



CCIWA Submission

Local Jobs Bill and Skilled Work Agreements

6 December 2019

1. Introduction

The Chamber of Commerce and Industry of Western Australia (CCIWA) is the leading business association in Western Australia and has been the voice of business for more than 125 years. We represent employers from across all regions and industries in WA, including major project proponents and small to medium enterprises (SMEs) who participate in the supply chain for major projects.

Due to the breadth of our membership, CCIWA is the only organisation to truly represent the entire supply chain. We also play a key role in connecting local service providers with major projects via the Industry Capability Network (ICN) to help ensure local content outcomes are effective and efficient for all WA businesses across the supply chain.

The Department of Jobs, Tourism, Science and Innovation (JTSI) has sought feedback in response to its Local Jobs Bill 2019 Consultation Paper (the Consultation Paper) and draft Skilled Work Agreement (SWA) document. CCIWA has participated in the initial consultation phase for the Local Jobs Bill and SWA as a member of the Mining Industry Consultation Group.

Our submission includes a response to the consultation questions¹ asked by JTSI regarding the Consultation Paper and Skilled Work Agreement. Short responses to these questions are provided at **Appendix A**. This submission also provides more substantive feedback on the Consultation Paper and SWAs based on input provided by our members, as well as insights from other consultation processes, including CCIWA's involvement in the Streamline WA Steering Committee.

Policy objective and relevance

The Consultation Paper states that the objective of the Local Jobs Bill is to leverage key industry sectors to help build and diversify Western Australia's economy and create a skilled local workforce.

It is proposed that the objective of the Local Jobs Bill will be achieved by requiring major project proponents to enter a SWA with the State Government that demonstrates:

- how Western Australian businesses have been provided with full, fair and reasonable opportunity, equal to that provided to businesses in other jurisdictions, to participate in all aspects of the project, including to tender and compete for any aspect of the work; and
- a commitment to workforce engagement and skilling in Western Australia.

We note that the Local Jobs Bill and SWA are proposed to be introduced as a state-based regime that adds to the existing national framework for major project reporting under the *Australian Jobs Act 2013* (Australian Jobs Act) and Australian Industry Participation Plans (AIPPs).

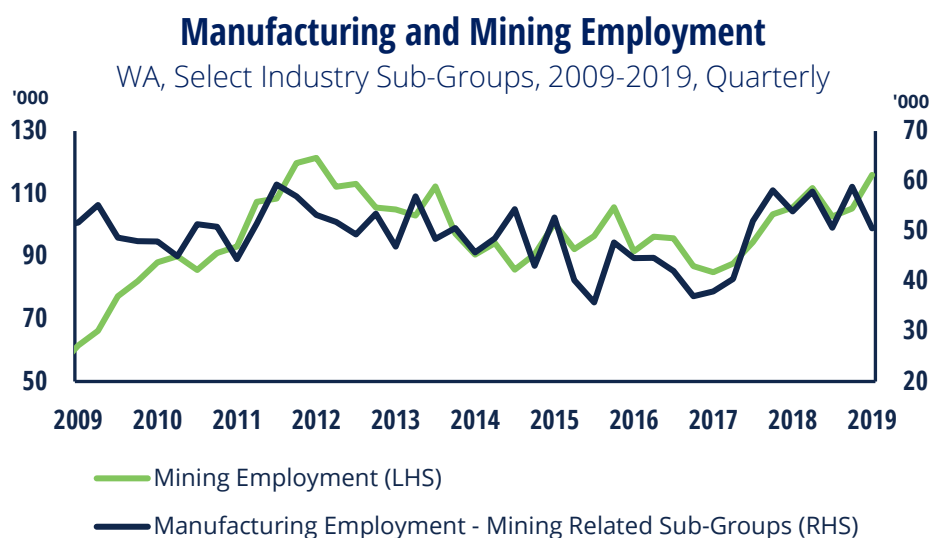
¹ Email correspondence from JTSI to Mining Industry Consultation Group members, 13 September 2019.

