



# Overview of the proposed Industry Participation Framework

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## Have your say

This Overview has been prepared to guide consultation on the Industry Advocate Bill and the revised South Australian Industry Participation Policy and Procedural Guidelines.

Your feedback will be used to finalise the Industry Advocate Bill and South Australian Industry Participation Policy and Procedural Guidelines.

Comments and submissions will be accepted until 5.00pm on Friday, 31 March 2017.

**For more information, please visit:**

[www.yoursay.sa.gov.au](http://www.yoursay.sa.gov.au)

[www.industryadvocate.sa.gov.au](http://www.industryadvocate.sa.gov.au)

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## Background

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South Australia has led the way in establishing the Industry Advocate role in 2013 to help businesses based in South Australia to take advantage of opportunities from the South Australian Government's procurement, infrastructure projects and grant funding activities.

The South Australian Industry Participation Policy (SAIPP) was redesigned in late 2013 to deliver greater economic benefit to the State through more jobs, supply opportunities and investment arising from Government's expenditure.

Establishing the Industry Advocate's role in legislation, together with a commitment from the Government to maintain the SAIPP provides industry with the confidence they need to fully embrace these initiatives and continue to contribute to and invest in the South Australian economy.

## Overview of the proposed Industry Participation Framework

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The proposed Industry Participation Framework consists of four main parts:

1. The Industry Advocate Bill 2017 (the Bill);
2. The South Australian Industry Participation Policy (SAIPP);
3. SAIPP Procedural Guidelines; and
4. Benefits Realisation and Reporting Guidelines.

### The Industry Advocate Bill

The Bill sets out the objectives of the SAIPP and confirms the South Australian Government's commitment to the establishment and maintenance of the SAIPP. It also establishes the Industry Advocate as a statutory position with specific functions and powers to further the objectives of the SAIPP.

### The SAIPP

The SAIPP has been revised significantly to incorporate into a single, comprehensive framework the strategic procurement policies regarding steel, regional development, Aboriginal participation, innovation and growth, investment attraction and special economic zones.

Unlike its predecessor, the revised SAIPP sets the priorities and methodology for furthering these objectives within a strategic policy framework. As a high level framework it is not intended to describe in detail the way that the Government of South Australia conducts acquisition planning and tendering.

## **Procedural Guidelines**

Procedural Guidelines have been developed and include:

- the roles and responsibilities in implementing the SAIPP;
- the requirements for various acquisition and procurement activities;
- the thresholds and coverage at which each requirement will apply;
- the steps and processes, the actions and requirements applying on businesses and government under any specific requirement; and
- the benefits realisation requirements that apply including reporting obligations.

Tendering requirements, templates and scoring assessment criteria will assist agencies to apply the SAIPP.

## **Benefits Realisation and Reporting Guidelines**

Benefits Realisation is a means of validating whether proposed projects and programs can deliver positive outcomes that specifically support the strategic objectives of the Policy. It provides a practical framework for defining and measuring results from a range of contracts, expenditure and procurement reforms.

Following consultation on the SAIPP and Procedural Guidelines, a Benefits Realisation and Reporting Guideline will be developed with key stakeholders to monitor how the Policy performs against the following framework:

- Employment for residents of South Australia;
- investment and capital expenditure that builds capacity in the South Australian economy;
- retention of economic benefit to South Australia or a region through the use of suppliers who employ and source inputs from South Australia or a region; and
- expanded economic development (see 4 below), including economic participation for disadvantaged and socially excluded groups.

It is proposed that the Industry Participation Plan (IPP) and Economic Contribution Test (ECT) be developed into 'online' forms that make it quicker and easier for businesses to enter information as well as reducing administrative burden on government staff through automated scoring. The OIA is also working with stakeholders to develop an automated data collection system to sit behind the forms that will streamline reporting requirements.

## Industry Advocate Bill

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### Part 1 - Preliminary

Part 1 of the Bill sets out the preliminary information including an interpretations section that explains some of the terminology used in the Bill.

### Part 2 – Establishment of SAIPP

Section 4 of the Industry Advocate Bill requires the Minister to establish the Industry Participation Policy.

