



Business SA submission:

*Industry Advocate Bill,
South Australian
Industrial Participation
Policy and South
Australian Industrial
Participation Policy
Procedural Guidelines*

March 2017

Executive Summary

- i. Business SA supports efforts to establish the Industry Advocate as an independent statutory authority. We also broadly support the objectives and intent of the draft South Australian Industry Participation Policy for March 2017 and the draft South Australian Industry Participation Policy Procedural Guidelines for March 2017.
- ii. Business SA believes all capable and competitive South Australian businesses should be able to access and tender for State Government contracts. Further, evaluation of such tenders should consider broad economic development outcomes for South Australia.
- iii. Importantly, the broad considerations in this tender process should not unreasonably burden the supplier. The benefits of an Industry Participation Policy will only be effectively achieved where business suppliers can easily and accurately tender for State Government contracts.
- iv. Business SA submits elements of the *Industry Advocate Bill 2017*, the draft South Australian Industry Participation Policy and the draft South Australian Industry Participation Policy Procedural Guidelines could be improved. These improvements will better target the Industry Participation Policy and ensure suppliers are not unreasonably burdened in the tender process. As far as possible the onus of establishing and measuring the broad considerations should be on the Responsible Government Agency calling for the tender.
- v. Business SA welcomes the opportunity to discuss matters which could affect our members as well as South Australian businesses in general.

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Introduction and why Business SA is interested

1. Business SA, South Australia's Chamber of Commerce and Industry, was formed in 1839 and has approximately 4,000 members across every industry sector, from micro businesses right through to listed companies. Our members employ some 140,000 South Australians. Business SA is a not-for-profit business membership organisation which advocates on behalf of members and the broader business community for sustainable economic growth in South Australia and the nation.
2. Business SA has long supported the Industry Participation Advocate ('Industry Advocate') and its function in assisting South Australian businesses tender for and win State Government contracts. Our advocacy in this area contributed to the establishment of the Industry Advocate in 2013. Business SA has also partnered with the State Government to launch 'Tender Ready', a project which aims to make South Australian small businesses more successful in winning State Government contracts. The Office of the Industry Advocate's Supplying to Government Workshops is an extension of this Tender Ready project.
3. Given this history of involvement with the Industry Advocate, and our diverse member base, Business SA is pleased to provide these comments on the draft *Industry Advocate Bill 2017* ('the Bill'), the draft South Australian Industry Participation Policy ('the draft Policy') and the draft South Australian Industry Participation Procedural Guidelines ('the draft Guidelines').

General comments

4. Business SA supports efforts to establish the Industry Advocate as a statutory position and to further streamline requirements for suppliers to access State Government contracts. We also generally support the draft Policy and the draft Guidelines.
5. We recognise the progress which has been made to reduce red-tape and limitations of liability requirements. These changes were instrumental in improving access for small business to State Government contracts.
6. We also recognise the value of events and initiatives such as Meet the Buyer and Supplying to Government Workshops. Our members report these events, which put State Government buyers in the same room as suppliers or give practical advice about the tender process, are instrumental in helping South Australian businesses understand and access contracts.
7. Further, our members report a general improvement in the culture around State Government procurement. Some members have told us they now feel more confident about, and more competitive in, applying for State Government tenders than they did five years ago. This is a promising shift in perception for such a short period of time.
8. The draft Policy and the draft Guidelines illustrate the advantages to South Australia of State Government buying local. We recognise these advantages, however Responsible Government Agencies must be given adequate guidance, either internally or from the Industry Advocate, to properly assess tenders against the draft Policy/draft Guidelines. Some of our

members have reported difficulty in properly filling out tenders and applications, with the Responsible Government Agency unwilling or unable to provide detail on how to quantify requirements.