The State Government’s proposed Local Jobs Bill and SWAs are directly relevant to two key policy issues for CCIWA’s members:

1. Local content:

CCIWA members regularly identify local content as a key priority. Access to major project opportunities for WA businesses is critical to driving business growth and job creation, as well as the development and retention of a skilled local workforce.

Analysis of WA’s manufacturing sector illustrates the close relationship between the mining sector and other sectors of WA’s economy. For example, Figure 1 shows the close link between employment in mining-related manufacturing sub-groups² and total mining employment.



Source: ABS, CCIWA

Figure 1

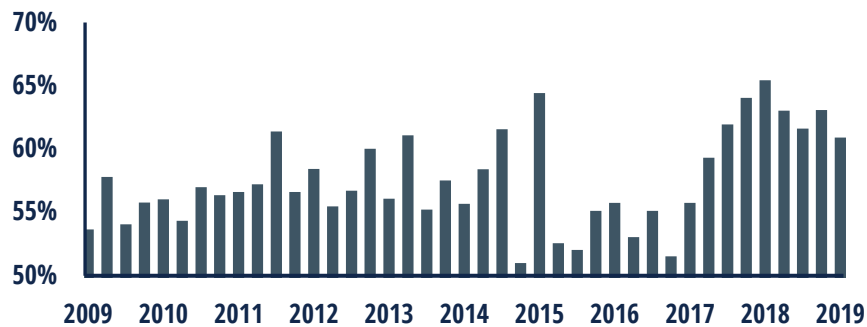
Also of note is the information presented in Figure 2, which highlights the proportion WA’s mining-related manufacturing workforce as a percentage of total manufacturing employment in WA. Over the past 10 years, these mining related sub-groups have made up the majority (57.3%) of total manufacturing employment on average (49,300 workers). This has increased over the past two years, with total employment in these

² Mining-related manufacturing sub-sectors include: Petroleum and Coal Product Manufacturing, Basic Chemical and Chemical Product Manufacturing, Polymer Product and Rubber Product Manufacturing, Non-metallic Mineral Product Manufacturing, Primary Metal and Metal Product Manufacturing, Fabricated Metal Product Manufacturing, Transport Equipment Manufacturing and Machinery and Equipment Manufacturing.

sub-groups currently sitting at 50,550 workers (60.5% of total manufacturing employment) – up 33% since August 2017.

Mining Related Manufacturing Sub-Groups as a % of Total Manufacturing Employment

WA, 2009-2019, Quarterly



Source: ABS, CCIWA

Figure 2

2. Efficient regulation:

The issue of ‘red tape’ is a persistent problem for CCIWA members that can be a substantial source of frustration and cost. Businesses identify red tape as an unnecessary and excessive burden that is imposed on regulated parties either by the regulation itself or in the way it is administered by public agencies. While businesses acknowledge that good regulation is required to achieve a public interest, poorly designed or administered regulation can be costly for the economy as it delays investment and job creation.

We discuss efficient regulation and regulatory uncertainty in more depth throughout this submission.

Summary of CCIWA’s position

While it is important that WA businesses can gain access to supply chain opportunities, it is equally critical this is achieved without onerous regulations being imposed on major project proponents and contractors. Any efforts to provide ‘full, fair and reasonable’ opportunities in major project supply chains must consider the implications of creating additional regulatory uncertainty, lengthy and costly approvals processes and onerous reporting regimes for WA businesses. Failure to do this could deter new investment, slow down project development, hinder economic growth and undermine new job creation.

CCIWA questions the rationale for requiring proponents to “demonstrate a commitment to workforce engagement and skilling in Western Australia.” The construction and resources sectors (both the primary targets of the proposed Bill and SWAs) already make substantial contributions via their own individual employment and training programs and by funding the Building and Construction Industry Training Fund (BCITF). This component of the SWA also goes beyond the scope of the Australian Jobs Act and AIPPs.

