



Canberra
Business Chamber

ABN 33 600 390 538

Level 3, 243
Northbourne Avenue,
Lyneham, ACT 2602

T: 02 6247 4199

E: info@canberrabusiness.com

W: canberrabusiness.com

20th November 2020

Dr Damian West
Chair, Secure Local Jobs Code Advisory Council
Chief Minister, Treasury & Economic Development directorate
ACT Government
Via email: securelocaljobs@act.gov.au

Dear Dr West

Secure Local Jobs Code review

Thank you for the opportunity to comment on, and make recommendations to, the review of the Code. The Chamber represents almost 650 member businesses, including 50 of the ACT's associations and community based organisations. Following our discussions with members and the broader business community, the Chamber has several concerns about the current operations of the Code, as well as suggestions for improvement.

Does the SLJC package of measures need to be enhanced?

The feedback from Chamber members and the broader Canberra business community is that there is no evidence that the SLJC, and its underpinning legislation, is necessary. Whilst we understand and acknowledge the scope of this review, we believe it is important that this view be provided for context.

Many, if not most, of the regulatory requirements contained within the Code are already to be found in many other pieces of territory and Commonwealth law – such as the requirement to pay appropriate wages and salaries; to comply with insurance, tax and superannuation commitments; and to ensure a safe working environment. The remedies for any breaches and pathways to seek these also exist in law. As such, it is unclear why it is necessary to re-iterate these in another piece of law and impose additional regulatory and compliance burdens on both businesses and government.

The ACT remains the only state or territory to impose a SLJC on its own businesses, and the code therefore is not aligned with the regulatory framework that exists for procurement in other states. We receive consistent feedback from smaller businesses that the code acts as a disincentive to businesses to bid for ACT Government work. In turn, this means that the ACT Government is not necessarily receiving the best or most competitive bids for its activities.

This damages employment security by making it harder for businesses to secure government contracts and employ more Canberrans. Unfortunately, we also frequently receive feedback from businesses who have completed code certification to bid for ACT government work, only to see contracts awarded to interstate businesses.

The Chamber's view therefore is that the current powers of the registrar under current legislative arrangements are more than sufficient. Any attempts to increase these through legislation would further risk conflict with Commonwealth and other ACT law, and further misalign ACT procurement processes with those in other states and territories.



The Chamber and the business community are strongly opposed to any legislative changes that would add greater investigative, inspectorate, regulatory or enforcement powers.

Compliance Burden on Small Businesses and Not-For-Profit Organisations

Our experience is that the current regulations impose an unfair burden on micro and small businesses and for-purpose organisations. This is a significant proportion of the ACT Canberra business population: micro (sole trader) and small-sized businesses represent more than 97% of all ACT companies – or over 29,000 of the 30,000 businesses currently registered and actively trading in the territory.

The additional level of extra compliance and paperwork means that many of these businesses are effectively excluded from bidding for relevant procurement work.

Education and Continuous Improvement

There is consistent feedback from both businesses and procurement officers that the purpose of the Code and the value of LRTWE plans are not clearly understood. This is exacerbated by a focus on compliance, rather than on continuous improvement and learning.

The overall rationale for the SLJC must be to deliver economic and social outcomes, yet there is no comprehensive reporting of these. Business and government should be able to see a comprehensive overview not just of compliance, but of the outcomes that are being generated by projects procured under the code. This data should include at least:

- The number of jobs created;
- The value of local vs interstate/overseas contracts awarded;
- Apprentices and trainees employed;
- Participation of at risk and priority groups (ATSI, migrant, people with disabilities);
- The overall cost of compliance based on the number of certification audits conducted and LRWTE plans prepared.

A collated view of projects and impacts would allow a genuine assessment of the impact of the SLJC and, assuming this is positive, provide a platform for government communication to businesses of the local benefits being delivered and the return on investment in compliance.

There is also a lack of learning and continuous improvement processes to assist with the preparation of LRWTE's. Both those who produce plans and those who assess them have no clear guidance on what "good" looks like. A knowledge management approach that provided clear examples of plans would assist assessors and provide genuine encouragement for businesses to improve plans to achieve better outcomes.

Membership of The SLJC Advisory Council

As the Chamber has raised with government previously, the composition of the Advisory Council is unbalanced. If the purpose of the Council is to advise and report on activities that are principally focused on business entities, and government wishes to understand the impact of the code on businesses then it follows that at least half, if not the majority, of members of the Advisory Council should be from the business community. Only in this way will government receive practical advice, information and feedback about the operations and effectiveness of the Code.



However, the current legislation provides no guarantee for any organised business voice. It is entirely at the discretion of the Minister whether any business representatives will be selected to sit on the Advisory Council. In contrast, employee representatives are always guaranteed at least half of the places on the Council under the Act. These imbalances are at odds with many other ACT Government bodies that regulate business activities. The WHS Council, for example, contains at least 50% business representation guaranteed in legislation.

It is unclear why the level of union presence is so much higher, as the law does not impose any requirements on unions.