9. A particular area of difficulty for some of our members is measuring the commercial benefit of local content in practice. For many businesses, while they may prefer to retain as much of their supply chain in South Australia as possible, in many cases this simply is not commercially viable. In most cases a supplier will, understandably, use the most cost-effective inputs. Where such a supplier is considering a tender, they are aware that their tender will be more highly rated if it incorporates a greater proportion of its supply chain in South Australia. However, if this in turn raises the cost of their tender this makes it less competitive. Given price competitiveness of a tender remains a significant consideration for the Responsible Government Agency when assessing bids, it is difficult for suppliers to balance local content with price competitiveness.
10. A further difficulty reported by members is the need to submit multiple industry participation plans where multiple State Government projects are being tendered. Where a supplier has to submit a separate industry participation plan for each project, even though their supply chain and other inputs remain unchanged, this can significantly increase the administrative burden of each tender. Businesses should be able to refer to previous industry participation plans where their South Australian participation has not changed from one tender to the next.
11. Business SA has further specific comments to make regarding the Bill, the draft Policy and the draft Guidelines. The following sections will deal with each document in turn. We have provided comments to express our support of elements of these documents, as well as our concerns with other elements. These concerns are provided on a constructive basis and we hope these will be addressed following this consultation period.

The Bill

12. Business SA welcomes the establishment of the Industry Advocate as an independent statutory authority through the Bill. We also support the terms and conditions of the Industry Advocate's appointment detailed in section 8 of the Bill. These should allow the Industry Advocate to exercise its functions impartially and without fear or favour.
13. Regarding section 4 of the Bill, Business SA broadly supports the aims of the South Australian Industry Participation Policy ('SAIPP'). The SAIPP should indeed promote South Australian economic development, it should promote value for money in public expenditure and it should promote capable South Australian businesses being given full, fair and reasonable opportunity to tender and participate in State Government contracts.
14. However, we note subsection 4(2)(c). Subsection 4(2)(c) creates a substantially similar requirement to subsection 4(2)(a), though in regard to a specific industry (the steel industry) and 'other strategically important industries' for South Australia. While Business SA supports development of local industries, we question the appropriateness of the Bill singling out the

steel industry for promotion in the SAIPP. Should the Bill become law this would require every iteration of the SAIPP to promote the economic development of the steel industry, regardless of the conditions facing our steel manufacturers.

15. Business SA suggests subsection 4(2)(c) remove specific reference to the steel industry and simply refer to strategically important industries for South Australia. This will allow the SAIPP to promote the economic development of those strategically important industries, which could include the steel industry, without being required to have a specific policy for the steel industry.
16. We also note subsection 4(4)(b), where it states '[The SAIPP and any guidelines referred to in the SAIPP] must be published in a website determined by the Minister.' We would simply comment that a more appropriate expression would be 'published on a website determined by the Minister' (change emphasised).
17. We generally support section 6 of the Bill which sets out the functions of the Industry Advocate. The only comment we would make relates to section 6(j). Section 6(j) allows the Industry Advocate to take any other action considered necessary to exercise functions conferred on the Industry Advocate. This wide-ranging power is only limited by the requirement any such action be considered necessary. Without wishing to impugn the character of the Industry Advocate, this power should have an objective standard. Section 6(j) allow any action reasonably considered necessary.
18. Regarding section 13, Business SA is concerned the power granted to the Industry Advocate is too broad. We recognise and support the purpose of section 13, however we believe the power to require information should be limited to 'participants' as defined in section 3. Currently, the Bill allows the Industry Advocate to require a person give the Industry Advocate information or face a penalty. Use of the word 'person' rather than 'participant' could significantly broaden the scope of section 13. Section 3 defines 'participants' as follows: 'in relation to a government contract, means the parties to the contract and any subcontractors engaged for the purposes of the contract'. Business SA is unsure of the rationale behind the use of 'person' rather than 'participant'. We further note section 14 uses the term 'participant'.
19. Given section 6 (the Industry Advocate's functions) uses the term 'participants', and the power granted by section 13 is to be used by the Industry Advocate to perform their functions under the Act, consistent language should be used. We suggest reference to 'person' or similar in section 13(1)-(3) be changed to 'participant'.

