



WA Local Jobs Bill Consultation Paper and Skilled Work Agreement – CME Submission

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia. CME is funded by member companies responsible for over 90 per cent of the State's mineral and energy production and workforce employment.

In 2017-18, the value of Western Australia's mineral and petroleum industry was \$115 billion. Iron ore is currently the State's most valuable commodity at \$61 billion. Petroleum products (including crude oil, condensate, liquefied natural gas, liquefied petroleum gas and natural gas) followed at \$26 billion, with gold third at \$11 billion. Both commodities saw an increase in value of 39 and 5 per cent respectively from the previous financial year.

Contributing to a third of the State's total industry Gross Value Added,¹ the resources sector is a major contributor to both the State and Australian economy. The value of royalties received from the sector in 2018-19 totalled \$6.2 billion, accounting for 20 per cent of State Government revenue.^{2 3} Western Australia accounted for 43% of the nation's merchandise exports in 2018-19.⁴

Summary of Recommendations

CME appreciates the opportunity to provide input through the consultation process for the Western Australian (WA) Local Jobs Bill (Bill) Consultation Paper (the Consultation Paper) and Skilled Work Agreement (SWA). CME is committed to working with the Department of Jobs, Tourism, Science and Innovation (JTSI) and the State Government to ensure policy which applies to the resources sector is equitable, efficient and effective to provide a foundation for continued investment and growth, and the economic benefits it delivers to WA.

The WA resources sector operates in a globally competitive market and must remain focussed on ensuring safe, productive and efficient operations in order to maintain its reputation as a leading jurisdiction.

The sector is a significant contributor to the economic and social well-being of WA. In line with the McGowan Government's policy priorities, the resources sector is continuing to demonstrate its commitment to local jobs, training and procurement to meet the current and future demands of industry. For example, the minerals sector directly employs a record 124,010 people in WA in 2019, an increase of 10% from the prior year⁵. A survey of just 41 organisations within CME's membership found our members engaged some 13,654 local WA businesses in 2018⁶.

In 2017 a CME survey found the sector was spending 3.5 per cent of their total payroll on training activities and that apprentices and trainees made up 3.5 per cent of the total workforce of CME member companies⁷. With the inclusion of the resources sector to the Building and Construction

¹ Duncan, A., Kiely, D. and Salazar, S., *Quarterly Economic Commentary: March 2019*, Bankwest Curtin Economics Centre, Curtin University, April 2019, p. 4.

² Excludes monetary contributions via North West Shelf grants, State taxes and fund levies.

³ Government of Western Australia, *Budget Paper No. 3: 2019-20 Economic and Fiscal Outlook*, Western Australian State Budget 2019-20, Department of Treasury, May 2019, p. 68.

⁴ JTSI, Western Australia Economic Profile – October 2019: <https://www.jtsi.wa.gov.au/docs/default-source/default-document-library/wa-economic-profile--october-2019.pdf>

⁵ DMIRS, 2018-19 Economic indicators resources data: <https://www.dmp.wa.gov.au/About-Us-Careers/Latest-Statistics-Release-4081.aspx> . Figure **excludes** personnel employed in the offshore petroleum industry.

⁶ CME, 2017-2018 Western Australian Resources Sector - Economic Contribution Report. <https://cmewa.com.au/wp-content/uploads/2019/06/Australia.pdf>

⁷ CME Training Survey 2017 and Diversity in the Western Australian Resources Sector Survey Report 2017

Industry Training Fund (BCITF), the sector is increasing its contribution to the State and the CTF's delivery of training outcomes across the construction sectors.

Noting the above, CME does not consider the intent and objectives as identified by JTSI in consultation forums and in the Consultation Paper provide sufficient justification for the introduction of new 'local jobs' legislation. CME believes the stated intent of the Bill could be achieved through alternative means other than legislation, and would have preferred to engage with JTSI in consultation on potential alternative processes to streamline and build consistency across local content and training commitments and reporting.

However, appreciating the Government's intent to introduce new legislation and avoid duplication with pre-existing legislation, the recommendations contained in this submission are focused on ensuring the content, structure and application of the proposed Local Jobs Bill and regulations do not result in unnecessary regulatory burden or 'red tape'.

Any new legislation requires clear identifiable scope and outcomes as well as ensuring the application of the laws are agile, practical and focused to deliver the desired outcomes that are appropriate, achievable and able to be quantified. Consistent with the Government's Streamline WA program, industry is strongly opposed to the introduction of additional project approval processes, administrative burden and onerous reporting obligations.

CME looks forward to the constructive consideration of the following recommendations and methods of implementation to ensure the Bill can deliver on its objectives and enable the resources sector to continue to productively operate and invest in Western Australia to the wider benefit of the community.

Recommendations

Resources Sector Position

1. Government should examine alternative mechanisms to achieve the stated intent of the Bill and facilitate streamlined local content reporting including:
 - Rather than adopt new legislation, amend the existing WA Jobs Bill, to insert a requirement for a WAIPIP (tied to the AIPP) and common, transparent reporting standards for private projects in WA exceeding AU\$500 million; or
 - Replace the approval of a SWA (within a proposed new Bill) with a requirement to develop a WAIPIP as an addendum to a project proponent's AJA AIPP.