Policy alignment and consistency

In December 2018, the State Government launched *Streamline WA*, a “whole of government initiative to make it easier to do business in WA by improving regulation and regulatory practice” and appointed CCIWA as a member of the Streamline WA Steering Committee.

Streamline WA’s view on effective regulation aligns with that of CCIWA, stating that: “effective regulation supports innovation, investment and protects our community and environment, but ineffective regulation can increase the costs and difficulties of doing business.”

Furthermore, the principles guiding Streamline WA’s work include developing and applying regulation in Western Australian to ensure that:

- Western Australians are confident that risks are well managed
- Regulatory requirements are clear and easy to understand
- Our decision-making addresses risks and focuses on outcomes
- We apply regulation consistently and reduce overlap and duplication
- Government information, applications and processes are available online for maximum efficiency

CCIWA is a strong supporter of Streamline WA’s objectives and principles. To date, there has been good progress to identify the stock of regulatory issues affecting businesses and the development of projects. However, it is equally important that the State Government assesses the flow of new regulation (such as the Local Jobs Bill) to ensure it aligns with the objectives and principles of Streamline WA. Otherwise, there is a risk that the State Government’s efforts to improve regulatory practice will be undermined.

Based on the Consultation Paper and draft SWA, CCIWA is concerned that the approach being considered by Government does not align with the objectives and principles of Streamline WA. The information provided by Government so far indicates that the Bill and SWAs:

- will make it harder to do business in WA;
- are unclear and not easy to understand;
- is not focused on outcomes; and
- creates overlap and duplication.

We consider that these problems largely arise due to:

- the Government not clearly defining the problem it is trying to solve with the Bill and SWAs;
- a lack of clarity regarding the State Government’s intent;

- mixed messaging and inconsistent language used in the Consultation Paper, SWAs and during consultation discussions; and
- the Local Jobs Bill and SWAs diverging from the Australian Jobs Act and AIPPs.

RECOMMENDATION:

- The design of the Local Jobs Bill and associated reporting framework should align with the objectives and principles of Streamline WA.

3. Justification for intervention

Defining the problem

Based on the ‘Background’ section of the Consultation Paper, the State Government’s intention to implement the Local Jobs Bill and Skilled Work Agreements is based on the view that the WA economy has not benefitted as much as it could have from the development of major resources projects.

However, the State Government does not appear to have provided any further information or analysis regarding the nature of the problem it is trying to solve, or how the proposed Local Jobs Bill and SWAs will solve this problem.

CCIWA considers it good policy practice for governments to clearly identify and define the problem they are trying to solve prior to proceeding with new legislation, approvals processes or reporting requirements for businesses. We consider that by deciding to proceed with new legislation and additional reporting processes without properly defining a problem, the State Government is proceeding with a framework that is not fit-for-purpose and relatively heavy-handed compared with other workable solutions.

Once the Government has defined and quantified the problem, it can then proceed with developing a solution. Without a baseline understanding of the level of local content currently featuring in major projects, it will be impossible to establish the effectiveness of the Local Jobs Bill. If a lack of information is preventing the State Government from understanding the problem, the Local Jobs Bill should aim to address this knowledge gap, as opposed to imposing a punitive enforcement regime on project proponents.

We also note that the ‘Steel Fabrication Report’ commissioned by JTSI (as an outcome of the Premier’s Steel Fabrication Roundtable in February 2019) will potentially provide useful insights into the capability and capacity of the local steel fabrication industry to service major projects. It is CCIWA’s understanding that this report has been completed but has not been circulated to stakeholders involved in the consultation process for the development of the Local Jobs Bill.

Recommendations:

The State Government should:

- assess and clearly define the problem it is trying to solve, then design its solution accordingly; and

- share its Steel Fabrication Report with stakeholders for consideration as soon as possible.

