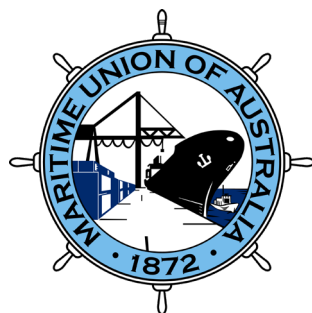




# **Reform of the operation of the *Australian Jobs Act 2013***

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MUA Policy Briefing Paper



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## **What is the objective of the Australian Jobs Act 2013 (Jobs Act)?**

The Jobs Act is a Labor policy, initiated by the then Minister for Climate Change, Industry and Innovation, the Honourable Greg Combet MP as part of the Labor Government's Industry and Innovation Statement, *A Plan for Australian Jobs*, released on 17 February 2013. The Act commenced on 27 December 2013.

The Explanatory Memorandum (EM) for the Bill describes the key objective of the Bill as being to support the creation and retention of Australian jobs by requiring Australian Industry Participation (AIP) plans for major projects to ensure that Australian entities have full, fair and reasonable opportunity to bid for key goods and services.

The EM said that under the Bill any domestic project worth \$500 million or more must demonstrate how they will provide opportunities to local businesses. The Bill also created a new Australian Industry Participation Authority (the Authority) to oversee these changes which will give local businesses greater opportunities. The Bill provides the Authority with a sufficient range of powers to not only ensure compliance with the Bill, but also to administer a range of other initiatives aimed at building capability and capacity within local business to win work on major projects.

## **The MUA analysis of the operation of the Act in relation to the LNG industry**

### **Applying the Australian participation provisions of the *Australian Jobs Act 2013* to the sea transportation elements of LNG projects**

In its submission to the Senate Inquiry into Australian shipping of March 2019 the MUA submitted that more needs to be done to ensure adherence with the object of the Jobs Act in relation to offshore and onshore LNG projects.

In that submission we stated that it is our assessment that AIP plans for LNG projects are either not, or not adequately, providing for Australian entities to have full, fair and reasonable opportunity to bid for the transportation services involving the movement of LNG from Australian LNG projects to overseas markets.

At March 2019 there were 10 producing LNG projects in Australia (that remains the position), requiring the equivalent of approximately 40-50 LNG tankers to transport the LNG cargo to overseas markets.<sup>1</sup> Just four of those ships (less than 10%) are Australian registered ships employing Australian seafarers. Those 4 Australian ships are all operated by North West Shelf Shipping Services Company (NWSSSC) for Woodside's NWS LNG project, the first Australian LNG project to commence operations, in 1989.

Since the MUA submission was lodged, the maritime unions have been advised that Woodside will be phasing out these 4 Australian owned and crewed LNG tankers so that by 2024, there will be no Australian LNG tankers of the 50 or so transporting Australian LNG. Part of the alleged rationale for the decision is that the change from long term contract selling of LNG to a spot market has resulted in the shipping being arranged by the buyer under Free-On-Board (FOB) shipping contracts

1. Queensland Curtis LNG - BG Group - Curtis Island, Queensland; Karratha Gas Plant - North West Shelf Venture operated by Woodside Petroleum in Karratha, Western Australia; Pluto LNG, operated by Woodside Petroleum in Karratha, Western Australia; Darwin LNG, operated by ConocoPhillips; Gladstone LNG, operated by Santos Limited; Australia Pacific LNG, operated by Origin Energy; Wheatstone LNG, operated by Chevron Corporation; Gorgon LNG, operated by Chevron Corporation; Ichthys, operated by Inpex in the Browse Basin, offshore Western Australia;

rather than the predominantly current arrangement where the seller arranges the shipping under Delivered Ex-Ship (DES) shipping contracts and is responsible for bearing all the costs and risks until the freight is delivered to the destination port.

Six new LNG projects have commenced since the Jobs Act commenced in 2013. Not one Australian LNG ship is utilised, nor is one Australian seafarer employed in the transportation of LNG by those 6 projects.