It also requires the SAIPP to seek to promote:

- a) government expenditure that results in **economic development for South Australia**;
- b) **value for money in public expenditure**;
- c) the **economic development of the steel industry and other strategically important industries for South Australia**;
- d) capable businesses based in South Australia being given **full, fair and reasonable opportunity to tender and participate in government contracts**.

### Part 3 – Industry Advocate

The Industry Advocate Bill will require that the South Australian Government appoint an Industry Advocate for a term of up to 5 years.

#### Industry Advocate's Functions

The Industry Advocate's existing advocacy functions will be formalised under the Bill, including—

- a) To take action to further the objectives of the Industry Participation Policy (including, without limitation, by building the capability and capacity of businesses based in South Australia to participate in government contracts);
- b) to receive and investigate complaints by and on behalf of business and their industry representatives about the Industry Participation Policy;
- c) to make recommendations to responsible officers for procurement and principal officers of public authorities to resolve complaints, remove impediments or improve procurement practices and processes;
- d) to refer unresolved complaints and issues to the Minister for consideration;
- e) to encourage the adoption of industry participation principles by local government;
- f) to review, and assist in the negotiations for, Industry Participation Plans to ensure they comply with the Industry Participation Policy prior to the finalisation of contract conditions;

- g) to investigate and monitor compliance with the Industry Participation Policy by participants in Government contracts;
- h) to take action to promote and ensure compliance with the Industry Participation Policy, including by issuing directions to participants in government contracts requiring them to comply with their contractual obligations in respect of the Industry Participation Policy;
- i) if directed by the Minister (acting at the request of the Minister to whom the administration of the *Local Government Act 1999* is committed), to investigate compliance by local government with relevant industry participation policies;
- j) to take any other action considered necessary for the purpose of exercising the functions conferred on the Industry Advocate; and
- k) to exercise other functions conferred on the Industry Advocate by the Minister under this or any other Act.

### **Power to require information**

The Industry Advocate will be able to require information from persons in order to carry out the Advocate's functions under the Act.

It is proposed that a breach will attract a maximum penalty of \$20,000, consistent with the *South Australia Small Business Commissioner Act 2011*.

### **Part 4 - Miscellaneous**

Part 4 of the Bill sets out how the Industry Advocate will report to the Minister, confidentiality provisions, an exemption from the *Freedom of Information Act 1991* and provides for the making of regulations.

## South Australian Industry Participation Policy and Procedural Guidelines

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### Assessing Economic Contribution

Section 3 of the SAIPP sets out the framework for the assessment of economic contribution between rival tenders within a broader value-for-money framework.

It explains the rationale behind the Government's decision to assess the economic benefit to the state via employment, investment and supply chain inputs.

It also establishes how the Government will use a benefits realisation framework to assess the performance of the SAIPP.

The SAIPP applies to all procurements **and extends to subcontractor and supplier activity.**

### Economic Contribution Test

An Economic Contribution Test (ECT) will apply to procurement from \$33,000 and for grants from \$500,000.

In procurements from \$220,000 the ECT will receive a 15 per cent weighting.

In Regional South Australia, the ECT will focus on measuring the benefits to the Region as well as the State.

In services and construction, the ECT will measure employment just as the current Employment Contribution Test does.

A new ECT for the purchase of goods will be developed through a working group to enable a better assessment of supply chain benefits to the South Australian economy (see Diagram 2 in Section 3.1 of the SAIPP).

### Industry Participation Plans

Industry Participation Plans (IPP Plans) will continue to operate in the same manner as they currently do from \$4 million (\$1 million in Regional SA). They will receive a 15% weighting.

In Regional South Australia, the IPP Plans will focus on measuring the benefits to the Region as well as the State.

### Application to Grants

The scope of coverage of the SAIPP now explicitly refers to grants. It is proposed that the ECT and IPP Plans will operate as they do on procurements, but from a starting threshold of \$500,000.