Feedback from suppliers and contractors

CCIWA sought feedback from members who classify themselves as suppliers or contractors who participate in major project supply chains. We asked for business' views on major project supply chain issues. Key insights reported by these members include:

- Some businesses consider that they are not afforded adequate opportunities to bid for major project work packages.
- Businesses use a range of methods to track supply chain opportunities, with individual companies' supply portals and third-party providers (such as the ICN) being the most preferred options.
- Barriers preventing local suppliers from accessing major project opportunities include:
 - the tendency for project principals to favour incumbent suppliers;
 - work package sizes not being aligned to the capacity of SMEs;
 - tender processes can be too time consuming and the outcomes of these processes are uncertain;
 - a focus on short term costs instead of quality (suggesting that higher quality products have lower ongoing costs as they require less maintenance and repair); and
 - the level of risk that supply agreement terms and conditions place on suppliers.

It is important that the State Government determines to what extent these issues are widespread, or whether they are being experienced by a relatively small number of businesses. This can help determine if barriers to accessing supply chain opportunities are systemic or isolated. It will also assist the State Government in better targeting its policies and programs for ensuring full, fair and reasonable access to major project supply chains.

Government's role in addressing the problem

While not comprehensive, the barriers listed above primarily relate to either the capability and capacity of suppliers, or the procurement practices of proponents and head contractors. It is important to consider the appropriate role of government in addressing these barriers and whether they represent a market failure that justifies government intervention.

For example, we **do not** consider it appropriate for the State Government to dictate:

- how procurement is undertaken by private sector businesses as these entities are best placed to determine the cost-competitiveness, capability and capacity of suppliers to meet the needs of a project; or
- the employment and training strategies proponents undertake to meet the skills needs of their project.

We also do not consider it appropriate for the State Government to punish businesses for undertaking activities that comply with national requirements, including those under the Australian Constitution, Free Trade Agreements and the Australian Jobs Act.

Alternatively, CCIWA would be supportive of the State Government using information collected under the Local Jobs Bill to:

- direct policies and programs at enhancing the competitiveness, capacity and capability of local suppliers to compete for major project work packages; and
- understand current and anticipated skills gaps in the local labour market to inform workforce development policy.

However, it is important to note that this support would be contingent on the State Government implementing a reporting framework that minimises onerousness and regulatory uncertainty for project proponents.

Recommendations:

The State Government should:

- not use the Local Jobs Bill as a mechanism for dictating how project proponents conduct procurement, employment and training; and
- focus on better using information to direct its policies and programs at enhancing the competitiveness, capacity and capability of local suppliers and identify skills gaps in the labour market.

4. Objective of the Local Jobs Bill and Government intent

Inconsistent messaging and language

As drafted, the Consultation Paper and SWA convey that the Government is seeking to commit proponents to a level of local content and employment targets, then punishing proponents if these targets are not met. The language used during initial discussions with JTSI in the Mining Industry Consultation Working Group also suggested that the Local Jobs Bill and SWAs are to be used as a punitive instrument to coerce project proponents into undertaking specific procurement and training practices. This represents a heavy-handed regulatory approach that is disproportionate to the (poorly defined) problem that the Government is trying to address.

However, subsequent discussions with JTSI³ have indicated that the aim of the Bill and SWAs is to improve the visibility of information regarding local content opportunities and skills requirements, and direct government policy, support and programs accordingly. According to JTSI, this is in response to the Government's view that current local content practices by proponents, while substantial, are somewhat fragmented and not well communicated by industry. Subsequently, local suppliers and the broader community do not have a full and accurate picture of the local content opportunities being provided by major projects.

Given the lack of clarity and consistency regarding the intent of the Local Jobs Bill and SWAs, it is crucial that the State Government clarifies what it is trying to achieve and how it intends to use the information that will be provided by project proponents.

Recommendations:

The State Government should clarify:

- the objective of the Local Jobs Bill, its desired outcomes and how it will solve the problem (once a problem has been clearly defined); and
- how it intends to use the information that is to be collected under the Local Jobs Bill.