The draft Policy

20. As earlier indicated, Business SA is generally in support of the draft Policy, however, like the Bill, we have some comments and concerns relating to the new SAIPP.
21. In regard to section 2 of the draft Policy we note the expanded effect of the SAIPP. The previous policy¹ applied to all Government expenditure above \$33,000 in listed activities. The

¹ [South Australian Industry Participation Policy](#), October 2016.

draft Policy removes this threshold and simply applies to Government of South Australia expenditure in listed activities. The listed activities of the 2016 Policy are much the same as the activities in the draft Policy, except that 'Grants' are added as a class of State Government expenditure in the draft Policy. Business SA has two comments regarding this change.

22. Firstly, we welcome coverage of the SAIPP extending to expenditure below \$33,000. The State Government should always consider South Australia's economic development and the ability for capable South Australian businesses to fully, fairly and reasonably tender and participate in State Government contracts. Secondly however, this expanded coverage should not unduly or inadvertently burden suppliers when tendering and participating in State Government contracts. The 2016 Policy found an encouraging balance. The following is an extract from section 2 of the 2016 Policy:

There are no specific requirements for tenders with a value of less than \$33,000; however Responsible Government Agencies should use local businesses wherever possible and encourage successful tenderers to consider using local SMEs.

23. We would hope this 'no specific requirements' approach will be adopted in the 2017 SAIPP. Responsible Government Agencies should simply be required to consider the objectives of the SAIPP (set out by the Bill/Act).
24. Business SA supports the economic development framework illustrated in section 3.1; this clearly explains the framework the State Government operates within when assessing rival tenders. The three core factors of economic contribution highlighted by Deloitte Access Economics are appropriate. Business SA also supports comments made regarding economic development for disadvantaged and socially excluded groups.
25. Regarding this framework however, we reiterate our letter of 23 July 2013 which responded to the draft *Industry Participation in Government Contracting Policy*. Small business should not be burdened by needing to prove economic benefit or to provide an unreasonable amount of information to measure economic benefit. The onus of establishing the economic contribution of a small business' tender within this economic development framework should be on the Responsible Government Agency. This is particularly important given subcontractors are now considered a participant for the purposes of the SAIPP.
26. Further to the above, while the onus should be on the Responsible Government Agency to assess the economic benefit of a tender, the criteria should be clear for that agency to ensure decisions are made in a timely manner. This comment is made in regard to section 3.1.3 – Supply-chain benefits. Business SA supports (as we also did in our 23 July 2013 letter) the notion that the supply chain should be a factor in the assessment process; however this factor should be clearly laid out for the Responsible Government Agency. Higher value contracts are likely to have many stages in the supply chain which will require more extensive investigation by the Responsible Government Agency to properly measure this element of a tender. These extensive investigations will most likely increase the time required before the final decision will be made. Delays in decision making cause uncertainty and cost for business. Given supply-

chain benefits are an element of the 15% minimum weighting in a tender assessment, this criterion should be clearly and concisely explained to the agency inviting the tender to ensure decision timelines are not unreasonably long.