Under either approach the WAIPIP could set out the practical steps the proponent will take, consistent with its AIPP, to engage the local market and provide 'full, fair and reasonable' opportunity to WA based suppliers

2. CME requests the comments contained in the SWA template at Appendix 1 are considered along with the below detailed comments on the Consultation Document.

Skilled Local Jobs Bill Consultation Process

3. CME recommends JTSI continue to engage with industry, collectively where possible, and to provide a summary of submissions and feedback received to ensure all parties have an opportunity to understand how and to what extent feedback and assessment of alternatives has been taken on board.

Lack of Clarity in Consultation Documents

4. CME recommends further information and consultation on the proposed end to end operation of Bill including supporting details such as definitions and matters proposed to be prescribed in supporting regulations is required prior to the Bill being finalised.

WA Local Jobs Bill Consultation Paper and SWA Template

Coverage of the Local Jobs Bill 2019

5. CME recommends that JTSI provide greater detail to outline how the WA Local Jobs Bill will align with the AJA, including how key terms and definitions interact. This could be achieved through written guidance to outline how key terms are proposed to be defined or to confirm terms used are to be taken to have the same definition as under the AJA unless otherwise stated.
6. CME recommends that JTSI align the coverage of the WA Local Jobs Bill to the AJA and that the Minister's powers to mandate specific projects proposed be covered by the WA Local Jobs Bill be limited by the \$500 million threshold.

Skilled Work Agreements

7. CME's strong preference is for the removal of the SWA ministerial approval requirement, however should this be retained, the SWA template should be amended to ensure both the timeline for development and information required to be reported aligns with AIPP requirements under the AJA and must clearly acknowledge the potential for early projections to vary.

Alternatives to SWA Approval

8. CME recommends JTSI explore alternative mechanisms – such as a WA Industry Participation Implementation Plan (WAIPIP) – whereby project proponents could report on the implementation progress of their AIPP so far as it relates to the State. Noting this does not preclude project proponents from engaging with the Government separately to develop project specific opportunities through collaboration.

Intervention in the Project Cycle

9. CME recommends that the intervention in the project cycle align directly with the AJA and that Part D of the SWA be removed to enable this alignment.

Ministerial Responsibility and Lead Agency

10. CME recommends that JTSI should facilitate a structured process where project proponents deal with an identified representative to reduce duplicative conversations and unnecessary delays, facilitating project proponents to understand their obligations and responsibilities as well as liaise with Government to identify issues and areas of collaboration.
11. CME further recommends a consultative whole-of-Government information sharing approach or mechanism to ensure information is shared and not siloed to avoid multiple departments seeking duplicative information from proponents and developing a single, consolidated data management system to facilitate transparent information sharing and decision making.

Reporting

12. CME recommends that the proposed WA reporting requirements align with those requirements outlined in the AJA – both with regard to submission of the AIPP and transparent annual reporting thereafter through an online electronic reporting system to facilitate the collection and collation of common data. This would also reduce the administrative burden on the State if a manual reporting requirement is required.
13. CME also recommends that existing reporting requirements be streamlined to remove duplication and ensure cross-government alignment on data collection, collation and sharing processes (with appropriate confidentiality controls).

Enforcement

14. CME recommends that JTSI further detail and align enforcement requirements and processes to those within the AJA regarding the AIPP to ensure alignment and clarity for project proponents.

Verification of Outcomes

15. CME recommends where possible that the Bill replicates current processes under the AJA to ensure alignment to proposed verification and audit processes, and in turn limit the risk of duplication.

State Agreements and Other Development Agreements

16. CME endorses JTSI's recommendation that existing State Agreements be exempt from coverage under the Bill and recommends that JTSI provide clear guidance as to how they see the SWA applying to new or varied state and other agreements with the State into the future and their proposed strategy to align reporting.

AJA and AIPP National Framework

17. CME recommends that JTSI provide further clarification on how the WA Local Jobs Bill (and SWA) will not breach the AIPP National Framework. Specifically where the SWA proposes to imply that project proponents are to treat WA entities differently from other states.
18. CME recommends that the State Government liaise with the AIP Authority to facilitate a bilateral information sharing arrangement and seek improvements to the current AIPP process to improve provision of information as an alternative process to legislation.

Thresholds and the CTF

19. CME recommends that the WA Local Jobs Bill should only apply to a project where that project falls under the auspices of the AJA. Utilising this method would ensure alignment between both acts and reduce the risk of duplication or scope creep under the WA Bill.
20. CME recommends that the State utilise the same threshold identified in the WA Local Jobs Bill and apply this to payment of the BCITF Levy as well as work with the resources sector to identify potential alignment of definitions, obligations and valuations of a project between the BCITF and Levy Collection Act, the proposed WA Local Jobs Bill and AJA to ensure consistency across legislation where project proponents are obligated to pay or report.

Context – Resources Sector Position

The Department of Mines, Industry Regulation and Safety (DMIRS) recently released a report indicating that the resources sector currently employs 124,010 people, is responsible for 94% of WA's merchandise exports and has invested over 51% of total capital expenditure for Australia in WA, amounting to \$17 billion⁸.

The resources sector is generating a record number of skilled jobs across WA and commits significant resources to the provision of training and upskilling of its staff. CME members recognise the benefit of investing in training and development noting that a highly skilled workforce provides improved productivity and safety benefits across the industry. Further to this, the sector is now required to make a significant contribution to the BCITF for any new construction work which is used by contractors to fund relevant apprentices and trainees in the construction sector.

