

Western Australian Jobs Bill 2017

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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

Western Australian Jobs Bill 2017

A Bill for

An Act to provide for —

- **the Western Australian Industry Participation Strategy; and**
- **participation plans in connection with the supply of goods or services to or for certain agencies or the State; and**
- **the determination of strategic projects; and**
- **related matters.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Western Australian Jobs Act 2017*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 other than sections 3 and 4 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

- (1) In this Act, unless the contrary intention appears —

agency means any of the following —

- (a) an agency as defined in the *Financial Management Act 2006* section 3 other than a university listed in Schedule 1 to that Act;
- (b) a government trading entity;
- (c) a person or body, or a person or body of a class, prescribed for the purposes of this paragraph;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

goods or services includes, without limitation, the following —

- (a) goods or services for or in connection with a public work as defined in the *Public Works Act 1902* section 2;
- (b) things of a kind prescribed to be goods or services for the purposes of this paragraph;

government trading entity means any of the following —

- (a) a body established by the *Electricity Corporations Act 2005* section 4(1);

- (b) a port authority established by the *Port Authorities Act 1999* section 4(1);
- (c) a body established by or under the *Water Corporations Act 1995* section 4;
- (d) the body established by the *Western Australian Land Authority Act 1992* section 5(1);
- (e) a subsidiary of a body referred to in paragraph (a), (b), (c) or (d);

local industry means suppliers of goods produced, or services provided, in Western Australia, another State, a Territory or New Zealand;

Minister responsible, for a procurement agency, means —

- (a) in the case of a public sector body as defined in the *Public Sector Management Act 1994* section 3(1) — the Minister to whom the administration of the procurement agency is for the time being committed by the Governor;
- (b) in any other case — the Minister responsible for the administration of the Act that establishes or continues the procurement agency;

offer to supply means a bid, tender or other offer to supply goods or services;

participation plan has the meaning given in section 11(1);

prescribed means prescribed by the regulations;

procurement agency, in relation to a WAIPS supply, means the agency responsible for conducting the procurement process for the WAIPS supply;

procurement decision means a decision made in the course of, or as a result of, a procurement process;

procurement process means a process to procure a supply;

prospective supplier, in relation to a WAIPS supply, means a person or body that makes an offer to supply in the course of the procurement process for the WAIPS supply;

s. 4

1 ***small or medium enterprise*** means a business or undertaking
2 that has less than 200 full-time equivalent employees;
3 ***supply*** means a supply of goods or services to or for an agency
4 or the State;
5 ***supply contract*** means a contract or other agreement for a
6 supply;
7 ***WAIPS*** means the Western Australian Industry Participation
8 Strategy under section 5, as in force from time to time;
9 ***WAIPS supply*** means a supply that meets the criteria prescribed
10 for the purposes of section 5(1).

11 (2) A reference in this Act to goods or services includes a reference
12 to goods and services.

13 **4. Act binds Crown**

14 This Act binds the Crown in right of Western Australia and, so
15 far as the legislative power of the Parliament permits, the Crown
16 in all its other capacities.

**Part 2 — Western Australian Industry
Participation Strategy**

5. Western Australian Industry Participation Strategy

- (1) The Minister must develop and implement a written strategy about the participation by local industry in activities for or in connection with a supply that meets the criteria prescribed for the purposes of this subsection.
- (2) The strategy is to be called the Western Australian Industry Participation Strategy.
- (3) The Minister may, from time to time, amend or replace the strategy.
- (4) The strategy is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

6. WAIPS provisions

Without limiting section 5, the WAIPS may include the following —

- (a) different provisions for different classes of supply, participation plan or supply contract;
- (b) guidelines as to its application and procedures to be followed in complying with it.

7. WAIPS objectives

In developing, amending or replacing the WAIPS, the Minister must have regard to the following objectives —

- (a) promoting the diversification and growth of the Western Australian economy by targeting supply opportunities for local industry;
- (b) providing suppliers of goods or services with increased access to, and raised awareness of, local industry capability;

s. 8

- 1 (c) encouraging local industry to adopt, where appropriate,
2 world's best practice in workplace innovation and the
3 use of new technologies and materials;
- 4 (d) promoting increased apprenticeship, training and job
5 opportunities in Western Australia;
- 6 (e) promoting increased opportunities for local industry to
7 develop import replacement capacity by giving local
8 industry, in particular small or medium enterprises, a
9 full, fair and reasonable opportunity to compete against
10 foreign suppliers of goods or services.

