of constant concern”.

When combined, the total responses for quality and volume appear as below:

Noted change to the quality and volume of Supplier submissions

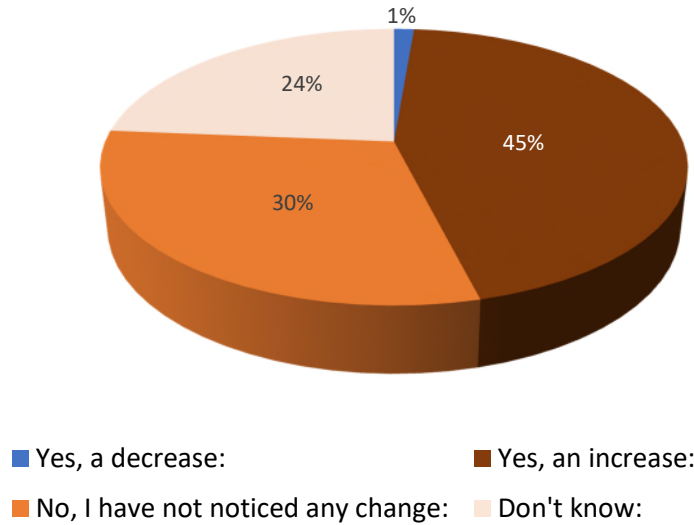


Figure 7 – Quality and Volume of Supplier submissions

While the graph suggests that overall there is a positive perception that the quality and volume of tenders/submission from suppliers has increased, there are in fact more responses combined within “no” and “don’t know”. Overall there were 41 responses indicating that they had not noticed any change or they did not know compared with 34 who considered quality and volume to have increased.

One respondent, a supplier, felt that there had been a decline in quality but commentary reveals that they may have been considering the quality available to them and not from them: “There has been a marked decrease in the quality of information coming through any RFT”.

Question 26

31 responses

The Rule provides for an exception from the AIP Plan requirement where a Major Project has a compliant state or territory Industry Participation Plan. Have you liaised with the AIP Authority regarding AIP Plan exceptions?

13 comments were provided.

Key Finding

Fewer than one in five stakeholders have liaised with the AIP Authority regarding AIP Plan exceptions but 100% of these had a positive experience

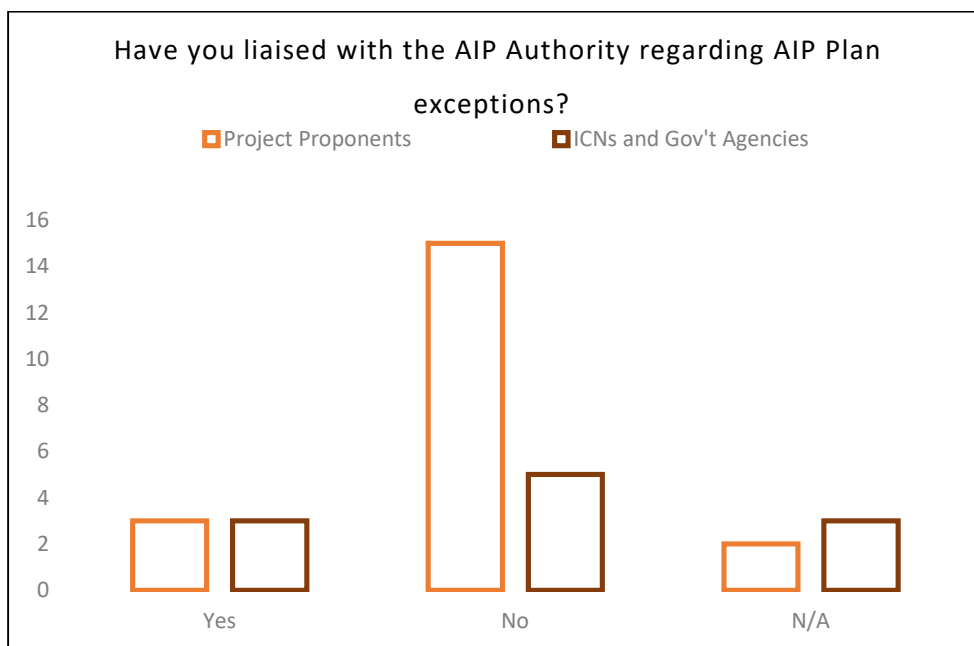


Table 15 - Liaison with the AIP Authority

Very few, only three from each cohort, had liaised with the AIP Authority regarding AIP Plan exceptions. Of these two were Government Agencies that noted “...existing communication channels to discuss the state Participation Plans” and that the process “worked well”.

