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1. Introduction

Government’s election commitments in the *Plan for Jobs* include establishing the necessary mechanisms to receive and evaluate unsolicited proposals from the private sector – commonly referred to as Market-led Proposals (MLPs).

MLPs provide an innovative pathway for businesses and government to work together to create jobs and stimulate the economy. The draft MLP Policy proposed a single portal to industry and a clear, consistent and transparent process for parties seeking to approach government with proposals, where government has not requested the proposal.

There are whole-of-government policies for dealing with MLPs in every State and Territory, except Western Australia (WA). These policies are not limited to proposals to build and/or finance infrastructure, but also capture proposals to provide goods or services, or to purchase a government owned asset. Such proposals are generally outside the normal planning and competitive procurement processes of government but may offer opportunities to deliver value to the community.

The Economic Regulatory Authority’s Inquiry into *Microeconomic Reform in Western Australia report* (2014) recommended that the WA Government develop a process and guidelines for unsolicited infrastructure proposals from the private sector to introduce innovation into infrastructure delivery and potentially alleviate funding pressures.

The Department of the Premier and Cabinet (DPC) has developed the MLP Policy and Supplementary Guidelines in consultation with government agencies, government trading enterprises (GTEs) and external stakeholders, and was overseen by a State Government Reference Group.

The Premier launched the draft MLP Policy and Supplementary Guidelines for public comment on 28 June 2018 for six weeks. A stakeholder forum was held in July 2018 involving a broad audience including government agencies, GTEs, industry associations and private companies.

This report provides an overview of submissions and comments received on the MLP Policy and Supplementary Guidelines, and highlights areas where comments have led to a proposed change to the documents. Further detail on the issues raised is also provided for each of the key elements of the proposed policy.

The MLP Policy and Supplementary Guidelines will be comprehensively reviewed after 12 months of operation and then at intervals not exceeding five years to enable ongoing improvement to the policy and its application.

This report also provides a summary of next steps in establishing the MLP Secretariat and implementing the MLP Policy and Supplementary Guidelines.

DPC thanks those who provided input during development of the policy and those who provided feedback through the public consultation process.
2. How we consulted

A reference group was established in 2017 to oversee the development of the draft MLP Policy. The group comprises senior officers from the Departments of the Premier and Cabinet; Treasury; Finance; Planning, Lands and Heritage; Primary Industries and Regional Development; Transport; Jobs, Tourism, Science and Innovation and the Premier’s Office.

On 12 September 2017, DPC hosted an interagency workshop for stakeholders with an interest in the development of the MLP Policy. Fifty people attended representing 32 government agencies, GTEs and Ministers’ offices. On 27 October 2017, DPC held a second workshop to specifically discuss the application of a MLP Policy to GTEs.

In addition, further detailed consultation was undertaken by DPC in developing the MLP Policy and Supplementary Guidelines. A number of formal and informal briefings and meetings were held with government agencies, GTEs and Ministers’ Offices.

Prior to public consultation, DPC consulted with the Office of the Auditor General, and the Corruption and Crime Commission on the probity aspects of the draft MLP Policy. DPC has also obtained the State Solicitor’s Office’s advice in respect to the drafting of the MLP Policy at several points.

The Premier launched the draft MLP Policy on 28 June 2018 for a six-week public comment period which concluded on 9 August 2018. DPC created a webpage for the consultation process and provided copies of the MLP Policy, Supplementary Guidelines, Fact Sheet, Frequently Asked Questions, Stakeholder Forum Presentation on the MLP Policy and a submission form.

To complement the launch of the draft MLP, DPC held an open invitation Stakeholder Forum on 18 July 2018, involving 34 people who represented a broad audience of 25 bodies including government agencies, GTEs, industry associations and private companies.

During the public consultation period, interested stakeholders were also able to contact DPC directly through a dedicated MLP email address and through a direct phone number.

There were 21 formal written submissions and one late submission received. A total of 121 individual comments were extracted from these submissions.

DPC undertook further consultation with other States and Territories on their respective MLP Policies and further refined this policy where appropriate.

Consultation was also undertaken with the teams which supported the Langoulant Inquiry into Government Programs and Projects and the Service Priority Review.
3. Summary of submissions and key issues raised

Submissions on the MLP Policy and Supplementary Guidelines were provided by a variety of stakeholder groups including State Government bodies, GTEs, Unions, industry peak bodies and infrastructure and property development related businesses. Twenty-one formal submissions were received. A breakdown of submissions by stakeholder type is provided at Figure 1.