11 **8. WAIPS principles**

12 The WAIPS must take into account and be consistent with the
13 following principles —

- 14 (a) the need to achieve value for money, as the primary
15 consideration, when making procurement decisions;
- 16 (b) the need to ensure probity and accountability for
17 procurement processes and procurement decisions.

18 **9. WAIPS to be consistent with other requirements**

19 The WAIPS must be consistent with the following —

- 20 (a) the *State Supply Commission Act 1991* and supply
21 policies under that Act;
- 22 (b) any other written law that relates to the procurement of
23 goods or services by agencies;
- 24 (c) section 92 of the Constitution of the Commonwealth.

25 **10. WAIPS to be publicly available**

26 The Minister must cause the WAIPS to be published on a
27 website maintained by or on behalf of the Department.

Part 3 — Participation plans

11. Participation plan

- (1) A *participation plan* is a written statement that outlines, in accordance with the WAIPS, the commitments of a prospective supplier in relation to the participation by local industry, in particular small or medium enterprises, in activities for or in connection with a WAIPS supply.
- (2) Without limiting subsection (1), if a determination is made under section 17 in respect of a WAIPS supply, the commitments outlined in a participation plan for the WAIPS supply must address the matters specified in the determination.
- (3) A participation plan can be a part of a document or a separate document.

12. Procurement agency to require participation plan

- (1) The procurement agency for a WAIPS supply must require each prospective supplier to submit a participation plan in the course of the procurement process for the WAIPS supply.
- (2) The regulations may provide that the obligation in subsection (1) does not apply to a procurement agency —
- (a) in relation to a WAIPS supply of a prescribed class; or
 - (b) in prescribed circumstances.

13. Participation plan to be considered in procurement process

- (1) The procurement agency for a WAIPS supply must assess and consider the participation plan submitted by a prospective supplier when evaluating the offer to supply made by the prospective supplier.
- (2) The assessment and consideration of the participation plan must be carried out in accordance with the WAIPS.

s. 14

1 **14. Participation plan commitments to be incorporated in**
2 **supply contract**

3 The procurement agency for a WAIPS supply must ensure that a
4 supply contract entered into with a prospective supplier in
5 relation to the WAIPS supply —

- 6 (a) incorporates, to the extent required by the WAIPS, the
7 commitments outlined in the participation plan of the
8 prospective supplier; and
9 (b) includes a requirement for reports to be given to the
10 procurement agency, in accordance with the WAIPS, on
11 the extent to which those incorporated commitments are
12 being, or have been, met.

13 **15. Exemption from s. 12(1)**

- 14 (1) The Minister may, in writing given to the procurement agency
15 for a WAIPS supply, exempt the procurement agency from the
16 obligation in section 12(1).
17 (2) The Minister may, in writing given to the procurement agency
18 for a WAIPS supply, amend or revoke an exemption.
19 (3) The procurement agency for a WAIPS supply must publish on a
20 website maintained by or on behalf of the agency —
21 (a) notice of an exemption given to the agency; and
22 (b) if the exemption is amended or revoked, notice of the
23 amendment or revocation.

24 **16. Delegation**

- 25 (1) The Minister may delegate the powers in section 15(1) and (2)
26 to the chief executive officer of the Department.
27 (2) A delegation must be in writing signed by the Minister.
28 (3) A delegation may authorise the chief executive officer of the
29 Department to further delegate the powers to another officer of

- 1 the Department in accordance with any conditions specified in
2 the delegation.
- 3 (4) A person exercising a power that has been delegated to the
4 person under, or as authorised under, this section is taken to do
5 so in accordance with the terms of the delegation unless the
6 contrary is shown.

Part 4 — Strategic projects

17. Determination of strategic project

(1) If the Minister considers that a WAIPS supply is of strategic significance to the Western Australian economy, the Minister may, in writing given to the procurement agency for the WAIPS supply, determine —

- (a) that the WAIPS supply is a strategic project; and
- (b) that the participation plans required by the procurement agency in respect of the WAIPS supply are to outline commitments addressing matters specified in the determination.