Difficulties were highlighted by one project proponent:

The Australian Jobs Act / AIP Authority practice requires approval of a project's AIP Plan earlier than has traditionally been required under State (Development) Agreements. [Our current] project [...] is likely to be impacted by regulation under both Federal and State jurisdictions. Recent State Government practice with other proponents under State Agreements appears to accept an AIP Authority approved AIP plan but still require a Local Industry Participation Plan and a Social Impact Management Plan which collectively overlap with matters addressed in the approved AIP Plan.

Interestingly there was one project proponent that “was not aware of this” (the exceptions process). It is a concern that a significant process such as this is not known by all key stakeholders.

If you answered yes to question 26, please rate your experience of the AIP Authority's feedback and processes relating to exceptions.

(The scale used was: very bad; poor; not sure; good; excellent)

There were six responses, three of whom thought the process was good and three thought it was excellent. Given the low numbers indicating experience with the AIP Authority exceptions process, together with the lack of awareness about the process itself it may be a good idea to consider pursuing awareness raising strategies.

*Suppliers and the Industry Association were not asked this question.

Question 27

31 responses

Have you noted any issues or enablers between State/Territory and federal administrative requirements for industry participation applicable to Major Projects?

Key Finding

Experience and opinions differed. Some could see “synergies” and “co-existence of plans” while others saw some tension between state and federal requirements

Quotes

Desire for State Governments to use major capital projects to drive regional and state economic outcomes for major capital projects versus Commonwealth's free trade agenda of attracting global capital at the expense of regional economic growth and employment.

(Project proponent)

Many responses (10, or almost one third) selected N/A leaving 21 other responses. 13/21 responses saw no issues or enablers but there was only one comment. It positively reflected that the “co-existence of plans from both layers of Government seems to have been hassle free”.

Eight respondents could see issues and/or enablers. Some could “see synergies”, while others could see issues. The criticisms were, as quoted above, that there is conflict between state and federal strategic priorities and legislated regulation. States were thought to work toward regional development and the Australian Government toward a national and international (free trade) agenda.

States may also be disadvantaged by the policies in other states: “SA IPP requirements may disadvantage interstate suppliers”.

It should be noted that responses also varied when considered by location. Each state has its own regional policies and strategies in place and this may have some influence on the experience and perception of state/federal synergies.

Some ambiguity also exists with funding and associated requirements with one Government Agency noting that “Rail projects contain ambiguity about coverage, including Inland Rail. The \$20M Commonwealth contribution level is not clear in terms of its application and visibility within this process.”

A project proponent noted the pending introduction of further legislation to be imposed on the sector: “The State Labor Government has also announced its intention to proceed with legislation to require

major projects within Western Australia to enter into a 'Skilled Work Agreement' with the State Government. My understanding is that legislation will be progressed at the end of this year.”

*Suppliers and the Industry Association were not asked this question.

Question 28

31 responses

If a Major Project obtains the AIP Authority's approval for an AIP Plan, is that Plan then used/accepted to satisfy state/territory processes/policy?

Key Findings

Majority not sure if AIP Plans are used to satisfy state/territory policy/process.

State/territory plan requirements are more “prescriptive” than those of the AIP Plan

Are AIP Plans used to satisfy state/territory policy/process?

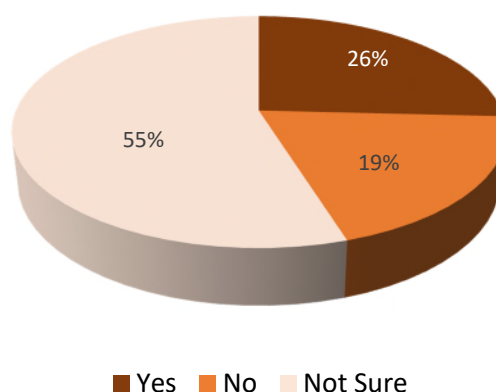


Figure 8 - Are AIP Plans used to satisfy State/Territory policy/process?

