



AUSTRALIAN JOBS ACT 2013

GUIDELINE FOR AUSTRALIAN INDUSTRY PARTICIPATION PLAN TRIGGER DATES

1. Purpose

The objective of the *Australian Jobs Act 2013* (the Act) is to support the creation and retention of Australian jobs by requiring proponents of major projects (\$500 million and above) in Australia to develop and implement an Australian Industry Participation (AIP) plan. The Act aims to ensure that proponents develop AIP plans early in their project's timeline to enable them to consider and include Australian industry in the design and procurement. It does this by identifying project events that will trigger the requirement to submit an AIP plan. This Guideline provides information for proponents to understand and meet the requirements for AIP plan trigger dates.

2. Trigger events

Each of the following is stipulated in subsection 13(4) of the Act as a trigger event for a project:

- (a) block diagrams for the project are developed;
- (b) process flow diagrams for the project are developed;
- (c) a project proponent enters into a contract with a procurement entity in relation to the project;
- (d) a request for bids for the supply of key goods or services for the project is made;
- (e) technical specifications for the project are prepared;
- (f) a project proponent determines what standards will apply to any of the project's key goods or services;
- (g) an equipment list for the project is prepared;
- (h) a project proponent first contacts a supplier to request pricing details for any key goods or services;
- (i) a construction and contracting methodology for the project is developed;
- (j) an environmental submission is made in relation to the project;
- (k) a detailed schedule for the project is prepared; or
- (l) a high-level scoping of the goods and services for the project is conducted.

These are activities that could be expected to occur early in the development of a project. Only one of the above events is required to trigger an obligation to submit an AIP plan. There may be other activities that occur that are not considered to be trigger events, such as board approval to proceed.

3. Trigger date

The earliest trigger event for a project from the list above will trigger the requirement to submit an AIP plan. The trigger date for the project is the day when the earliest trigger event occurs, unless the AIP Authority specifies an alternative day.

Example 1: A mining company decides to develop a new mine and engages an engineering, procurement and construction (EPC) firm to design and build the mine and ore processing plant (trigger event (c) in the list in section 2 above). As this is the earliest trigger event for the project, the day of contract signing with the EPC firm is the trigger date for the project.

Example 2: An energy company selects a site for its next wind farm project and engages an environmental consultant. The consultant advises it will require 18 months to prepare the environmental submission and submit it (trigger event (j) in the list above). As this is the earliest trigger event for the project, the day of lodgement of the environmental submission is the trigger date for the project.

4. Alternative trigger days

For some projects it may be impractical to use the earliest trigger event as the trigger day for submission of the AIP plan. The earliest trigger event may have already happened or there is difficulty determining when it will happen. The earliest trigger event may occur too early in the project’s timeline for an AIP plan to be completed. A later trigger day may be more suitable for development of the AIP plan. In such cases proponents may propose an alternative trigger day.

It is important that an alternative trigger day is still early in the project’s timeline. It should allow for an AIP plan to be developed that will cover the project’s detailed design and active procurement phases. Proposing an alternative trigger day that is after the design, supplier engagement or procurement has been completed will not be acceptable.

Waiting until the project has achieved final approvals from government or the board is also not acceptable. Subsection 8(3) of the Act states that if a project is subject to one or more conditions such as receiving approvals, assume that those conditions will be satisfied. Proponents must engage with the AIP Authority before all their project approvals are received.

The following example of a project’s timeline shows suitable trigger events that could be used as the alternative trigger day and later events that would not be suitable:

Q1 2019	Q3 2019	Q1 2020	Q3 2020	Q4 2020	Q2 2021	Q4 2021	Q1 2022
Environmental submission	Select design concept	Develop contracting strategy	Select design contractor	Commence detailed design	Release tenders	Board final approval	Award contracts and commence construction
Earliest trigger event	Suitable alternative	Suitable alternative	Suitable alternative	Suitable alternative	Not suitable	Not suitable	Not suitable

Example 3: A shopping centre developer conducts a high level scoping of the goods and services for a new shopping centre (trigger event (l) in the list above). It then decides to add a cinema complex on top of the centre which increases the estimated capital cost over \$500 million. As the earliest trigger event for the project has already happened, it proposes a later trigger day of developing a detailed schedule for the project (trigger event (k)). The AIP Authority agrees and specifies the commencement of detailed schedule development as the trigger day for the project.

Example 4: A telecommunications provider plans to roll out a mobile phone network but is waiting for government approval of spectrum licences, so proposes a trigger day of commencement of construction. The AIP Authority does not agree as the AIP plan submission should not be dependent on obtaining the licence approvals and the proposed trigger day would be too late in the project’s timeline. The trigger day is therefore the earliest trigger event for the project, which is the preparation of technical specifications (trigger event (e)).

5. Proposing an alternative trigger day

All proponents must advise the AIP Authority of their major projects by completing the AIP Notification Form available from the AIP Authority website (www.industry.gov.au/aip). In the form, proponents provide their proposed trigger day for the project. If the proposed day is not the earliest trigger event for the project, an explanation must be given. The explanation should include reasons why the alternative trigger day is more suitable for the project.

Information provided in the form remains confidential and is not published by the AIP Authority.

The AIP Authority will review the alternative trigger day to ensure it is early enough to allow for the inclusion of Australian industry in the project's design and procurement. The AIP Authority may request further information in support of the alternative trigger day or suggest another trigger day for the project. If agreement cannot be reached with the proponent on a trigger day, the AIP Authority may specify a trigger day for the project on its own initiative.

If design or procurement for the project is about to commence or has commenced, the AIP plan may need to be developed immediately. The AIP Authority will advise proponents if this is the case.

Proponents should contact the AIP Authority if a project's agreed trigger day subsequently needs to be changed before the AIP plan is submitted.

6. Submitting an AIP plan

Subsection 17(1) of the Act requires a proponent submit their draft AIP plan to the AIP Authority at least 90 calendar days before the trigger date for the project.

Once approved, an AIP plan remains in force for the duration of the project. Should changes to a project or plan occur, a replacement AIP plan with updated information may be submitted. Proponents should confirm with the AIP Authority if their changes require a replacement AIP plan.

7. Review rights

Under section 112 of the Act, a proponent may apply to the Administrative Appeals Tribunal for review of decisions by the AIP Authority under subsection 13(1)(c) to:

- refuse to specify a trigger day for a project; or
- specify a trigger day for a project.

8. Further information

Proponents should contact the AIP Authority for more information:

Email aip@industry.gov.au

AIP Hotline – 02 6213 6404