![Figure 1: Submissions by stakeholder type](image)

The comments indicated overall support for the establishment of a MLP Policy in WA to offer industry a mechanism for the State Government to receive and evaluate MLPs.

Many comments provided further detail on specific elements of the proposal, outlining certain challenges, providing suggestions or seeking clarification on the draft MLP Policy and Supplementary Guidelines.

A summary of the broad themes raised are provided below. These themes match the submission form provided by DPC for the public consultation process. Further detail on submission comments by category is provided in the subsequent sections of this report.
The broad themes raised in submissions:

**General support**
- All 21 submissions (100 per cent) indicated support for the establishment of an MLP Policy in WA.
- Many respondents particularly supported the Government on formalising the processes by which businesses approach the State to seek support for an MLP.

**Governance arrangements**
- The role of the MLP Secretariat and the need to provide adequate resources so it can effectively deliver the policy was highlighted.
- The need for strong communication protocols between the MLP Steering Committee and other relevant agencies when the evaluation is agency led was identified in a number of submissions.
- The application of the thresholds that apply to GTEs for centrally coordinated evaluation processes received several comments and requests for clarification.

**Evaluation process**
- Many respondents suggested the policy provide timeframes for decision-making in the various stages of the evaluation process.
- A number of submissions suggested that information required from proponents in the various stages of the evaluation process match the complexity of the proposal so the process may be expedited where possible.
- Some queries were raised about the Expression of Interest (EOI) process in Stage 1, including its intent and its effectiveness to measure the uniqueness of a proposal.
- Clarification was sought on the options available to the MLP Steering Committee to refer proposals that do not meet the MLP Policy criteria to a government led process.
- A number of respondents stressed the need for a strong level of support and guidance from the MLP Secretariat for both proponents and lead agencies during the evaluation process.
- Respondents requested that the MLP Steering Committee/MLP Secretariat provide sufficient feedback to proponents for unsuccessful proposals.
Evaluation criteria

- A number of GTEs noted the potential conflict between the “strategic priorities of government” evaluation criteria and the requirements of GTEs under their enabling legislation.

- A respondent noted that MLP proposals are unlikely to align with government expenditure commitments given the very nature of MLPs.

Evaluation principles

- A significant number of respondents raised queries about the MLP Policy’s consistency with GTE enabling legislation and other statutory frameworks that may apply to WA Government agencies.

- Questions about confidentiality and the protection of proponent’s intellectual property was raised in a number of submissions.

- Submissions welcomed a framework that provides for a more integrated, transparent and robust assessment of proposals across government.

Other

- A number of respondents suggested the policy provide for incentives, rewards or compensation for proponent’s original ideas if the proposal is put to an EOI process or pursued through a government led process.

- A number of State Government and GTE respondents highlighted the need for clarification on the exclusions criteria and how the exclusions apply to individual circumstances.

There were 121 individual comments extracted from the submissions and categorised according to key elements of the policy (refer Figure 2).

The majority of the comments in the submissions related to specific issues about the proposed evaluation process.

Further detail on submission comments by category is provided in Section 4 of this report.
In response to the comments received during the consultation process, a number of improvements to the MLP Policy and Supplementary Guidelines are proposed. Given the broad support expressed through the submissions, the improvements do not make fundamental changes to the proposed MLP Policy or Supplementary Guidelines.

A summary of proposed changes is provided at Table 1.

Some of the comments provided in the consultation process will be considered in the implementation stage of the MLP Policy to ensure its effective implementation.
Table 1: Summary of proposed changes to the MLP Policy and Supplementary Guidelines