Of the 31 responses to this question, the vast majority were not sure if AIP Plans are used to satisfy state/territory processes and policies. Given the responses to the preceding questions this is not a surprising result – only a handful had expressed experience in the exceptions process and no comments indicated a knowledge of the reverse exception.

Many comments revealed that state requirements were “quite prescriptive” and “tend to drill down more in areas such as regional or indigenous employment and training issues”. One project proponent had their AIP plan rejected by the State Authority. The AIP Plan then had to be updated to reflect the

State requirements. Another noted that “the level of reporting required under an AIP plan is not compatible with that collected under the State plans, making it difficult to merge data and report on outcomes.

*Suppliers and the Industry Association were not asked this question.

Question 29

31 responses

Within the Rule – Part 2, section 5 (3) it provides for the exception of an AIP Plan if the plan does “not give preference to suppliers of goods or services located in one State or Territory over suppliers located in another State or Territory”. What advice and processes are being maintained by state/territory authorities (and ICNs) to reduce the burden on major projects of having to comply with both state/territory and federal legislation and requirements?

Key Findings

ICNs are central to the provision of effective advice

Experience and opinions differed. Some could see “synergies” and “co-existence of plans” while others saw some tension between state and federal requirements

31 comments were received – however nine project proponents made no comment, did not know or had no experience relating to the question. This left 22 responses.

Quotes

The obligations are not in conflict. The same requirement of full fair and reasonable opportunity operates for both the State and AIP Plan obligations.

(Project proponent)

... this is impractical - the state has the State interest at heart and Feds the national interest at heart - Why would a state government approve a plan that does not give suppliers within their State a form of advantage/preference?

(Project proponent)

As the quotes above indicate there was not a single, agreed view. However, there was a common approach that appeared to be (as one ICN put it) the “guaranteed consideration of jurisdictional suppliers but not necessarily at the exclusion of broader expressions of interest”. And as a project proponent put it “no premium or restricted bidding is involved”. In this regard there is a fair approach to suppliers that allows for the regional opportunity without excluded the national interest. The same ICN as above observed that “Proponents will come to agreements with the jurisdictional Governments re the engagement of 'localised' suppliers.”

The Industry Capability Network described their support services offered to project proponents with everything from “Supply Chain Analysis, Project page & listing supply opportunities [to] Bid List preparation, and reporting. ICN also acts as the intermediary to assist suppliers in getting a better understanding of the project and opportunities, as well as enhancing their capability statements and profiles”.

Two government Agencies noted benefits testing as a key tool of assessment to understand major project contribution to local economies. One Government Agency noted that they “provide a framework for assessing economic contribution within a value-for-money framework and [do] not provide a preference based on ownership or office location”. Another Government Agency noted that “Private sector project proponents can choose to report under the Queensland Charter for Local Content instead of the AIP and we provide advice to facilitate this. The current Queensland Procurement Policy provides for a Local Benefits Test to be applied.”

One project proponent felt that State requirements/commitments “go over and above the requirements of the AIP [Plan]. Therefore, the AIP Plan was not accepted as a substitute for the [...] state government [plan]”. This sentiment was also expressed through commentary in question 28.

*Suppliers and the Industry Association were not asked this question.

7.4 Appendix 4 – Question Allocation

The table below identifies the question number and the survey page number as they relate to stakeholders.

Question Allocation						
Question #	Project Proponent (PP)	Vendor Identification Agency (VIA)	Government Agency (GA)	Industry Association (IA)	Supplier (S)	Survey Page #
1	✓	✓	✓	✓	✓	2
2	✓	✓				3
3	✓	✓				
4	✓	✓				
5	✓	✓				4
6	✓	✓				
7	✓	✓				
8	✓	✓				5
9	✓	✓				
10	✓	✓	✓	✓	✓	
11	✓	✓	✓	✓	✓	6
12	✓	✓	✓	✓	✓	
13	✓	✓				
14	✓	✓				7
15	✓	✓				
16	✓	✓	✓	✓	✓	
17	✓	✓	✓	✓	✓	8
18	✓	✓	✓	✓	✓	
19	✓	✓	✓	✓	✓	
20	✓	✓	✓	✓	✓	9
21	✓	✓	✓	✓	✓	
22	✓	✓	✓	✓	✓	
23	✓	✓	✓	✓	✓	8
24	✓	✓	✓	✓	✓	
25	✓	✓	✓	✓	✓	
26	✓	✓	✓			9
27	✓	✓	✓			
28	✓	✓	✓			
29	✓	✓	✓			
TOTAL	29	29	18	14	14	