It is also unclear why a member of the public service should sit on the Advisory Council. This is at odds with most other representative and consultative bodies of government (for example, the WHS Council has no public servants on it as voting members).

Creating A Workable Scope and Project Thresholds

If the SLJC is to remain, there should not be any broadening of the scope of industries and services covered. Rather, the SLJC should as a matter of priority exclude small, low-cost procurement activities and only apply at a meaningful level of business turnover. The current arrangement, in which small scale and low-risk bids as low as \$25,000 for minor works are caught under the Code, is unreasonable and provides no benefit for business, employees or government.

These bids by their nature typically come from very small enterprises with one or two staff, or self-employed individuals. The additional compliance requirements effectively exclude participation, and therefore discourage rather than encourage small business growth and job creation.

The threshold bid level requiring submission of a LRWTE plan should be at least \$200,000 before any work needs to comply with the SLJC. Such an amount should also be indexed regularly and move in parallel with other government index measures.¹

There is also a need for clear communication of the scope and coverage of “Territory funded work”, both generally and regarding specific procurements. Businesses report that procurement officers are frequently unable to clarify whether a SLJC certificate is needed for projects. There are reports of anomalies, such as a community-based organisation being told that they required code certification to deliver a Commonwealth funded program, as they were based in an ACT Government building. This does little to build business confidence in the code or the ACT Government’s overall procurement practices.

Moving to A Pre-Qualification Model

The present SLJC system requires that certification and a LRWTE plan be prepared and assessed by procurement teams, for every procurement bid made by a company. This is an expensive and repetitive process, with little obvious benefit or improvement in regulatory outcomes. It also deters smaller, competitive businesses from repeatedly bidding for work.

¹ For example, the Commonwealth government indexes penalty fee units on a regular basis.



Businesses should register once, be certified as compliant, and then be eligible to bid for any work for a period of three years.

SLJC Certification Audit Requirements

We do not believe that audits should be centralised and move to be conducted by a government agency. The costs associated with transition will be significant, and a government agency cannot undertake the audit function at cost comparable to the private sector.

Bringing audit into government will require additional staff and offices, further training, and threatens to increase the cost of audit certification to businesses applying to enter the SLJC system. Not only will this be an expensive process, but typically government regulators work on slower schedules than occurs under industry self-regulation systems.

We therefore cannot see the case for a change that will result in more cost and less efficiency.

The current restrictions on member organisations (including Canberra Business Chamber) being able to audit and accredit their own members are imbalanced, and we cannot see any clear rationale for this requirement. As a result of this requirement, the provision of SLJC audits have effectively developed into a commercial business for several operators. These operators now enjoy a commercial and competitive advantage over not for profit industry, community, and profession associations.

Self-regulation is the norm across industries and jurisdictions globally, supported by a considerable body of research and evidence. Providing education, professional development and encouraging best practice for members is a core function for industry and professional associations and community organisations.

Furthermore, these are not for profit organisations, and any income that associations might derive from SLJC audits must, by law, be reinvested into the organisation for the benefit of members. Surplus funds cannot be distributed as dividends. In addition, most associations are companies limited by guarantee, with boards of directors bound by law to report their activities and fulfil fiduciary requirements.

The best outcomes for all stakeholders in our view would be achieved by:

- Allowing not for profit industry, community, and professional organisations to conduct audits of their members;
- Supporting not for profit industry, community, and professional organisations in providing education and encouraging best practice for members;
- Developing clear guidelines for the operation of this model in consultation with NFP's and drawing on the available literature;
- Investing government resources in the development of information and communication technology to enable effective management of audit and LWRT information and comprehensive reporting.

Communication with Businesses

Much of the website information has the potential to confuse prospective businesses unfamiliar with the Code and its conduct. It is also becoming somewhat dated, with constant



references to changes in November 2019 that are now well established. For example, the dedicated “business” webpage within the larger SLJC site

(<https://www.procurement.act.gov.au/supplying-to-act-government/securelocaljobs/business>) states:

Your business will need a Secure Local Jobs Code Certificate to quote on construction, cleaning, security or traffic management work for the ACT Government. From 7 November 2019, if you're interested in providing services worth more than \$200,000 to the ACT Government you will also need a Code Certificate.

It is unclear whether this means that only construction, cleaning, security or traffic work over \$200,000 requires a Code certificate – or if any work over \$200,000 needs a certificate, regardless of industry sector. It is also unclear whether this applies only to for-profit businesses, or to not-for-profit entities as well.

We recommend the website be thoroughly reviewed, with a focus on improving utility and easy of understanding for business managers.

Conclusion

As we have indicated above, there are several areas in which we believe change is needed and would significantly enhance the outcomes that can be achieved for all stakeholders. We would welcome the opportunity to discuss further in more detail in person if that will also assist your review.

Please don't hesitate to contact me if you wish to arrange such a meeting.

Yours sincerely,

Graham Catt
CEO, Canberra Business Chamber