The resources sector also has extensive local procurement processes and initiatives, some of which are undertaken in collaboration with the State or Federal Government and others that are independently initiated – such as the Industry Capability Networks (ICN), to facilitate local businesses to identify tender opportunities, engage early in prequalification opportunities, identify potential partners to co-tender with and, in turn, submit competitive tenders. Examples such as industry's broad adoption of ICN illustrate the practical steps being undertaken to extend open and fair opportunities to local businesses.

Noting the significant contributions of major projects to the State and regional communities, CME supports the Government's stated intent in introducing the Bill *"...to leverage key industry sectors to help build and diversify Western Australia's economy and create a skilled local workforce."*

Furthermore, CME recognises the State Government's intent to build consistency across local content approaches and reporting requirements. We recognise that the State and Commonwealth Government's current approach to industry reporting is inconsistent and disjointed, and in many instances that industry data is required to be submitted confidentially.

However, CME would prefer that the State Government work with industry to build on the good practice outlined above and to support further cross-sector, collaborative initiatives to deliver shared and transparent outcomes, rather than committing to implementing new legislation with prescriptive requirements.

CME notes an alternative (to implementing new legislation) could be amending the existing WA Jobs Bill, which applies to public works, to insert a requirement for a 'WA Industry Participation Implementation Plan (WAIPIP) - tied to the Australian Industry Participation Plan - and common, transparent reporting standards for private projects in WA exceeding AU\$500 million. This approach could be both proportionate and expeditious.

Certainty for industry is important where multi-billion dollar commitments to the state, over a substantial period of time, expose proponents to risk. Therefore, any desire for amended policy outcomes – in this case proposed through new legislation, regulation and additional project approvals processes – should rightly be subject to detailed consultation including the consideration of viable alternatives to achieve the desired outcomes.

As discussed below, while we acknowledge JTISI's efforts, the consultation process to date has not met industry's expectations. While outcomes improved as the consultation process progressed, the release of reference documents and meeting of consultation group meetings was disjointed and inconsistent.

⁸ DMIRS, Latest statistics release, 2018-19 Economic indicators resources data

With regard to the reference documents, it is noted the Consultation Document outlines the proposed coverage and operation of the Bill at a high level; whereas the subsequently released SWA template proposes the provision of unreasonably detailed information at the front end of the project, with the prospect of punitive ongoing compliance. While it is appreciated much of the supporting detail will be contained in regulations and guidance material, the scope and detail set out in the Consultation Documents has raised a number of questions and concerns from CME members. Further work is required to clearly outline and clarify with stakeholders the end-to-end operation of the proposed Bill, regulations and guidelines, and we welcome the assurances provided by JTSI that consultation on this detail will be ongoing.

On the basis of information provided at various stages through the Consultation Document and SWA template, the resources sector is concerned key elements of the proposed Bill will, in application, create duplication and additional impost. CME notes this is inconsistent with the broad assurances offered by the State Government and runs contrary to the objectives of its overarching Streamline WA initiative⁹. In particular, the proposed requirement for ministerial approval of a SWA under the Bill would be an additional and unnecessary step in an already onerous project approval process and is strongly opposed.

Further, we do not accept that there is justification to mandate a SWA, as a proposed additional approval, in addition to the extensive existing requirements under an AIPP. An additional approval will not deliver more streamlined, or arguably better, local content outcomes and will instead create undue burden on project development.

It is further noted that the proposed reporting requirements under the SWA have not been linked to specified policy outcomes sought by the State, over and above existing reporting requirements at State and Commonwealth levels. It is therefore unclear what particular value or local content threshold can be expected to be derived from introducing new approval requirements and ongoing compliance reporting.

Throughout the consultation process to date CME has consistently raised the fundamental importance that the proposed Bill aligns with and operates alongside the AJA in practice. As outlined further below, the proposed SWA template requests information outside the scope of the AJA and the lack of definitional clarity could create further duplication and/or inconsistencies.

Provided the consolidation of data reporting requirements are relevantly and appropriately aligned with current requirements under AJA and State Agreements Acts, and JTSI can demonstrate the data requested is not otherwise available or accessible through pre-existing reporting to Government (including, but not limited to, the BCITF), then industry is broadly supportive of these requirements being consolidated.

Government should examine alternative mechanisms to achieve the stated intent of the Bill and facilitate streamlined local content reporting including:

- Rather than adopt new legislation, amend the existing WA Jobs Bill, to insert a requirement for a WAIPIP (tied to the AIPP) and common, transparent reporting standards for private projects in WA exceeding AU\$500 million; or
- Replace the approval of a SWA (within a proposed new Bill) with a requirement to develop a WAIPIP as an addendum to a project proponent's AJA AIPP.

⁹ Streamline WA – Making it easier to do business, Fact Sheet, Streamline WA Secretariat, 25 June 2019

Under either approach the WAIPIP could set out the practical steps the proponent will take, consistent with its AIPP, to engage the local market and provide 'full, fair and reasonable' opportunity to WA based suppliers

Industry continues to support the State Government objective to deliver streamlined regulation through StreamlineWA and is closely engaged in this process. CME notes that the WA Local Jobs Bill has been named as a StreamlineWA¹⁰ initiative, however it is not yet clear how the proposed Bill will result in any meaningful reduction and streamlining of process or outcomes. Instead it runs the real risk of increasing regulatory and administrative burden, for the reasons outlined in this submission.