It is the view of the MUA that one of the key reasons why the Jobs Act has failed to secure any level of Australian participation in the transportation of LNG from these projects is that the project proponents submitting Australian Industry Participation plans have failed to properly specify the standards for shipping services for the project that are to be acquired by the procurement entity as required by s35(1)(e)(i) of the Jobs Act, and that the Authority has failed to address this in its compliance role.

We submitted that if the project proponent was specifying appropriate labour standards for the workforce elements of the shipping services required for the transportation of Australian LNG, being the International Labour Organisation (ILO) Core Labour Conventions<sup>2</sup>, given effect through the *Fair Work Act 2009* (FW Act) and the Modern Awards and enterprise agreements made under the FW Act, then Australian entities may have had a full, fair and reasonable opportunity to bid for those transportation services.

In the absence of those labour standards, foreign shipping service providers have been given a free ride and monopoly access to those LNG transportation services, contrary to the national interest rationale for introduction of the Jobs Act.

The MUA submitted at the time that either the administration of the Jobs Act be strengthened, or it be amended to ensure that a fair share of the commercial opportunities, such as the transportation of LNG to foreign markets under long term contracts of affreightment (COA), are taken up by Australian entities.

## **The MUA's current view on remedies to ensure the Jobs Act operates as intended**

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The MUA's current view on remedies to increase the opportunity for Australian ship transportation entities to have full, fair and reasonable opportunity to bid and win contracts for both the sea freight transportation services for carriage of the production outputs of major projects, resource projects in particular, and the support vessel component of offshore energy projects, to increase the employment of Australian seafarers are:

- That the Australian Government utilise the “legislative rule making” power provided by s128 of the Jobs Act<sup>3</sup> to specify the minimum standards for procurement of sea freight transportation services and offshore support vessel services that must be published by the procurement entity

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Prelude (FLNG vessel), operated by Shell - [https://www.jtsi.wa.gov.au/docs/default-source/default-document-library/wa-Ing-profile-0620.pdf?sfvrsn=e9f0711c\\_4](https://www.jtsi.wa.gov.au/docs/default-source/default-document-library/wa-Ing-profile-0620.pdf?sfvrsn=e9f0711c_4)

2. ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

3 The rule making power in the Jobs Act:

Section 128 Legislative rules

The Minister may, by legislative instrument, make rules (legislative rules) prescribing matters:

(a) required or permitted by this Act to be prescribed by the legislative rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

in accordance with s35(1)(e)(i) of the Jobs Act, and that must be applied by the procurement entity when inviting and approving tenders for the supply of sea freight transportation and offshore support vessels services. Alternatively, or additionally, the legislative rule making power should, in cases where the ship transportation is to be arranged under FOB shipping contracts, require the AIP plan entity, as the seller of product to in turn require the buyer to meet Australian content requirements in the shipping of their freight purchases.

- Consistent with Recommendation 2 of the *Review of the Implementation of the Australian Jobs Act 2013* of November 2018<sup>4</sup>, which recommended that the Australian Industry Participation Authority (AIP Authority) consider enhancing its communication strategy to promote AIP plans and outcomes, and raise industry awareness through information dissemination, the AIP Authority:
  - ▶ Publish and actively promote the standards for sea freight transportation services and offshore support vessel services identified in the proposed rule; and
  - ▶ Report annually on compliance with the legislative rule as proposed, including the number of Australian ships and associated Australian jobs that are procured annually as a result of adoption and application of the proposed legislative rule; and
- That consistent with the MUAs 20 Point Plan to rebuild the Australian shipping and maritime industries, the Australian Government incentivise Australian ship service providers to ensure they are prepared and willing to charter or invest in ships that employ Australian seafarers and are Australian registered, including on the Australian International Ship Register (AISR) (requiring minor reform of the *Shipping Registration Act 1981*) to be in a position to tender for the provision of Australian ships for the sea transportation and offshore support vessel services elements of major projects under AIP plans.

Although there are likely to be few new LNG projects in the future, there remain a number of projects for which AIP plans are required involving a shipping component, and the next wave of large scale carbon neutral manufacturing projects that could emerge in future years, such as green steel and hydrogen, to name just two, along with the many offshore wind energy production projects in the pipeline suggests that the Jobs Act could still be made to operate more effectively in creating maritime jobs for Australians.