5. Approvals, red tape and regulatory uncertainty

Common issues affecting businesses and investment

CCIWA consults extensively with our members to understand how the design, implementation and administration of government policy and regulation affects the ability of businesses to operate, invest and grow.

In recent months, CCIWA has received feedback from our members to inform our response to the following reviews and consultation processes:

- Economic Regulation Authority (ERA) Business Licencing Reform Inquiry;
- Local Government Act Review – Phase 2;
- Streamline WA (including the *Environmental approvals in the mining sector* regulatory reform project⁴); and
- Federal Government Deregulation Taskforce work program, which includes a project focusing on “getting major infrastructure projects up and running sooner”⁵.

We also receive regular feedback from members on regulatory issues via our [Red Tape Portal](#) and policy committee meetings.

³ One-on-one consultation meeting between JTSI and CCIWA, 25 November 2019.

⁴ <https://www.wa.gov.au/organisation/departments-of-mines-industry-regulation-and-safety/environmental-approvals-the-mining-sector>

⁵ <https://treasury.gov.au/review/deregulation-taskforce>

In assessing the multitude of policy and regulatory issues highlighted by our members, CCIWA has identified some recurring themes and characteristics that contribute to ineffective regulation or government processes that hinder the ability of businesses to operate, invest and grow. These include:

- excessive paperwork;
- delays in approvals;
- excessive or unnecessary information requests;
- duplicated requests for similar information by different regulators or agencies;
- excessive regulatory rules and complicated processes that stop a business getting things done;
- inconsistent and overlapping approaches by regulators; and
- poorly designed regulations.

Most of the contributing factors to poorly administered regulation listed above are related to the management of information provided by businesses to government to aid decision making. This can include information provided as part of a project approval process, licensing and permit applications or regular reporting requirements (e.g. reporting requirements under State Agreements). These issues cut across all levels of government and affect businesses of all sizes in every sector, not just major projects.

CCIWA considers that the provision of information by businesses is crucial for enabling informed government decision making. However, feedback from our members consistently highlights that the way information is used and shared within and across government agencies requires improvement. In particular, we regularly observe a lack of communication and awareness of government activities across portfolios and agencies. This can further contribute to duplicative requests for information from government agencies interacting with businesses.

Delays and inefficiencies with project approvals

In addition to the red tape issues listed above, CCIWA sought input from businesses regarding approvals processes for major projects as part of our involvement in Streamline WA's *Environmental approvals in the mining sector* regulatory reform project. Common issues affecting major project proponents include:

- **Management and resourcing issues:**

Many businesses have experienced problems with documents that sit in departmental inboxes and are not assessed. This delays agency staff from opening and assessing applications – this often causes an additional 30 days to permit applications.

It appears that some agencies do not have the flexibility to engage additional resources to approve projects in a timely manner, causing a backlog of projects. Some agencies insist that they can only assess two projects from a business at one time.

- **Design issues:**

There are sometimes requests for information and excessive detail on matters covered under other approval processes, causing duplication and additional delays.

There is a lack of risk-based assessment. Some court cases have caused agencies to become very conservative and subject all proposals to the highest possible level of assessment and public review.

We consider that if SWAs are introduced as a new approval process for major projects, they will be subject to the red tape issues and delays discussed above. Furthermore, we note that imposing an additional approval process is inconsistent with the work being undertaken by Streamline WA.

Consistent feedback from our members on red tape issues indicates that the SWA approval process will add time and cost to the project development process. Any additional regulation or approval requirements that aren't offset with a reduction in the regulatory burden in other areas makes WA projects less attractive. In turn, delaying projects will only serve to delay local opportunities for businesses and workers.

As such, we urge the Government to consider options for achieving its desired outcomes that do not rely on the creation of a new approvals process and duplicative reporting requirements. This could be achieved by closely aligning the State Government's approach to the requirements, scope and coverage of the Australian Jobs Act and AIPPs.

