

Queensland Industry Participation Policy Bill 2010

Explanatory Notes

General Outline

Policy Objectives

The objective of the Queensland Industry Participation Policy Bill 2010 is to maximise economic, employment, industry development and social benefits to Queensland of State Government-funded procurement by ensuring the high-level principle of developing, maintaining and implementing an industry participation policy is put into practice by all Queensland Governments.

Reasons for the Bill

Participation by Queensland suppliers of goods and services in activity generated by State Government-funded procurement contributes substantially to employment and business growth. This local industry participation not only helps create and retain jobs; it drives technology transfer, research and development, innovation and improved productivity as suppliers pursue best practice. It also provides access for Queensland Government project managers and contractors to the widest range of capable local industry, providing more options for achieving value for money.

Legislating to require the development of a local industry policy will ensure that the principles of securing economic, employment and social benefits through State Government-funded major project procurement are put into practice by successive Queensland Governments.

Achievement of the Objectives

To achieve the policy objectives, the Queensland Industry Participation Policy Bill 2010 provides for the development and implementation of a Queensland industry participation policy by all Queensland Governments,

and requires annual reports to Parliament on the policy's implementation and government agencies' and Government Owned Corporations' (GOCs) compliance with it.

It is not the intention of this Bill to capture projects, developments, procurements and other initiatives wholly funded by local governments. The contracting and procurement activities of local governments are regulated by the *Local Government Act 2009*. Under this Act, local governments are required to have regard to five contracting/procurement principles, one of which is the development of competitive local business and industry.

It is the intention of the Bill, however, to make provision to capture State capital grants to local government, community organisations and private sector companies, as occurs under the existing Local Industry Policy for projects that meet its criteria. A large number of local government roads projects are funded through grants, and some large private sector projects may also be partially funded through grants.

Alternatives to the Bill

The legislative approach is considered the most appropriate and only approach in terms of the institution of Parliament providing for a lasting commitment to developing and implementing a policy to optimise economic, employment, industry development and social benefits to Queensland from State Government-funded procurement. Legislation provides for policy embodying these principles in perpetuity, signals a strong commitment to the Queensland public and industry, and increases transparency and accountability through Parliamentary reports.

Estimated Cost for Government Implementation

The funding arrangements and allocations for the implementation of the Queensland Government's existing *Local Industry Policy - a fair go for local industry, January 2008*, are not affected by the Bill. The requirements of the Bill as they relate to the implementation arrangements adopted by the current Queensland Government are to be met through existing resources.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles. It is not the intention of the Bill to create rights and liberties, nor to provide for offences, powers of prosecution or civil actions to be taken under the Bill, nor does it provide for the compulsory acquisition of property.

Consultation

The Department of Employment, Economic Development and Innovation consulted widely, offered and carried out briefings with interested parties across Queensland, including industry and regional development organisations, trade unions, departments and GOCs. There is general support for the Bill.

Legislation of the Commonwealth or another State

Local industry participation is a central component of economic development policies and legislation in all Australian jurisdictions, including the Commonwealth.

The Council of Australian Governments (COAG) committed to the principles of local industry involvement in government-funded major project procurement in 2001 by endorsing the Australian Industry Participation National Framework (AIPF). The AIPF's central aim is to provide for full, fair and reasonable opportunity for Australian industries to participate in significant government-funded public and private sector project activity.

The Victorian Government signalled the prime importance of local industry participation to Victoria's economic development with the introduction of the *Victorian Industry Participation Policy Act 2003*.

The Queensland Industry Participation Policy Bill 2010 gives expression to the COAG principles under the AIPF and complements and is consistent with the Victorian legislative approach.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides for the short title of the Act as the *Queensland Industry Participation Policy Act 2010*.

Clause 2 provides that the Act will commence on a day to be fixed by proclamation.

Clause 3 makes provision that the Act binds all persons, including the State. It also provides that nothing in the Act makes the State liable to be prosecuted for an offence.

Clause 4 provides that contravention of the Act does not create civil cause of action.