For WA to remain competitive and attract major investments it is critical that the State optimises its position as an efficient and stable jurisdiction. The competitive nature of global markets for mobile capital means that industry and Government must work together to ensure that we continue to attract new investment and extension of existing long-life operations through which the broader community benefits.

The concerns outlined in this submission are most recently informed by our sector's experience with respect to amendments to the BCITF to remove the exemption on the resources sector and the subsequent five year statutory BCITF Act Review. These reforms were characterised by disjointed consultation, expedited timelines and a lack of clarity and aligned expectations on outcomes, which combined, resulted in a challenging and burdensome transition for resources sector participants.

Noting the State Government's stated commitment to introduce a Local Jobs Bill applicable to the private sector, the following detail is focused on providing feedback to the scope, structure and operation of the proposed Bill (as outlined in the Consultation Paper). Additional specific commentary is provided in the attached SWA template (which was circulated separately to the Consultation Paper) as Appendix 1.

CME requests the comments contained in the SWA template at Appendix 1 are considered along with the below detailed comments on the Consultation Document.

Skilled Local Jobs Bill Consultation Process

CME and our members have been actively involved with the consultation process for the WA Local Jobs Bill. This has been through involvement in the various, disaggregated industry consultation groups, direct engagements with JTISI, discussion members of the State Government as well as through facilitated forums with our members and industry representatives.

From the outset CME has raised concerns regarding the consultation process with inconsistent distribution of materials and insufficient time initially provided for preparation of feedback. The separation of the industry consultation groups between mining, oil and gas and construction has contributed to the lack of transparency and clear understanding of the nature of the process.

CME appreciates that, in response to concerns raised, further detail was provided subsequent to the release of the Consultation Paper on the SWA and that the original consultation timeline specified for the Consultation Paper was extended to enable a more fulsome consideration of the SWA template alongside the Consultation Paper. The extension provided the ability to reasonably consider both documents in alignment and understand the relationship between the Bill and draft SWA.

However, we believe an opportunity may have been missed in the consultation process by not sufficiently taking advantage of this extension to engage industry in a more effective and collaborative

¹⁰ Letter to CME, Resources Sector Approvals and Associated Reforms, 2 October 2019, From DMIRS and DWER.

way to address commonly held concerns. Regardless, CME and its members committed to participating in the proposed one-on-one consultation meetings and welcomes JTSI's ongoing openness to engage.

Further to this, CME considers it will be critical for JTSI to summarise the feedback received as part of the current process and to produce a report for stakeholders review prior to the finalisation of the proposed Bill. This would ensure stakeholders can be confident their views have been accurately represented and given due consideration.

CME recommends JTSI continue to engage with industry, collectively where possible, and to provide a summary of submissions and feedback received to ensure all parties have an opportunity to understand how and to what extent feedback and assessment of alternatives has been taken on board.

Lack of Clarity in Consultation Documents

Industry is generally supportive of high level requirements being enshrined at the level of the Bill with details on how to meet these requirements detailed in regulations and or supporting guidance. However, there is insufficient detail in the Consultation Document to determine whether the proposed content of the Bill will provide the necessary long term certainty on the scope and operation of the regulations.

This limits industry's ability to understand potential intended and unintended impacts or provide feedback on how they may be resolved.

For example, it is difficult to determine from the information provided in consultation materials how various terms proposed to be used in the Bill will be interpreted which could have a material impact on its operation. The references to "initial construction phase, operational phase and project expansions" is a key example, as referenced below. While JTSI have indicated there will be general alignment of definitions to the AJA, it is unclear to what extent this applies to definitions of key terms contained in the Commonwealth Act.

Further, ongoing ambiguity leads to concerns that the proposed structure of the Bill, and supporting regulations, could enable scope creep with unintended consequences for administrative burden, placing project timeframes and investment decisions at risk of delay.

CME recommends further information and consultation on the proposed end to end operation of Bill including supporting details such as definitions and matters proposed to be prescribed in supporting regulations is required prior to the Bill being finalised.

WA Local Jobs Bill Consultation Paper

Coverage of the WA Local Jobs Bill

The Consultation Paper broadly outlines the projects the Bill and SWA approval requirements are intended to apply to. However, there remains fundamental uncertainty as to where the limits of coverage will be. For example, the Consultation Paper states that the requirement for a SWA would apply to the "initial construction phase, operational phase and project expansions". This potentially broadens the scope of coverage to exceed that of the *Australian Jobs Act 2013, Cwth* (AJA) which limits its scope to a major project to establish, expand, improve or upgrade a facility¹¹ and further explicitly limits application to the first 2 years of operation of a new major facility only. This raises issues in regards to alignment as well as creates confusion as to the coverage and duration of a SWA.

Although the Consultation Paper references the intent to align the Bill with the AJA, the lack of supporting clarity on this point is unsatisfactory. Currently there is no explicit wording to indicate that the terms to

¹¹ Australian Jobs Act 2013, Part 1, Preliminary, Section 4 Simplified outline.

be used in the Bill will be defined as they are in the AJA, and where definitions are or become inconsistent this will fundamentally impact on alignment and immediately, if not unintentionally, introduce duplication.