Alignment with the Australian Jobs Act and AIPP

The Consultation Paper suggests that the State Government intends to align the Bill and SWAs with the existing reporting framework under the *Australian Jobs Act*. We consider that the approach of aligning the Local Jobs Bill with the Australian Jobs Act in terms of nomenclature, threshold, coverage, timing and reporting requirements has merit as it could:

- provide greater certainty and clarity for proponents as it leverages an existing reporting framework;
- support policy consistency between federal and state-based schemes;
- facilitate the collection of state-based project information to better understand local supply chain opportunities; and
- reduce duplication, cost and time for proponents (relative to a stand-alone reporting framework).

However, there are aspects of the Consultation Paper and proposed SWA that indicate the scope and coverage of the Local Jobs Bill will diverge from the Australian Jobs Act. For

example, Page 3 of the draft SWA states that “In circumstances where an AIPP is not required under the *Australian Jobs Act 2013* but the Local Jobs Bill is triggered, the intention is that a Skilled Work Agreement will consist of a separate document...”

If the Local Jobs Bill and Australian Jobs Act were truly aligned, there should be no instances where the requirement for a SWA is triggered, but the requirement for an AIPP is not triggered. Furthermore, the Consultation Paper and SWA do not explain under what circumstances a SWA would be required when an AIPP is not required. This creates considerable uncertainty for proponents as it is unclear which projects will be covered by the Local Jobs Bill.

Further adding to this uncertainty is the intent to provide the relevant Minister ‘discretion’ for capturing projects in other industries outside the scope and coverage proposed in the Consultation Paper. Enabling the Minister to apply the Local Jobs Bill to projects in an ad-hoc manner would only serve to increase regulatory uncertainty for proponents.

The Local Jobs Bill and SWA also diverges from the Australian Jobs Act by requiring reporting on workforce estimates, employment strategies and skills development associated with a major project.

Recommendations:

The State Government should:

- avoid creating a new approvals process for major projects as this will create project delays, increase costs and reduce productivity;
- pursue a more streamlined approach to achieving this objective by leveraging the existing framework under the Australian Jobs Act and AIPPs – this could be achieved by:
 - collecting state-based information via an appendix to AIPPs, rather than a separate approvals process involving a SWA; or
 - collaborating with the Federal Government to amend the existing reporting framework under the Australian Jobs Act to include regional and state-based project information, as well as employment and training data within one template; and
- provide industry with greater certainty regarding the scope and coverage of the Local Jobs Bill by properly aligning it with the Australian Jobs Act.

6. Reporting, enforcement and verification of outcomes

We reiterate our concerns about the lack of clarity and inconsistency regarding the Government’s intent with the Local Jobs Bill and SWAs as it has direct implications for how reporting by project proponents will interact with the proposed enforcement and verification regimes.

If the State Government pursues an option that fully aligns with the Australian Jobs Act, then we question the need for what appears to be punitive enforcement and verification regimes. Enforcement and verification powers should be proportional to the government's objective and desired outcomes. If it is the Government's intention to better understand the capacity and capability of local industry, as well as potential skills gaps, then the need for heavy-handed enforcement and verification provisions is diminished.

CCIWA also notes that the timing of reporting under the Australian Jobs Act occurs early in the project development process. It is unreasonable to expect a proponent to 'commit' to certain procurement activities or employment targets when there is still considerable potential for the scope of a project to change. Initial reporting under the Local Jobs Bill should therefore be considered an estimate that can be adjusted as conditions evolve over the life of the project.

Also of concern is the absence of any assessment criteria to guide the completion of a proponent's SWA. In the absence of clear criteria, a proponent has no understanding of what is required to have their SWA "approved" by the Minister. This further adds to the lack of clarity and regulatory uncertainty surrounding the Local Jobs Bill.

Members have advised CCIWA that they already provide much of the information planned to be captured under the Local Jobs Bill and Skilled Work Agreements. This suggests that when introducing new reporting requirements via the Local Jobs Bill, the State Government should seek to streamline or rationalise the number of channels it is using to collect information from industry.