27. Business SA welcomes the recognition of opportunities for expanded economic development in section 4 of the draft Policy. The opportunities identified are indeed areas where State Government procurement should be particularly assessed against the SAIPP. However, any such focus on these opportunities must be consistent with the State Government's agreements/commitments at a national and international level (discussed later).
28. Business SA has concerns regarding section 5. We note the intent of this section - to give the local steel industry a competitive advantage against low quality imports. We also note this was stated in similar terms as the objective of the South Australian Steel Economic Participation Policy.² We strongly support efforts to ensure the State Government purchases steel that fully meets the requirements of the relevant Australian Standards. We further support the ability for State Government to purchase steel from suppliers in the process of meeting these relevant Australian standards.
29. Concerningly however, section 5 states the minimum industry participation weighting is increased (from 15% to 20%) for contracts triggering industry participation plan requirements and involving the purchase of structural and reinforcing steel. This increased weighting, when combined with the supply-chain consideration outlined in section 3.1.3, could lead to protectionist-style 'retaliation' by other Australian State/Territory governments. Business SA knows from our dialogue with members that many of our most successful local businesses rely on both interstate trade and export customers and we must remain mindful of their opportunities to continue to do so. We do not want capable and competitive South Australian suppliers disadvantaged when tendering in other jurisdictions.
30. In regard to section 6, Business SA supports the application of the three objectives to all activities under the SAIPP. Our only comment would that more explanation should be given to the terms of these objectives. The current SAIPP (October 2016) contains a number of definitions in section 8. These definitions explained how the terms 'full', 'fair', 'reasonable' and 'value for money' should be interpreted. Given these terms are major elements of objectives which apply to all activities under the SAIPP, guidance must be given for Responsible Government Agencies applying the Policy. We suggest a new section 9 – Definitions, be inserted into the draft Policy. This section should, at a minimum, repeat the definitions found in the current SAIPP which are applicable to the draft Policy.

The draft Guidelines

31. Business SA supports the considerations expressed in section 3.1 of the draft Guidelines. It is appropriate that the State Government consider the opportunities for South Australian small, start-up and Aboriginal businesses to provide a quote or tender.

² [South Australian Steel Economic Participation Policy](#), September 2016, section 1.

32. Business SA notes section 3.6, which effectively deems a managing contractor to be a Responsible Government Agency if the project meets an IPP threshold. Business SA seeks assurance that where a managing contractor is deemed to be a Responsible Government Agency and is required to apply the SAIPP, the Industry Advocate will provide that managing contractor the same level of assistance as if it were a true Responsible Government Agency, if not more.
33. Business SA notes at section 4.1 the statement that the Office of the Industry Advocate can work with a Responsible Government Agency to design and implement a Tailored IPP in any area of expenditure regardless of its value. While all State Government procurement should be based on principles of best value and full, fair and reasonable access for local suppliers, these tailored IPP's must not impose onerous application, procedural and/or reporting requirements on tenders below the \$50 million threshold.
34. Business SA supports section 4.4 of the draft Guidelines, which suggests Responsible Government Agencies consider opportunities for Aboriginal economic participation.
35. We also note section 4.5, which sets out that the industry participation can potentially be increased where it will address particular socio-economic objectives. No financial thresholds are described in this section. It is acceptable that the draft Guidelines be broad enough to cover a wide range of State Government procurement activities. However, as has been a consistent view of Business SA throughout this submission, the appropriate level of information or reporting requirements should be thoroughly considered, with the onus of establishing/assessing such requirements to be on the Responsible Government Agency rather than the small business supplier.
36. Business SA broadly supports section 4.7 of the draft Guidelines. We welcome the guide for areas to measure when the Responsible Government Agency issues a Tailored IPP Plan. We particularly support the Tailored IPP considering the type of presence the relevant business currently has in South Australia. In our 23 July 2013 letter we commented that the success of the local participation policy should not be judged on interstate/international companies maintaining shell subsidiaries in South Australia or only temporarily employing staff in SA.
37. Business SA's concern with the considerations laid out in section 4.7 is that any tender or application process be as simple as possible. The Tailored IPP Plan lays out some eight areas to measure, covering a broad range of policy outcomes. We reiterate our earlier comments that any tender application or process should be as simple as possible. Supplier businesses should not have too many 'hoops' to jump through as part of the Tailored IPP process. Every Tailored IPP must be carefully drafted between the Responsible Government Agency and the Office of the Industry Advocate to ensure only the most relevant areas of section 4.7 are measured in any particular project.

Conclusion

38. Should you require any further information or have questions, please contact Christopher Klepper, Policy Adviser, on (08) 8300 0000 or chrisk@business-sa.com.



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