<table>
<thead>
<tr>
<th>Element</th>
<th>Proposed change</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Governance</strong></td>
<td></td>
</tr>
<tr>
<td>MLP Steering Committee membership</td>
<td>The MLP Policy be amended to add “Other key agencies as determined by the Steering Committee” to the membership.</td>
</tr>
<tr>
<td>Lead Agency</td>
<td>The MLP Policy be amended to explicitly state that GTEs as well as government bodies can act as a Lead Agency.</td>
</tr>
<tr>
<td></td>
<td>The MLP Policy be amended to require the lead agency to report to the MLP Steering Committee on outcomes of agency led evaluations at the end of each stage and prior to making any public disclosures or commitments to the proponent.</td>
</tr>
<tr>
<td><strong>Evaluation Process</strong></td>
<td></td>
</tr>
<tr>
<td>Referral to a government led process</td>
<td>A section on “Referral to a government led process” be added to the MLP Policy.</td>
</tr>
<tr>
<td>Pre-qualification meeting</td>
<td>The MLP Policy be amended to include the proposed lead agency in the pre-qualification meeting.</td>
</tr>
<tr>
<td>Appendix 1 – Pre-qualification template</td>
<td>The Supplementary Guidelines be amended to state that “the pre-qualification template be completed commensurate with the complexity of the proposal, to the satisfaction of the MLP Secretariat”.</td>
</tr>
<tr>
<td>Evaluation timeframes</td>
<td>A best endeavours timeframe of three months be added to the pre-qualification stage for centrally coordinated proposals in the MLP Policy and for Stages 1-3, include a provision for timeframes in the Stage Agreements.</td>
</tr>
<tr>
<td>Expression of Interest (EOI) – Stage 1</td>
<td>The MLP Policy be amended to include the following provisions:</td>
</tr>
<tr>
<td></td>
<td>• allow for a whole or a portion of the proposal to be tested in the EOI;</td>
</tr>
<tr>
<td></td>
<td>• the proponent will be advised prior to an EOI being undertaken;</td>
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<tr>
<td></td>
<td>• the EOI process is to test whether any other parties could deliver similar outcomes, within acceptable timeframes and offer comparable value to what has been proposed; and</td>
</tr>
<tr>
<td></td>
<td>• the MLP Steering Committee and Cabinet are not bound by the outcomes of the EOI.</td>
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<tr>
<td>Element</td>
<td>Proposed change</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Evaluation Process</td>
<td>The MLP Policy be amended to include provision for the proponent to withdraw from the evaluation process in the pre-qualification review and Stage 1.</td>
</tr>
<tr>
<td>Evaluation Process</td>
<td>Across all stages, the MLP Policy be amended so that wherever possible, the proponent will be provided with the reasons why a proposal is not suitable for further consideration.</td>
</tr>
<tr>
<td>Evaluation Process</td>
<td>The MLP Policy be amended to require that infrastructure related proposals meet Infrastructure WA requirements (once established and where relevant) in Stages 2-3.</td>
</tr>
<tr>
<td><strong>Evaluation Criteria</strong></td>
<td></td>
</tr>
<tr>
<td>Strategic Alignment</td>
<td>The Supplementary Guidelines be amended to remove text that refers to the requirement for an MLP to align with “government expenditure commitments”.</td>
</tr>
<tr>
<td><strong>Evaluation Principles</strong></td>
<td></td>
</tr>
<tr>
<td>Other Statutory Approvals and Processes</td>
<td>The Supplementary Guidelines be amended to state the MLP Policy works within existing statutory frameworks of both governing agencies and GTEs and include a reference to the Gateway Review process.</td>
</tr>
<tr>
<td>Intellectual Property</td>
<td>The MLP Policy be amended to state that &quot;The legal rights of a proponent in respect of any intellectual property held by it in connection with a proposal will be observed.&quot;</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>The Introduction of the MLP Policy be amended to include the following:</td>
</tr>
<tr>
<td></td>
<td>• a reference to the application of the policy to all government agencies and GTE; and</td>
</tr>
<tr>
<td></td>
<td>• that the MLP Policy supersedes any current or future policies maintained by them in respect of dealing with MLPs.</td>
</tr>
<tr>
<td>Element</td>
<td>Proposed Change</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Exclusions</td>
<td>The MLP Policy be amended to add the following exclusions:</td>
</tr>
<tr>
<td></td>
<td>• proposals that relate to a program that government has decided and/or announced will be released to the market;</td>
</tr>
<tr>
<td></td>
<td>• proposals that are not required to be subjected to a competitive procurement process; and</td>
</tr>
<tr>
<td></td>
<td>• also, a statement that says the MLP Policy is intended to be administered consistently with applicable legislation be added to this section.</td>
</tr>
<tr>
<td>Disclosure</td>
<td>A statement be added to the Disclosure section in the MLP Policy, that a Register of all MLPs received in the pre-qualification stage will be maintained by the MLP Secretariat.</td>
</tr>
</tbody>
</table>
4. Submission comments by category

This section of the Consultation Report provides a summary of submission comments received by category. Some of the comments received provide detail on specific elements of the policy, which will be used as the policy is implemented, and the roles and functions of the MLP Secretariat and MLP Steering Committee are further refined over time.

4.1. Support for market-led proposals mechanism

Each of the 21 submissions (100 per cent) indicated support for the establishment of an MLP Policy in WA.

Many submissions provided strong support for the policy and welcomed the State Government formalising the processes and establishing a clear framework by which businesses approach the State to seek support for a proposal not requested by government.