CME recommends that JTSI provide greater detail to outline how the WA Local Jobs Bill will align with the AJA, including how key terms and definitions interact. This could be achieved through written guidance to outline how key terms are proposed to be defined or to confirm terms used are to be taken to have the same definition as under the AJA unless otherwise stated.

The Consultation Document also includes a recommendation from JTSI that the Minister should have the power to capture other projects which meet “the thresholds”. While acknowledging the intent appears to be to enable the Minister to extend the application of Bill beyond the resources and constructions sectors, CME requests it be clarified that this power would be limited to projects above the \$500 million threshold.

CME recommends that JTSI align the coverage of the WA Local Jobs Bill to the AJA and that the Minister’s powers to mandate specific projects proposed be covered by the WA Local Jobs Bill be limited by the \$500 million threshold.

Skilled Work Agreements

As noted above, the requirement under the Bill to develop a SWA for approval by the Minister has generated concern among CME members. In addition to concerns this essentially introduces a new layer in the project approval process, CME members are concerned, proposed timeline for its development and the interaction of the proposed compliance measures under the Bill will lead to unreasonable expectations and punitive enforcement.

Requiring a negotiated approval process as a mechanism for project proponents to engage in, is concerning given no clear acceptable standards have been defined for what would necessarily satisfy and ultimately constitute an approved SWA. This seems to leave open the opportunity for the approval process to become protracted through ongoing negotiation, with the potential for it to be subject to the political sentiments of the day.

The resources sector also has concerns with the proposed SWA template in its current format with respect to the WA specific information it seeks to gather. For example:

- the information required in Part D exceeds the scope of the AIPP;
- The request for information for contracts down to the value of \$5 million is excessive noting some of these projects could be valued at tens of billions of dollars with potentially hundreds of contractors or sub-contractors representing an excessive burden;
- Part D of the SWA requires disclosure of workforce data, however, for many projects these details are not finalised until post-Front End Engineering Design (FEED) activity or in some cases until contracts are awarded;
- Other requirements in the SWA seeking proponents to obligate contractors to meetings and reporting to the State is not practical nor possible in some cases. For example in industry’s experience some smaller enterprises may have limited ability to provide forecasting and other data required by the SWA.
- SWA’s dual focus on both procurement and training also raises inconsistency in purpose and application, as compared to the AJA.

To minimise duplication and align processes with the AJA, CME considers the proposed SWA (or as we propose above, the WAIPIP) should be developed and submitted in close alignment with the requirements of AIPP.

Further to this, and in alignment with expectations under the AJA, it must be recognised requiring overly specific or detailed preliminary forecast data at an early stage in the project lifecycle offers limited actionable benefit to any institution or government, noting at best the figures and information provided would be based on assumptions and subject to change.

Noting the potential for the preliminary forecast numbers to change significantly as projects evolve, and details become clearer, the operation of the SWA template with the requirement for Ministerial approval is of concern. While the draft SWA template requests 'best estimates' and the document alludes to a process of reviewing and updating these, there remains a perceived risk early forecast estimates could be taken as a commitment. Early, assumption based estimates should not be used as a basis for compliance or performance reporting. It is not feasible to provide estimates with an appropriate level of certainty during the AJA process as so much of a project can change between Final Investment Decision (FID), pre Front End Engineering Design (FEED), FEED and then awarding a first contract for construction.

The SWA template appears to both require a level of information which is outside the scope of the AJA and would be difficult to provide with any certainty. Further, the SWA is also not accompanied with sufficient detail to indicate how the data collected is to be supplied with respect to structure and granularity nor how the Government proposes to utilise the data.

Moreover, the Consultation Paper suggests proponents could ultimately be held to strict compliance against these early projections – including the prospect of enforcement actions. CME would welcome further clarification that this scenario is specifically not the State Government's intention.

CME's strong preference is for the removal of the SWA ministerial approval requirement, however should this be retained, the SWA template should be amended to ensure both the timeline for development and information required to be reported aligns with AIPP requirements under the AJA and must clearly acknowledge the potential for early projections to vary.

Alternatives for SWA 'Approval'

CME considers a stated intent of the proposed Bill, to gather information on project proponent's activities in the State, is already met through long-established practices whereby proponents of major projects voluntarily and proactively engage with the State Government to discuss a variety of issues with regards to their projects. For example, ICN networks exist already enabling provision of information to state based business.

In WA, project proponents also undertake ongoing engagement with the State Government and various departments to provide intelligence and insight on current and future skills needs both for new projects and ongoing operations e.g. through the BCITF (discussed further below), State Priority Occupation List and Skills Market Review processes. It is also noted that most project proponents disclose the award of major contracts publicly and/or report on them as part of the compliance process under the AIPP.

It is therefore unclear as to what gap exists that would require an explicit legislative mechanism (i.e. SWA) to provide the data requested, nor a clear explanation of how this data will facilitate the State Government to make decisions or how it is different from data already collected. Further, broad concerns exist that the State Government is seeking to become more involved in commercial matters that companies have previously undertaken with the market.