## Application to private projects

Private projects which receive more than \$2.5 million in monetary support (or value-in-kind) from the Government of South Australia will need to apply the Policy. In most cases the IPP Plan will operate as an effective implementation; however, there are cases, such as large scale developments where a Tailored IPP Plan is better practice. The best approach will be determined by the Responsible Government Agency RGA after advice from the Office of the Industry Advocate.

## Strategically Important Industries - Steel

Section 5 of the SAIPP is designed to give the local steel industry a competitive advantage against low quality imports through mandating that reinforcing and structural steel used on projects funded by the South Australian Government fully meet the requirements of the relevant Australian Standards.

It adopts the requirements approved by Cabinet in November 2015 that are currently set out in the South Australian Steel Economic Participation Policy.

It applies in addition to the requirements under the standard and tailored Industry Participation Policy framework section – that is a contractor must:

- commit to the value of the economic benefit to the State from the purchase of steel in their Industry Participation Plan at the tender stage;
- commit to sourcing steel and steelwork from certified steel mills and fabricators at the tender stage;
- agree to be bound by those commitments under the contract; and
- retain records to evidence compliance with these commitments to the Industry Advocate.

### Purchase of structural and reinforcing steel

All contracts above \$4 million in metropolitan Adelaide and \$1 million in regional South Australia that involve the purchase of structural and reinforcing steel must apply a minimum 20% industry participation weighting as part of the overall evaluation criteria.

In addition, contractors must purchase reinforcing bar and mesh, pre and post tensioning strand structural steel from a steel manufacturer that has been certified by the Australasian Certification Authority for Reinforcing and Structural Steels (ACRS).

### Fabrication of structural work

All contracts that include fabrication of structural steelwork must apply a minimum 20% industry participation weighting as part of the overall evaluation criteria.

In addition, Steelwork fabricators must be certified to the relevant Construction Category in accordance with the National Structural Steelwork Compliance Scheme.

**NB:** As an interim measure, until sufficient South Australian steel fabrication businesses have achieved certification to the project Construction Category level, Section 5 of the Procedural Guidelines provide that a steel fabricator who has applied for and is in the process of certification may be engaged to conduct work.

## **Opportunities for small, start-up and Aboriginal businesses**

In Section 3.1 of the Procedural Guidelines RGAs are asked to consider opportunities for small, start-up and Aboriginal businesses operating in South Australia through the provision of a quote or tender.

## **Regional South Australia**

A greater focus on regional development from procurement activities is set out in Section 3.3 of the Procedural Guidelines including a new Regional Industry Participation Plan Template for contracts valued at \$1 million or greater.

The scoring for the Regional Economic Contribution Test (ECT) and Regional Industry Participation Plan (IPP) will remain at a minimum of 15% of the overall tender evaluation, however a greater proportion of the score will be awarded to businesses in the region vis-à-vis other parts of South Australia.

RGAs will also be required to seek at least 1 quote from a business in the region for any procurement valued above \$33,000.

## **Managing Contractors**

Where a managing contractor is appointed to manage a project that meets the above thresholds, the managing contractor will be required to apply the South Australian Industry Participation Policy as if they were a RGA under Section 3.6 of the Procedural Guidelines.

## **Design and Specifications**

In Section 3.7 of the Procedural Guidelines, designers of technical specifications and project requirements should provide suppliers that have employed or invested in South Australia with an opportunity to win contracts and sub-contracts.

Design specifications should use Australian standards, or standards regularly used in Australia, to ensure that Australian suppliers are not 'designed out' of the contract.

## Tailored Plans – Expanded Opportunities

Section 4 of the Procedural Guidelines sets out the way in which a tailored Industry Participation Plan can be used to deliver greater opportunities for economic development for the State from procurement.

RGAs are asked to consider if the procurement includes potential for:

- major infrastructure?
- the purchase of steel or steelwork?
- development of a special economic zone?
- Aboriginal business opportunities?
- investment attraction or generating innovation and growth?
- other socio-economic objectives?

In these cases, the OIA will develop a Tailored IPP Plan and may recommend lifting the weighting above minimum requirements (noting a higher minimum 20% weighting applies if purchasing steel or steelwork as part of the project).