A number of GTEs commented that the policy will assist them to respond to approaches from the private sector in a consistent manner and has the potential to encourage innovation and job growth.

Government agencies welcomed the policy, acknowledging it provides a reliable process for State Government agencies to engage with the private sector in cases where the Government has not identified the need in the first instance.

Industry expressed strong support for the policy and the potential to enhance communities and the economy through leveraging private sector investment. Industry welcomed the provision of a clear and transparent process and the potential for the private sector to work more collaboratively with government.

“UDIA congratulates the Government for seeking to establish a framework to receive and consider, market-led proposals. UDIA strongly supports the proposal and the commitment to creating new opportunities that allow the private sector to work more collaboratively with Government to enhance our communities and the economy by delivering new development and jobs”.

Urban Development Institute of Australia (WA) Inc.

“CCIWA strongly supports the State Government’s intent to design and implement a MLP framework.”

Chamber of Commerce and Industry WA (CCIWA)

“Western Power appreciates the Government’s efforts to connect with private sector entrepreneurship to identify and develop projects that benefit Western Australians and create jobs.”

Western Power
4.2. Governance arrangements

Approximately 18 per cent of comments related to the governance arrangements outlined in the MLP Policy, including comments related to:

- the MLP Steering Committee;
- designation and responsibility of the lead agency;
- thresholds for central coordination of the evaluation process; and
- requirements for government approval.

The governance arrangements outlined in the policy received broad support, particularly in terms of the benefits it provides for a whole-of-government evaluation process and the coordination of teams for the benefit of delivering projects.

Some submissions requested clarifications of the governance arrangements or provided suggested changes.

GTEs in particular requested clarification on the application of the MLP Policy to GTEs and on the thresholds that apply to GTEs for centrally coordinated evaluation processes.

A number of respondents identified the importance of adequately resourcing the MLP Secretariat and ensuring it has full visibility and access across government.

Some submissions asked for clarification on the level of support the MLP Secretariat will provide to lead agencies undertaking evaluation of MLPs. In addition, some concerns were raised about providing agencies with adequate resources, including skilled staff, to carry out the evaluation process.

Some respondents highlighted the need for lead agencies to have a strong communication protocol with the MLP Steering Committee and other relevant agencies when the evaluation is agency led. This included the suggestion that the lead agency be required to provide feedback to the MLP Steering Committee on outcomes of agency led evaluations.

Some respondents also stressed the importance of the lead agency’s consultation with other relevant agencies where appropriate.

It was suggested the MLP Steering Committee comprise “other key agencies as determined by the Steering Committee” to ensure appropriate representation in the consideration of proposals.

“The only feedback of note would be to ensure that there is a strong communication protocol for proposals that are managed directly by Lead Agencies back through to the MLP Steering Committee. This should ensure those proposals are managed in a manner that is consistent with, and aligned to the policy.”

Western Australian Treasury Corporation
4.3. Evaluation process

This category received the highest number of submissions with 31 per cent of comments relating to the evaluation process and the role and information required at each stage of that process.

In particular, industry raised queries about the potential time it could take to complete the evaluation process. While Cabinet’s role in decision-making in Stages 1-3 was supported, there were concerns about the potential delays and uncertainty this could create for the proponent. To address this concern, a number of respondents requested the MLP Policy provide timeframes for decision-making in the various stages of the evaluation process.

Some respondents suggested that the policy consider fast-tracking uncomplicated and low risk proposals and that the information required from proponents in the various stages match the complexity of the proposal.

In cases where Cabinet rejects a proposal, industry respondents requested that the MLP Steering Committee/Secretariat provide sufficient feedback to Proponents and reasons for the proposal not proceeding under the policy. This would allow the market to learn from unsuccessful bids and enable them to develop successful MLPs in the future.

Industry also suggested that the MLP Secretariat should provide high quality information to guide proponents to assist them in developing high quality MLPs. The provision of case studies and regular reporting of trends and factors that contribute to the success or failure of MLPs in WA should be provided to the market.

Several submissions sought clarification on the options available to the MLP Steering Committee to refer proposals and ideas that do not meet the MLP Policy criteria to a government led process.

In relation to this process, some queries were raised about the Government’s use of intellectual property and whether government would recognise the value of the good idea or proposal through the payment of compensation or some kind of reward to the original proponent.

Some government agencies also asked for further clarification around this process.

While there was broad support for the inclusion of an EOI process in Stage 1, a number of industry respondents queried the intent of the EOI. Some respondents expressed concern about the potential for government to identify competitors through the EOI process or that government may disclose the confidential details of the proponent’s proposal to the market.