The resources sector agrees that open and ongoing dialogue is the key to affecting the provision of more local skilled jobs, as opposed to a legislative mechanism seeking to collect more data with no

clear expectation of what will be done with the data or the obligation on Government to act on issues identified by the data.

CME would suggest that JTSI further engage with the AIP Authority to investigate potential improvements to the AIPP to capture procurement related matters (identified through the SWA) and implement an information sharing arrangement. An appropriately administered information sharing arrangement between the Commonwealth and State Government – and indeed across State agencies - would facilitate the WA Government's objective without the need for additional prescriptive legislation. This process could sit alongside ongoing collaborative efforts that can meet the spirit and intent of Part D of the SWA, in a way that utilises a whole of government and industry initiative to forecast and identify opportunities to address current and future skills needs.

CME recommends JTSI explore alternative mechanisms – such as a WA Industry Participation Implementation Plan (WAIPIP) – whereby project proponents could report on the implementation progress of their AIPP so far as it relates to the State. Noting this does not preclude project proponents from engaging with the Government separately to develop project specific opportunities through collaboration.

Intervention in the Project Cycle

The SWA in its current format makes it difficult to determine the point at which the Bill should apply or 'trigger' in the project cycle. If the SWA is aligned with the AIPP process then the Bill could simply replicate the requirements as set out in the AJA.

Currently however the SWA broadens the scope of information it seeks and diverts from alignment with the AIPP. Specifically with regards to Part D in the SWA.

The information that aligns with the AIPP could be supplied concurrently and the bill could align with the AJA. Part D would then need to be deferred until after the project proponent awards their first contract or identifies the primary contractor. This then would mean that the approval requirement in the Act for the SWA would not be duplicated.

CME recommends that the intervention in the project cycle align directly with the AJA and that Part D of the SWA be removed to enable this alignment.

Ministerial Responsibility and Lead Agency

The resources sector notes the designation of the Minister for State Development; Jobs and Trade noting that proponents already engage with the Minister when looking to undertake a major project.

CME is supportive of JTSI as the lead agency provided this arrangement reduces the need for proponents to liaise with multiple departments. **CME recommends that JTSI should facilitate a structured process where project proponents deal with an identified representative to reduce duplicative conversations and unnecessary delays, facilitating project proponents to understand their obligations and responsibilities as well as liaise with Government to identify issues and areas of collaboration.**

Currently project proponents and the broader resources sector are burdened with multiple reporting requirements and various system and formats in which they are required to do so. Specifically the information provided to JTSI should where possible be aligned with information required by other departments such as DMIRS, Department of Water and Environmental Regulation, Department of Training and Workforce Development (DTWD) and Infrastructure WA to facilitate streamlined approvals and reporting processes.

CME further recommends a consultative whole-of-Government information sharing approach or mechanism to ensure information is shared and not siloed to avoid multiple departments seeking

duplicative information from proponents and developing a single, consolidated data management system to facilitate transparent information sharing and decision making.

Reporting

As part of StreamlineWA the resources sector would urge JTSI, and more broadly the State Government, to utilise this process to drive alignment and to create common systems and format for the supply of data to ease the burden on industry as well as enable Government to be able to access clear data to facilitate informed policy making.

The resources sector would welcome common, transparent reporting mechanisms to collect data that can be used by Government to develop policy and future infrastructure planning. The ability to use this process to develop a whole of government reporting process that collates and consolidates the variety of existing data requests that industry is subject to would significantly reduce the burden on industry and improve outcomes. This would also facilitate Government to share data and reduce the tendency for Government agencies to seek duplicative data requests.

It is a significant opportunity for industry and one that should be championed by StreamlineWA. It is important to ensure that data collected can be used by Government to develop and implement policy and planning that is functional and will address issues identified.

The proposed individually negotiated reporting processes are not transparent nor are they realistic to facilitate streamlining and the production of data in an agreed format against common data points. This will not facilitate Government to be able to gather data that is useful to identify overall economic trends and potential future needs.

Further where an Act mandates reporting requirements, timelines should be clearly set out for certainty for Government and proponents.

CME also notes that JTSI have indicated they intend to have an annual report submitted to Parliament which will be a collation of project proponent data reported throughout the year. CME would urge the State Government to ensure that data is aggregated and treated in confidence with regards to commercially sensitive information that proponents may disclose to Government through the reporting process. As is indicated through the Privacy and Responsible Information Sharing for the WA public sector discussion paper the State does not yet have sufficient in built protections for data it collects¹². These matters would need to be addressed prior to the State collecting this data and be appropriately protected practices regarding the sharing of data between State departments to ease duplication.

CME recommends that the proposed WA reporting requirements align with those requirements outlined in the AJA – both with regard to submission of the AIPP and transparent annual reporting thereafter through an online electronic reporting system to facilitate the collection and collation of common data. This would also reduce the administrative burden on the State if a manual reporting requirement is required.

CME also recommends that existing reporting requirements be streamlined to remove duplication and ensure cross-government alignment on data collection, collation and sharing processes (with appropriate confidentiality controls).

¹² Privacy and Responsible Information Sharing for the Western Australian public sector Discussion paper, Public Sector Reform Unit, page 6 - 9

Enforcement

CME notes JTSI has outlined the consequences for non-compliance will largely align with the AJA.