A review of AIP plans on foot over the period 2018 to 2020 (involving some 66 projects) reveals there are around 12 projects that will involve a shipping services requirement, of which at least three include international sea transportation services, those being:

- Woodside Burrup Pty Ltd - Pluto Train 2 Project;
- Shell Australia Pty Ltd – Crux gas project; and
- Sheffield Resources Limited (SFX)- Thunderbird Mineral Sands Project<sup>5</sup>.

<sup>4</sup> Department of Industry, Innovation and Science, Report of the *Review of the Implementation of the Australian Jobs Act 2013*, 26 November 2018, <https://www.industry.gov.au/sites/default/files/2019-01/review-of-the-jobs-act-2013-report.pdf>

<sup>5</sup> Department of Industry, Science, Energy and Resources, Major project Australian Industry Participation plan summaries <https://www.industry.gov.au/regulations->

## **The minimum standards for procurement of sea freight transportation and offshore support vessel services that need to be specified in a Jobs Act s128 Rule**

It is the view of the MUA that a Jobs Act legislative rule should specify the following minimum standards for inclusion in the specifications for tenders for ship service providers to provide transportation services for the carriage of outputs, and for offshore support vessel services from major resource and energy projects:

- That the ship be registered on the Australian General Shipping Register (AGSR), or if more than one ship is required, that the procurement entity have in place an agreement jointly made with Maritime Industry Australia Ltd (MIAL) and the three maritime unions acting under the auspices of the ACTU and ITF, on an appropriate mix of ships on the AGSR and on the Australian International Shipping Register (AISR) for its project;
- That seafarers engaged for the ship or ships be employed under a single collective agreement with Australian maritime unions made in accordance with the *Fair Work Act 2009* and approved by the Fair Work Commission (FWC);
- That irrespective of whether the procurement entity takes advantage of the shipping taxation incentives, the requirements to have in place a training plan that meets the training requirements specified in Part 2 of the Shipping Reform (Tax Incentives) Regulation 2012 i.e. to have a cadet/trainee in Master, Engineer and Rating/Steward on each ship, be applied;
- That seafarers engaged for the ship or ships hold Australian vocational education and training (VET) qualifications specified in the Maritime Training Package and occupational licenses (Certificates) specified in Marine Orders 70 to 73 made by AMSA under the *Navigation Act 2012*;
- That the beneficial shipowner has an agreement with Australian maritime unions that it will comply with the Neptune Declaration and IMO Protocols for addressing seafarer crew changes.

In the case of ship transportation services where the shipping is to be arranged under FOB shipping contracts, the legislative rules require the buyer to meet the following Australian content and labour relations requirements:

- A minimum of 33 per cent of the ships be Australian registered on the AGSR and employ Australian seafarers;
- A further 33 per cent of the ships be crewed with Australian seafarers;
- That Australian seafarers engaged on the ship or ships for the project be employed under a single collective agreement with Australian maritime unions made in accordance with the *Fair Work Act 2009* and approved by the Fair Work Commission (FWC);
- That international seafarers on the ships be engaged under an approved International Transport Workers Federation (ITF) collective bargaining agreement (CBA);
- That Australian seafarers engaged on the ship or ships for the project hold Australian vocational education and training (VET) qualifications specified in the Maritime Training Package and occupational licenses (Certificates) specified in Marine Orders 70 to 73 made by AMSA under the *Navigation Act 2012*;

- That the beneficial shipowner of any ships to be used on the project is registered under corporation and tax laws in a nation that has ratified all ILO core Labour Conventions and the ILO Maritime Labour Convention as well as all IMO Conventions ratified by Australia;
- That the beneficial shipowner be required to specify the work health and safety (WHS) legislation that will apply to seafarers on the ships, and that there is an agreement with the Australian Maritime Safety Authority (AMSA), Australian maritime unions and the ITF as to which regulator will have the WHS compliance and enforcement responsibility in a joint agreement with AMSA, Australian maritime unions and the ITF; and
- That the beneficial shipowner has an agreement with the Australian maritime unions and the ITF that it will comply with the Neptune Declaration and IMO Protocols for addressing seafarer crew changes.