Clause 5 provides for a Dictionary in the Schedule which defines words used in the Act, in particular the meaning of ‘agency’, ‘GOC’ and ‘local industry’. The meaning of ‘agency’ outlines the intention of the Act that the local industry policy to be made under clause 6 should encompass developments, procurements and other initiatives undertaken or funded (whether wholly or partially) by the State of Queensland through ‘agencies’ meaning all departments, all statutory bodies and all special purpose vehicles; and all ‘GOCs’, including their subsidiaries.

The definition of ‘special purpose vehicle’ provides for those companies established by the State under the Corporations Act to assist in delivering infrastructure across the state, other than a GOC.

As the State is a Party to the *Australia and New Zealand Procurement Agreement*, the meaning of ‘local industry’ is intended to be consistent with that Agreement. The Bill at *clause 9(a)* also provides that the local industry policy must be consistent with other obligations of the State under any conventions, treaties or other international agreements to which the Commonwealth is a party.

This clause also provides that ‘shareholding Ministers’ are the shareholding Ministers of a GOC as set out in section 78 of the *Government Owned Corporations Act 1993*.

Part 2 Local industry policy

Clause 6 gives practical expression to the policy objectives of the Act by ensuring the high-level principle of developing, maintaining and implementing an industry participation policy relating to State Government-funded procurement is put into practice. It therefore provides for all future Queensland Governments to develop and implement a Queensland industry participation policy, to be called ‘the local industry policy’, by requiring the Minister responsible for administering the Act to develop and adopt a policy (*clause 6(1)*) for projects, developments, procurements and other initiatives undertaken or funded (whether wholly or partially) by the State of Queensland.

While *clause 6(1)* is broad, it is the intention that the Minister of the day would exercise discretion on which activity might be captured by the local industry policy and what project value thresholds might apply to such activity in order to efficiently and effectively achieve the Bill’s policy objectives to maximise economic, employment, industry development and social benefits of State Government-funded procurement under this clause.

It is not the intention of this Bill to capture projects, developments, procurements and other initiatives wholly funded by local governments. The contracting and procurement activities of local governments are regulated by the *Local Government Act 2009*. The Bill does, however, allow State Government capital grants to local government, community organisations and private sector companies to be included under a local industry policy.

In this regard, *clause 6(2)* provides that guidelines explaining the application and procedures to be followed in complying with the policy may be developed by the Minister. The detail of a policy and its application are therefore matters for the Minister of the day.

Clause 7 sets out high-level objectives that must be taken into account by the Minister in developing the local industry policy in order to achieve the overarching policy objective of maximising the economic, employment and social benefits to the State of State Government-funded procurement.

Clause 7(a) specifically provides for the recognition of employment and business growth in maximising the overall economic, employment and social benefits to Queensland.

Clause 7(b) relates to the potential competition benefits for agencies and GOCs from a local industry policy which provides access to a wider range of potential capable, competitive suppliers that can deliver value for money.

Rural and regional Queensland currently makes a significant contribution to employment and the Queensland economy. *Clause 7(c)* requires the Minister to have regard to the objective of supporting the development of regional and rural Queensland from the government-funded activities.

Clauses 7(d), (e) and (f) list the industry and business development objectives in relation to local industry in Queensland to which the Minister must have regard in developing a local industry policy, and highlight the role of innovation in achieving the Bill's overarching objectives.

Clause 8 provides that the local industry policy must be consistent with accountability principles relating to public expenditure and the principle of minimising the administrative burden on government agencies and GOCs in complying with the policy in its implementation and reporting of outcomes.

Clause 9 provides for the local industry policy developed by the Minister to be consistent with the State's obligations under any conventions, treaties or other international agreements to which the Commonwealth is a party (*clause 9(a)*), for example free trade agreements.

Clause 9(b) provides for consistency with other legislative requirements relating to government procurement, including the Acts referenced specifically in *clause 9(b)(i), (ii) and (iii)*.