CME is concerned with the lack of clarity surrounding what JTSI would consider to be a matter that would be subject to enforcement processes. Noting the language used does not indicate any reasonable distinction between inadvertent omissions as opposed to overt non-compliance.

CME is concerned that individual project proponents may be unduly held to preliminary, heavily assumptions-based forecasts provided in the SWA and not be afforded adequate mechanisms or allowance to update forecasts as the project progresses.

CME and our members would ask that further detail is provided to outline when enforcement would be triggered as well as outlining how proponents could seek reasonable review of punitive decisions taken by Government in respect of alleged non-compliance. Noting that the most adverse outcome could be an injunction to halt a project. **CME recommends that JTSI further detail and align enforcement requirements and processes to those within the AJA regarding the AIPP to ensure alignment and clarity for project proponents.**

Verification of Outcomes

The lack of detail in this section is cause for concern with respect to businesses being subject to potentially onerous audit and verification processes or having to disclose commercial in confidence matters. These matters should be subject to a verification time period post submission by a proponent. This could avoid potential open ended querying as well as place obligations on the State to ensure they are appropriately resourced to undertake compliance activities in a timely manner.

JTSI should clearly outline the expected obligation on proponents to disclose certain information and where it may be appropriate for proponents to delay disclosure where that information is sensitive or not yet finalised.

It is also requested that further clarity be detailed in regards to what powers are proposed to be vested in JTSI under this Act, including the limits or restrictions placed on JTSI in exercising these powers.

CME recommends where possible that the Bill replicates current processes under the AJA to ensure alignment to proposed verification and audit processes, and in turn limit the risk of duplication.

State Agreements and Other Development Agreements

There is a lack of clarity in respect to how the proposed Bill would interact with existing and future State Agreements (SA) and other development agreements. CME notes that many SAs already have clauses that require proponents to:

- i. submit a Local Participation Plan;
- ii. use their best endeavours to support local procurement; and
- iii. produce annual and, at certain phases, quarterly local content performance reports.

While the Consultation Paper makes broad reference to the proposed Bill not applying to current SAs, there is insufficient detail as to the implications for meeting existing reporting obligations (including definitions and timeframes) or how these reporting arrangements may be amended over time. The concern is this could result in a duplication of obligations across the SA framework and those set out by the Bill.

Further, it is unclear whether the State intends to vary SAs to incorporate the Bill, or standardise reporting requirements noting the multiple data requests for industry information including amongst various SAs which carry their own differing requirements.

CME is concerned that the Bill creates uncertainty in respect to our members that carry out operations pursuant to a SA or other development agreement. Therefore, additional clarity on the intended transition arrangements is required.

CME endorses JTSI's recommendation that existing State Agreements be exempt from coverage under the Bill and recommends that JTSI provide clear guidance as to how they see the SWA applying to new or varied state and other agreements with the State into the future and their proposed strategy to align reporting.

AJA and AIPP National Framework

The AIPP National Framework was developed in 2001 by the Federal Government in conjunction with State and Territory Governments to ensure policy consistency across Australia. Noting that a unified policy approach would facilitate industry to have clarity and consistency which will benefit Australian businesses to benefit from major projects.

The Consultation Paper outlines how the Government is working with its Federal counterparts in an effort to ensure a consistent approach as well as ensuring that measures sought will be constitutional.

We note in particular JTSI states that it is their belief that so long as the WA Local Jobs Bill does not preference or mandate WA industry it would conform to the AIPP National Framework¹³.

If the intent is to identify what tender processes and opportunities are provided to WA based business then JTSI already has the ability to engage the project proponent to discuss or seek a copy of the AIPP.

CME would welcome further clarification on how the State will ensure stakeholders can have certainty that measures put in place as part of the proposed legislation are constitutional and won't lead to project proponents inadvertently being in breach of their AIPP obligations.

CME recommends that JTSI provide further clarification on how the WA Local Jobs Bill (and SWA) will not breach the AIPP National Framework. Specifically where the SWA proposes to imply that project proponents are to treat WA entities differently from other states.

Further CME notes the Act Review of the AJA completed in late 2018 made a recommendation that the AIP Authority investigate information sharing arrangements with states to supply the AIPP to those governments to facilitate information sharing and alignment.

CME would urge the State Government to work with the AIP Authority to implement this recommendation which would limit the need for project proponents to undertake duplicative processes through greater State and Federal Government alignment.

This alignment and information sharing under the AJA could also facilitate the removal of prescriptive requirements within the proposed Local Jobs Bill, such as the need for a SWA as part of an additional project approval process.

CME recommends that the State Government liaise with the AIP Authority to facilitate a bilateral information sharing arrangement and seek improvements to the current AIPP process to improve provision of information as an alternative process to legislation.

¹³ WA Local Jobs Bill 2019 Consultation Paper, Australian Industry Participation National Framework Page 8, WA Industry Link

Reporting under the BCITF

The inclusion of the resources sector into the BCITF, which is administered by the CTF, also raises questions as to why project proponents need to double report on the initiatives their construction contractors undertake in regards to workforce skilling and engagement.

The resources sector pays a 0.2% levy on the cost of their new projects to the CTF. The CTF is tasked with working with the construction sector to ensure appropriate skilled workers are available by way of provision of grants to the sector operators to engage apprentices and trainees. The resources sector currently has no oversight of this, only the obligation to pay the levy. Similar to an individual building a house and being required to pay the levy they then aren't also required to report on how they plan to ensure their builder engages trainees and apprentices to provide a skilled workforce.