(2) The Minister must not make a determination in respect of a WAIPS supply unless the WAIPS supply meets the criteria prescribed for the purposes of this subsection.

(3) The Minister may, in writing given to the procurement agency for a WAIPS supply, amend or revoke a determination.

(4) The procurement agency for a WAIPS supply must publish on a website maintained by or on behalf of the agency —

- (a) notice of a determination given to the agency; and
- (b) if the determination is amended or revoked, notice of the amendment or revocation.

18. Consultation

(1) Subsection (2) applies if —

- (a) the Minister proposes to make, amend or revoke a determination under section 17; and
- (b) the Minister is not the Minister responsible for the procurement agency for the WAIPS supply to which the determination relates.

- 1 (2) The Minister must consult with the Minister responsible for the
2 procurement agency for the WAIPS supply before making,
3 amending or revoking the determination.

Part 5 — Reporting

19. Minister to report on implementation of Act and WAIPS

- (1) After the end of each financial year the Minister must prepare a report on the implementation of this Act and the WAIPS in the financial year.
- (2) The Minister must cause the report to be laid before each House of Parliament, or dealt with under section 21, before 30 November next following the end of the financial year to which the report relates.

20. Agencies to provide information to Minister

- (1) An agency must, on request, give the Minister any information the Minister requires for the purposes of preparing a report under section 19(1).
- (2) When giving information to the Minister under subsection (1) an agency may —
- (a) identify information that the agency considers should not be included in the report because of its confidential or commercially sensitive nature; and
 - (b) request that the identified information not be included in the report.
- (3) The Minister may, but is not required to, comply with a request under subsection (2)(b).

21. Laying report before House of Parliament when House not sitting

- (1) This section applies if when the Minister is ready to lay a report prepared under section 19(1) before a House of Parliament —
- (a) the House is not sitting; and
 - (b) the Minister is of the opinion that the House will not sit before the day referred to in section 19(2).

- 1 (2) The Minister must transmit a copy of the report to the Clerk of
2 the House.
- 3 (3) A copy of the report transmitted to the Clerk of the House is
4 taken to have been laid before the House.
- 5 (4) The laying of a copy of the report that is taken to have occurred
6 under subsection (3) must be recorded in the Minutes, or Votes
7 and Proceedings, of the House on the first sitting day of the
8 House after the receipt of the copy by the Clerk.

Part 6 — Miscellaneous

22. Obligation imposed on department

To the extent that this Act imposes an obligation on an agency that is a department of the Public Service, the obligation is imposed on the chief executive officer of the department.

23. Obligation imposed under Act overrides other obligations

If an obligation imposed on an agency under this Act conflicts or is inconsistent with an obligation imposed on the agency under the Act that establishes or continues the agency, the obligation imposed under this Act prevails to the extent to which the obligations conflict or are inconsistent.

24. Effect of contravention of Act or WAIPS

(1) No civil or criminal liability attaches to an agency or any other person only because the agency or other person has contravened this Act or the WAIPS.

(2) A procurement decision made, or supply contract entered into, in respect of a WAIPS supply is not invalid only because an agency or any other person has contravened this Act or the WAIPS in relation to the WAIPS supply.

25. Regulations

The Governor may make regulations prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for giving effect to this Act.

26. Review of Act

(1) The Minister must carry out a review of the operation and effectiveness of this Act before the 5th anniversary of the day on which this section comes into operation.

- 1 (2) The Minister must prepare a report based on the review and, as
2 soon as is practicable after the report is prepared, cause it to be
3 laid before each House of Parliament.

4

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
agency	3(1)
Department	3(1)
goods or services.....	3(1)
government trading entity	3(1)
local industry	3(1)
Minister responsible.....	3(1)
offer to supply	3(1)
participation plan	3(1), 11(1)
prescribed.....	3(1)
procurement agency	3(1)
procurement decision.....	3(1)
procurement process	3(1)
prospective supplier	3(1)
small or medium enterprise.....	3(1)
supply.....	3(1)
supply contract.....	3(1)
WAIPS.....	3(1)
WAIPS supply	3(1)