



GUIDELINES FOR AUSTRALIAN JOBS ACT 2013 COMPLIANCE MONITORING AND ENFORCEMENT

1. Purpose

The objective of the *Australian Jobs Act 2013* (the Jobs 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. Each AIP plan will detail how Australian entities will have full, fair and reasonable opportunity to bid for the supply of key goods and services for the project. AIP plans do not mandate levels of Australian content on a project.

The Australian Industry Participation Authority promotes and monitors compliance with the Jobs Act. Proponents, operators and other entities which contravene the Jobs Act may be subject to the enforcement actions available to the AIP Authority under Part 5 of the Jobs Act.

These include naming responsible entities as non-compliant, requiring them to take out adverse publicity notices and imposing restraining or performance injunctions. These Guidelines explain how the AIP Authority monitors and enforces compliance with the Jobs Act.

2. Proponent and operator obligations

Parts 2 and 3 of the Jobs Act set out the obligations of proponents and operators of major projects.

The proponent for a major project is required to:

- (a) notify the AIP Authority that it has a major project under the Jobs Act (section 41);
- (b) prepare and submit to the AIP Authority a draft AIP plan for the project (section 17);
- (c) comply with Part B of the approved AIP plan (section 24); and
- (d) submit to the AIP Authority six monthly compliance reports against its AIP plan (section 25).

The operator of a major project that involves establishing a new facility is required to:

- (a) comply with Part C of the approved AIP plan (section 24); and
- (b) submit to the AIP Authority six monthly compliance reports against its AIP plan (section 26).

The Jobs Act provides the timeframes for compliance with each requirement. Further information on proponent and operator obligations and how the AIP Authority applies the Jobs Act can be found in the Frequently Asked Questions on the AIP Authority's website at www.industry.gov.au/aip.

The AIP Authority is available to assist proponents and operators to meet their obligations and should be consulted early in the project life-cycle to ensure compliance with the requirements. When there is any uncertainty if a proponent or project is subject to the Jobs Act, early contact should be made with the AIP Authority for discussion of the particular circumstances and a determination of the obligations. This contact could avoid non-compliance action at a later date.

3. Compliance monitoring

Compliance with the Jobs Act is mandatory and the onus is on major project proponents and operators to be familiar and compliant with their obligations. The AIP Authority continually monitors

compliance with the Jobs Act using a range of approaches including researching and receiving information on major projects, identifying proponents with obligations and reviewing AIP plan compliance reports. Concerns or complaints raised by an affected party about the compliance of proponents and operators with the Jobs Act will be investigated by the AIP Authority. The contact details for the AIP Authority are aip@industry.gov.au or 02 6213 6404.

The AIP Authority may exercise the information gathering powers in Part 4 of the Jobs Act to investigate possible non-compliance. When the AIP Authority becomes aware of non-compliance that undermines the objective of the Jobs Act, action will be taken to remedy it.

4. Compliance enforcement

There are several actions available to the AIP Authority to remedy non-compliance with the Jobs 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 Jobs 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 Jobs 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 as explained in more detail below.

4.1 Naming

After considering the circumstances of the non-compliance, the AIP Authority may decide to name the responsible entity as having contravened the Jobs Act in the AIP Authority's Annual Report and/or on its website. Details of the contravention will be published along with the names of body corporates of which the responsible entity is a subsidiary. The AIP Authority's Annual Report is tabled in the Australian Parliament and its website is regularly visited by interested parties.

4.2 Adverse Publicity Notice

Alternatively the AIP Authority may impose an adverse publicity notice on the responsible entity. The notice would require the responsible entity to publicly identify itself as being in contravention of the Jobs Act and publish the details of its non-compliance for a period and in the manner set out in the notice. The publication could be on its corporate website and in newspapers, television or trade or industry association journals. The notice could also require the responsible entity to notify a person or class of persons of the contravention of the Jobs Act. These could include shareholders, the Australian Stock Exchange, financiers, lenders, State or Territory Government approval agencies and Ministers, suppliers, unions, local governments, traditional owners and community associations. Evidence must be provided to the AIP Authority that the terms of the notice have been carried out.

4.3 Injunction

Alternatively the AIP Authority may seek a restraining or performance injunction in a prescribed court when a responsible entity is engaging in conduct in contravention of the Jobs Act or refusing or failing to take action to meet its obligations under the Jobs Act. The AIP Authority may request the court to suspend all procurement activity for the project or facility until the non-compliance is remedied by the proponent or operator.

5. Prior notice and rights of review

If the AIP Authority proposes to name a responsible entity or impose an adverse publicity notice, it must first give the responsible entity notice in writing of the proposed action and the reasons for

taking it. The responsible entity can make written representations about the proposed action within 28 days and the AIP Authority must consider those representations before taking the action.

The Jobs Act allows for applications to be made to the Administrative Appeals Tribunal for review of a decision by the AIP Authority to name a responsible entity or impose an adverse publicity notice.

6. Hypothetical non-compliance scenarios and potential enforcement actions

The following are some hypothetical scenarios of non-compliance and enforcement actions:

A resources company undertaking a \$600 million expansion of its mine attempted to avoid its Jobs Act obligations by breaking the project down into three \$200 million projects – a new crushing plant, extension to the mine workers village and purchase of additional haul trucks. This is despite all three elements being undertaken at the same time and sharing the same internal and external approvals.

All the activity that makes up a project must be included in determining if there is a Jobs Act obligation. Breaking projects down for the purpose of avoiding the Jobs Act is not permissible. In response to this non-compliance, the AIP Authority could declare all three sub-projects to be major projects that require their own AIP plans and compliance reporting.

A renewable energy company developing a \$750 million wind farm needed to finalise a power supply contract with the regional electricity provider before it could take the final investment decision. In the meantime it started engaging with potential wind turbine and tower manufacturers and placed long lead orders for the HV cable. It delayed submitting its AIP plan until the final investment decision.

Jobs Act obligations commence before all approvals are in place for a project and AIP plans must be submitted in accordance with the project's earliest trigger date. In response to this non-compliance, the AIP Authority could seek a court injunction preventing any further procurement or market engagement until the AIP plan had been submitted and approved.

A lithium processor responded to market demand by developing a second \$500 million processing train one year after completing its original \$500 million processing plant. It decided to use the same contractors and suppliers, many of which were Australian, and therefore assumed it did not need to submit a new AIP plan to the AIP Authority.

An AIP plan is required for each major project, including duplicates of earlier projects or phased expansions or development programs. Having existing supplier or contractor arrangements (which may be 100% Australian) does not absolve a proponent or operator from the AIP plan requirement. In response to this non-compliance, the AIP Authority would require the proponent to submit an AIP plan within 60 days and could publish details of the company's breach on the AIP Authority website.

An airport owner engaged an engineering, procurement and construction (EPC) firm to design and build a new \$1 billion passenger terminal. The airport owner failed to make the EPC aware of the project's approved AIP plan requirements. The EPC breached the plan by not advertising procurement opportunities outside of its existing supply chain resulting in complaints from other suppliers.

Commitments in an AIP plan apply equally to any EPC/Ms, head contractors or subcontractors engaged on the project. It is the proponent's responsibility to make them aware of the obligations and ensure they are upholding them, preferably through contract clauses. Proponents may face compliance action for any breaches by their contractors. In response, the AIP Authority could require the airport owner to notify all affected suppliers of the breach and invite them to submit bids for the opportunities.