A CCIWA member has also referred to the State Government's approach to reporting in other processes which can lead to expansion of the practical impact of regulation, namely in monitoring compliance with the domestic gas reservation (domgas) policy. In its desire to be certain that a proponent is (and will continue to be) in compliance with the relatively simple matter of reserving gas to the effect of 15 per cent of LNG production for domestic use, JTSI's reporting requirements stretch into the annual provision of detailed reserves, production, and contracted and uncontracted volumes information. This can be highly commercially sensitive and onerous to produce, and it is not clear that it has contributed to a clear and consistent picture for the State.

Recommendations:

The State Government should:

- ensure reporting requirements under the Local Jobs Bill, including timing and frequency, should align with the Australian Jobs Act and AIPPs;
- ensure that the Local Jobs Bill does not result in frivolous, ad-hoc requests for information from government agencies;

- seek to offset new reporting requirements in other areas of government or consolidate this information so proponents only need to submit it to government once.

Appendix 1: Response to consultation questions

1. Are the proposed thresholds appropriate?

The \$500 million threshold is appropriate to the extent that it aligns with the *Australian Jobs Act 2013*. Projects under this threshold should not be covered by the Local Jobs Bill.

2. Are the proposed sectors and coverage appropriate?

The sectors and coverage of the Local Jobs Bill should strictly align with those of the Australian Jobs Act. As discussed in the body of our submission, CCIWA is concerned that the Consultation Paper and draft SWA indicate that the scope and coverage of the Local Jobs Bill diverges from that of the Australian Jobs Act.

3. Is the proposed overall intent of the Skilled Work Agreements appropriate?

As discussed in the body of our submission, the State Government's overall intent for the Skilled Work Agreements is unclear. This is due to the lack of an adequate problem definition, as well as inconsistency in the messaging and language used on the Consultation Paper, SWA and during consultation sessions.

While we support efforts to demonstrate full, fair and reasonable access to supply chain opportunities, we do not support SWAs being used as a punitive instrument for coercing businesses to undertake certain business practices. If there is a knowledge gap preventing the State Government from understanding capacity and capability constraints in local industry, the Local Jobs Bills and supporting framework should be designed to address this.

It is also important that the regime that is ultimately introduced by the State Government recognises that the scope and content of major projects changes over time.

4. What level and frequency of reporting is appropriate?

The timing and frequency of reporting should strictly align with the Australian Jobs Act 2013. The frequency of reporting should be fixed and not occur on an ad-hoc basis.

5. Intervention in the project cycle – at what point should a Skilled Work Agreement be required and how should the approvals process be structured?

A Skilled Work Agreement should be submitted at a time that aligns with reporting requirements under the Australian Jobs Act 2013. We consider it unnecessary for SWAs to be submitted via an additional approvals process as this will impose additional delays, cost and uncertainty for proponents with no clear benefits.

Instead, state-based project information could be provided as an addendum or appendix to AIPPs submitted under the Australian Jobs Act. This would provide a more streamlined approach to information collection by the State Government.

6. Will alignment with the *Australian Jobs Act 2013*, as an approach to reducing duplication, be effective?

Alignment with the Australian Jobs Act 2013 is a sound approach. However, we are concerned that the approach proposed in the Consultation Paper and SWAs will create a substantial amount of additional reporting requirements for proponents. Again, we reiterate our concerns that the Local Jobs Bill and SWAs diverge substantially from the Australian Jobs Act and AIPPs – this needs to be addressed by the State Government going forward.

7. Is the proposed enforcement regime appropriate?

CCIWA is concerned the proposed enforcement and verification regimes indicate that the Local Jobs Bill and SWAs will be used as a heavy-handed, punitive instrument against industry for undertaking activities that comply with the Australian Constitution, Free Trade Agreements and the Australian Jobs Act. This reiterates the importance of the Government clarifying its objectives and intent, as well as better aligning the proposed regime with the Australian Jobs Act so that industry can better determine if a proposed enforcement regime is appropriate.