Clause 10 provides for consultation in developing and reviewing local industry policy with agencies and GOC's. It also provides for consultation with industry organisations and trade unions (*clause 10(1)(c)*), and with other entities as the Minister considers appropriate (*clause 10(1)(d)*). It is the intention that *clause 10(1)(d)* could also include consultation with members of the public if the Minister of the day considered it appropriate.

Clause 10(2) provides that consultation with agencies must be with the Minister of the agency, and shareholding Ministers for GOCs.

Clause 11 provides for agencies and GOCs to comply with the local industry policy made by the Minister under *clause 6*. GOCs are significant purchasers of goods and services with the potential for significant impacts on employment and economic outcomes, particularly in regional Queensland. It is the policy intention therefore that the local industry

policy should apply to GOCs. However, it is appropriate for the Bill to recognise the role of shareholding Ministers and the processes under section 114 of the *Government Owned Corporations Act 1993* (GOC Act) for the application of government policies to GOCs. The Bill therefore provides for the local industry policy to apply to GOCs where shareholding Ministers give notification to the boards of GOCs following the consultation process as required under section 114 of the GOC Act.

Part 3 Publication, and reporting on implementation, of the local industry policy

Clause 12 ensures that the local industry policy developed under *clause 6* is available electronically on the website of the department responsible for administering the Act (*clause 12(a)*) and for public inspection at the offices of the same department for public inspection free of charge (*clause 12(b)*) during normal business hours. It is the intention that the department responsible for administering the Act will be the Department of Employment, Economic Development and Innovation (DEEDI) and an editor's note is provided indicating DEEDI's website address.

Clause 13 makes provision for Parliamentary and public scrutiny of outcomes from the implementation of the local industry policy developed by the Minister. It requires the Minister to prepare and table an annual report in Parliament. The form of the report and the nature of the information in it are matters for the Minister. Such a reporting mechanism allows the Queensland Government to profile the real impacts and successes of the policy and also to highlight non-compliance where it occurs.

Clause 14(1) gives the Minister responsible for administering the Act the right to make a request in writing for information from agencies required to make the report to Parliament under *clause 13*. *Clause 14(2)* provides for the Minister to stipulate a reasonable period of time for an agency to provide the information. *Clause 14(3)* provides that the agency must comply with the request unless it would break a law in meeting the request.

Clause 15 gives the Minister responsible for administering the Act the right to make a request in writing for information from GOCs and outlines the

process for the same Minister to obtain information from a GOC in order to make a report to Parliament under *clause 13*.

Clause 15 recognises also the role of shareholding Ministers under the GOC Act in relation to obtaining information from a GOC in that the Minister responsible for administering the Act must make a written request through shareholding Ministers (*clause 15(1)*) of a GOC and provide a reasonable period for the shareholding Ministers to comply (*clause 15(2)*).

Clause 15 then provides that shareholding Ministers must obtain the information by written notice to a GOC (*clause 15(3)*), provide a reasonable period for the GOC to comply (*clause 15(4)*), and that a GOC must provide the information to the shareholding Ministers within that period unless it would break a law to meet the request (*clause 15(5)*).

Clause 15(6) then provides that the shareholding Ministers must provide the information to the Minister responsible for administering the Act within the period provided by that Minister under *clause 15(2)*.

It is the intention that in order for the Minister to make a report under *clause 13*, the necessary administrative arrangements would be put in place by the department responsible for administering the Act to obtain the information necessary from agencies and GOCs for the Minister. The Minister would then only be required to exercise the right under *clause 14* or *clause 15* if those administrative arrangements are not successful in obtaining the information the Minister requires to make a report under *clause 13*.

Part 4 Savings provision

Clause 16 provides for the Queensland Government's existing *Local Industry Policy – a fair go for local industry* to be taken as the local industry policy for the purposes of *clause 6* on commencement of the Act. There is a large number of projects subject to the existing Local Industry Policy. This clause provides for continuity and certainty for public and private sector proponents needing to comply with the existing Local Industry Policy without disruption, and will readily enable the first report to Parliament under *clause 13*.

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