## Workforce Participation Policy Targets

Tailored IPP Plans for major infrastructure projects will focus on employment and sub-contracting opportunities specific to the building and roads construction sectors and will include implementation of the Steel Policy and delivery of Workforce Participation Policy commitments under Section 4.2 of the Procedural Guidelines.

This small but important change addresses confusion that has existed for industry between the Workforce Participation Policy targets and the Industry Participation Plan requirements. It also streamlines and simplifies the reporting requirements for industry.

## Special Economic Zones

The Government of South Australia has already established Northern Adelaide as a special economic zone for industry participation. This zone carries a minimum 20 per cent weighting with a focus on economic contribution to the Northern Economic Plan area.

Section 4.3 of the Procedural Guidelines provide that further areas may be established as special economic zones from time to time. When a zone is established, key features can include that projects and procurements within the zone should expressly be designed to benefit the zone, for example the contract can be designed to:

- a) look to source the contracts from businesses within the Special Economic Zone, that is when seeking quotes or tender short lists, the RGA will look for options from within the Special Economic Zone;
- b) carry an increased industry participation weighting - this weighting assesses economic contribution to the region as a critical criteria in selection of contractors to perform government contracts; and
- c) ensure that wherever possible, the RGA uses panel contracts, prequalification lists and existing contract arrangements in a manner that promotes activity in the Special Economic Zone.

## Aboriginal Economic Participation

Section 4.4 of the Procedural Guidelines establishes that Aboriginal Economic Participation through Procurement is focused on developing whole-of-government procurement practices which use the existing Industry Participation Policy and Aboriginal Business Procurement Policy as the primary frameworks.

RGAs are asked to consider their forward procurement program for opportunities that are suitable for Aboriginal economic participation.

RGAs can procure directly from an Aboriginal business to the value of \$220,000 where that business is listed on South Australia's online register of Aboriginal businesses, Aboriginal Business Connect, and provides a value for money quote.

### Contracts above \$220,000 and tailoring the IPP to Aboriginal economic participation

The industry participation weighting can be increased above the minimum of 15% and accompanied by tailored measures for Aboriginal participation which are directly relevant to raising economic participation for Aboriginal businesses and employees.

Relevant considerations on when to apply this include:

- Contracts performed in Aboriginal lands or for communities with a significant Aboriginal population
- Contracts which have demonstrated Aboriginal businesses performing within it or in the supply-chain
- Contracts where the Workforce Participation Policy sets requirements for use of Aboriginal labour and raising the use of Aboriginal businesses can assist with achieving those targets

### Major projects - use of Aboriginal businesses and target group employment

Projects such as the Northern Connector have identified how a specific set of industry participation initiatives around Aboriginal economic participation can assist with the Workforce Participation Policy to deliver significant new opportunities for Aboriginal businesses in the construction industry.

### Projects in Aboriginal Lands

A Tailored Industry Participation Plan has been developed for large contracts in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands. This plan sets out the new approach of the South Australian Government to meet the minimum requirement of 30% total on-site labour hours filled by Anangu personnel (and in some cases can be lifted even further to 35% or more).

## Other socio-economic objectives

Section 4.5 of the SAIPP notes the Government of South Australia may, from time to time, seek to use procurement to drive other socio-economic objectives such as encouraging greater workforce participation or skill development opportunities for particular groups. Often this will be on a case by case basis and may entail an increased weighting or tailored industry participation plan requirements to support the objectives of the procurement. (see also Section 4.5 of the Procedural Guidelines)

## Growth, innovation and investment attraction

Section 4.6 of the SAIPP provides that a further benefit to the South Australian economy can be promoted where increased industry participation weightings are used to attract or develop significant capital investment for the State with the associated industry development, eg

- to support a priority areas of focus for the Government of South Australia in contracting for generating growth and innovation in the South Australian economy; and
- where a contract has potential to attract a new industry participant to the State, or to expand one that already exists here significantly, and this would be in the economic development interests of the State.

RGAs should work with the OIA at the early stage of business case planning and acquisition planning to realise the benefits of growth, innovation and investment attraction (see Section 4.7 of the Procedural Guidelines).