Table 6 – Question allocation by Cohort

7.5 Appendix 5 – TOR and related interview questions

The table below shows the TOR and highlights the related, relevant question numbers.

Terms of Reference (TOR)		
The Review will consider the:		Interview questions:
1	impact on regulated entities of complying with the Act's administrative and reporting obligations;	3 – 7, 13, 14, 20 – 23, 27
2	effectiveness of AIP plans in enhancing major project proponent and operator engagement with, and outcomes for, Australian suppliers and understanding of their capability to supply;	17 - 25
3	determination of trigger events and dates for major projects and the timing for submission of AIP notification forms and draft AIP plans;	4, 5, 22, 23
4	development, approval and implementation of AIP plans under the Act and subsequent compliance reporting by proponents and operators;	6 – 9, 11, 13 – 15, 22, 23
5	effectiveness of compliance monitoring, enforcement and sanctions available under the Act;	9 - 14
6	procedures for gaining an exception from the AIP plan requirements of the Act through use of a compliant state or territory industry participation plan; and	26 - 29
7	availability and effectiveness of the AIP Authority information and resources to assist proponents and operators to meet their obligations under the Act.	3 – 9, 22, 23

Table 5 – Questions addressing the review Terms of Reference

7.6 Appendix 6 – TOR and related data sources

Below are the Terms of Reference, against which are the identified relevant data sources.

Terms of Reference (TOR) – Data Sources		
The Review will consider the:		Data Source – Stakeholder
1	impact on regulated entities of complying with the Act’s administrative and reporting obligations;	<ul style="list-style-type: none"> ▪ Project Proponents ▪ Government Agencies ▪ Industry Associations ▪ Vendor Identification Agencies ▪ AIP Authority Templates, Policy and Process ▪ The Act and the Rule
2	effectiveness of AIP plans in enhancing major project proponent and operator engagement with, and outcomes for, Australian suppliers and understanding of their capability to supply;	<ul style="list-style-type: none"> ▪ Project Proponents ▪ Government Agencies ▪ Industry Associations ▪ Vendor Identification Agencies ▪ Suppliers ▪ AIP Authority Templates, Policy and Process
3	determination of trigger events and dates for major projects and the timing for submission of AIP notification forms and draft AIP plans;	<ul style="list-style-type: none"> ▪ Project Proponents ▪ Vendor Identification Agencies ▪ The Act and the Rule ▪ AIP Authority Templates, Policy and Process
4	development, approval and implementation of AIP plans under the Act and subsequent compliance reporting by proponents and operators;	<ul style="list-style-type: none"> ▪ Project Proponents ▪ Vendor Identification Agencies ▪ AIP Authority Templates, Policy and Process ▪ The Act and the Rule
5	effectiveness of compliance monitoring, enforcement and sanctions available under the Act;	<ul style="list-style-type: none"> ▪ Project Proponents ▪ AIP Authority Templates, Policy and Process ▪ The Act and the Rule
6	procedures for gaining an exception from the AIP plan requirements of the Act through use of a compliant state or territory industry participation plan; and	<ul style="list-style-type: none"> ▪ Project Proponents ▪ Government Agencies ▪ AIP Authority Templates, Policy and Process
7	availability and effectiveness of the AIP Authority information and resources to assist proponents and operators to meet their obligations under the Act.	<ul style="list-style-type: none"> ▪ Project Proponents ▪ Government Agencies ▪ Industry Associations ▪ Vendor Identification Agencies ▪ Suppliers ▪ AIP Authority Website

Terms of Reference (TOR) – Data Sources		
		<ul style="list-style-type: none"> ▪ The Act and the Rule ▪ AIP Authority Templates, Policy and Process

Table 7 – Terms of Reference and data sources