The CTF has indicated that they believe there are no differences between construction work undertaken in the resources sector, therefore it stands to reason that the CTF is able to manage the workers in resources construction as well as domestic and commercial construction as they are required to under the BCITF Levy Act¹⁴ and share relevant reporting information to JTSI rather than the resources sector duplicating this process on a project by project basis.

Thresholds and the CTF

The resources sector is generally supportive of the proposed threshold outlined in the Consultation Paper for where the Bill would start to apply to projects provided alignment with the AJA is confirmed including through clarity on key definitions as discussed above.

CME recommends that the WA Local Jobs Bill should only apply to a project where that project falls under the auspices of the AJA. Utilising this method would ensure alignment between both acts and reduce the risk of duplication or scope creep under the WA Bill.

In CME's submission to the Review of the BCITF and Levy Collection Act 1990 (WA) we recommended that a threshold at which the levy applies to the resources sector be set to align to the AJA with regards to applying to new construction projects where those projects meet or exceed \$500 million in value. CME also recommended a differential rate be applied of 0.1% to further mitigate impact on commercial viability of projects while ensuring the fair contribution to the CTF.

Consistency among regulations is one of the key objectives of StreamlineWA and more broadly the resources sector is concerned with the duplication of requirements being placed on the resources sector. Having regard for the rationale for aligning the proposed Bill and the AJA, the methodology for determining the value of a project should also be aligned to reduce the level of complexity with regards to the various acts that project proponents are required to comply with.

In line with the State's commitment to Streamline WA, CME considers there is an opportunity to both address some of industry's concerns with the BCITF and to further streamline requirements under the AJA, BCITF and proposed WA Local Jobs Bill through amending the BCITF Levy's Schedule 2 for the valuation of a project such that the levy applies to new construction or project expansion valued above \$500 million.

Alignment of the thresholds across each of these pieces of legislation would create welcome consistency and greatly streamline the administration of the BCITF, in particular, without adversely impacting the objectives. Additionally, broader alignment of reporting would avoid duplication of CTF's specified role with respect to apprentice and trainee training where the CTF already has this data and reports to the State Government on behalf of industry as a whole.

¹⁴ Minutes of the Building and Construction Industry Training Board Minutes 15 April 2019, Item 5

The CTF exists to report on and develop a skilled construction sector workforce. Yet the WA Local Jobs Bill through the SWA effectively proposes that project proponents undertake the role of CTF in reporting on training schemes etc. by construction contractors where the CTF already oversees these processes and, in turn, reports to the DTWD.

CME and our members would urge the State to consider industry's feedback regarding the BCITF and consider implementing the principles of Streamline WA to consolidate existing thresholds, planning processes and delivery outcomes with respect to the State's training.

CME recommends that the State utilise the same threshold identified in the WA Local Jobs Bill and apply this to payment of the BCITF Levy as well as work with the resources sector to identify potential alignment of definitions, obligations and valuations of a project between the BCITF and Levy Collection Act, the proposed WA Local Jobs Bill and AJA to ensure consistency across legislation where project proponents are obligated to pay or report.

Conclusion

The resources sector is currently employing more people than ever before in Western Australia, 124,010, is responsible for 94% of WA's merchandise exports and has invested over 51% of total capital expenditure for Australia in WA, amounting to \$17 billion¹⁵.

CME and its members are committed to working in a collaborative manner with JTSI and State Government to ensure the resources sector can operate and continue to deliver benefits to Western Australia.

CME and our members would prefer a non-legislative mechanism be developed in collaboration with JTSI to achieve agreed outcomes. This would facilitate an agile approach to work to develop best practice processes that meet the State's desired outcomes and facilitate the resources sector to continue to grow unencumbered by additional approval processes.

However if a legislative mechanism is progressed, CME and our members call on JTSI to engage in meaningful consultation to facilitate amendment to the proposed Bill and SWA to develop an effective legislative mechanism. Currently industry is concerned with the proposed scope and nature of the WA Local Jobs Bill and the SWA noting the potential for unintended consequences and scope creep.

The resources sector also has concerns with regards to JTSI's capacity to administer this process noting the increased project activity in the resources sector will require JTSI to invest significant resources to administer the Act, Regulations and SWA. This creates the potential for negative impacts on WA as a destination for investment, noting the increased regulatory burden which is in stark contrast to the State Government's previous commitment to reducing regulation through StreamlineWA. Additional regulation and project approvals are not regulatory reduction processes.

The resources sector is committed to providing skilled local jobs and opportunities where commercially appropriate to WA business. We are also committed to providing, and in many cases already do, information to the State with regards to current and future needs and how they can be leveraged by the State to encourage diversification.

CME hopes the review will consider the recommendations made in this submission, on behalf of our members. If you have any further queries regarding the above matters, please contact Ms Adrienne LaBombard, A/Manager Economics and Tax, on a.labombard@cmewa.com.

¹⁵ DMIRS, Latest statistics release, 2018-19 Economic indicators resources data

Authorised by	Position	Date	Signed
Paul Everingham	CEO	03/12/2019	
Document reference	WA Local Jobs Bill Consultation Paper and Skilled Work Agreement – CME Submission		