Some suggested the EOI process may deter proponents from submitting a proposal in the first instance. Others thought the market would not be inclined to respond to an EOI process that did not offer any benefit or reward to them as a participant. It was suggested that a lack of willingness to participate could undermine the effectiveness of the EOI as a test of uniqueness.

“There are no timeframes provided around the process and whilst there will likely need to be some flexibility on the time to evaluate, it is important that the process is undertaken in a reasonable (commercially acceptable) timeframe to avoid potential criticism of Government not being responsive enough or the process being too slow.”

Technology and Industry Advisory Council (TIAC)
Some respondents suggested that consultation and agreement should take place with the proponent prior to the Government undertaking an EOI process.

A number of industry, GTE and government agency respondents stressed the need for a strong level of support and guidance from the MLP Secretariat for both proponents and lead agencies during the evaluation process.

Some GTEs and agencies expressed particular concerns about the resources required to undertake the evaluation process, in particular the EOI process and the feedback to be provided to the proponent at the end of each stage under agency led evaluations.

Government agency respondents raised the importance of early inclusion of the relevant lead agency in the pre-qualification evaluation stage and suggested the proposed lead agency attend the pre-qualification meeting.

“We are particularly supportive of the Government’s proposed Early EOI Test in the Stage 1 Concept Evaluation. We believe this will enable good ideas to be brought forward to Government for consideration without significant upfront investment and risk to intellectual property and, should there be an interest in the project, for an early test to clearly establish a level of realistic competitive private sector interest.”

Lendlease Corporation
4.4. Evaluation criteria

Only a small number of respondents provided comment on the proposed evaluation criteria outlined in the MLP Policy, (approximately seven per cent of comments).

Some GTEs noted the evaluation criteria broadly aligned with their own procurement policies and practices and current evaluation mechanisms for market-led proposals.

The main issue raised in this category was identified by GTEs in relation to the evaluation criteria requiring a MLP proposal be in “Strategic Alignment” with government priorities. GTEs suggested this particular criterion may conflict with GTE requirements under their enabling legislation. There was also a suggestion the evaluation criteria should consider the GTE’s commercial requirements when assessing proposals.

One submission noted that MLP proposals are unlikely to align with government expenditure commitments as required under the “Strategic Alignment” criteria given the very nature of MLPs.

Unions commented that the MLP Policy should measure MLP proposals on their capacity to deliver secure, sustainable full-time employment to Western Australians.

One submission requested that national benefit be considered in the evaluation criteria.

“Given the MLP Policy purports to apply to GTEs, Horizon Power considers that care should be taken by Government to ensure the application of the Policy is consistent with the GTE enabling legislation, in Horizon Power’s case, the Electricity Corporation Act 2005 (WA)”.

Horizon Power
4.5. Evaluation principles

Approximately 16 per cent of comments were focused on the evaluation principles outlined in the MLP Supplementary Guidelines.

There was general acknowledgement that the MLP Policy provided a rigorous process that would provide sufficient probity, transparency and accountability in the consideration of MLPs. The potential for a more integrated and robust assessment of proposals across government was identified by respondents.

Some GTEs commented that the evaluation principles under the MLP Policy showed a strong alignment with their existing unsolicited bids processes and principles.

The Unions who responded stressed the importance of ensuring close monitoring and transparency around key decisions on contracts negotiated under the MLP Policy.

Several respondents identified issues about the MLP Policy’s consistency with GTE enabling legislation and other statutory frameworks that may apply to WA Government agencies, including State Supply Commission Procurement Policies. Acknowledgement of the Gateway review process in the MLP Policy Guidelines was also suggested.

Queries about confidentiality and the protection of a proponent’s intellectual property was raised in a number of submissions. Some respondents suggested the MLP Policy needed to provide more assurance to industry on the treatment of intellectual property so that proponents are not discouraged from participating in the MLP process.

“We support the evaluation principles as proposed, in particular that they are simple and clearly presented. This will encourage proponents to consider submitting proposals.”

Lendlease Corporation

“The existing documented principles capture sufficiently well enough those elements that will ensure each decision is seen to be open, logical and above reproach.”

Department of Transport
4.6. Other comments

Eleven per cent of comments fell into the “Other comments” category.

Some respondents sought clarification on the application of the MLP Policy and queried whether the MLP Policy would replace existing similar processes within agencies and GTEs. A number of GTEs and agencies expressed a preference to maintain their existing processes for market-led proposals while ensuring alignment with the MLP Policy principles.

Some comments also included clarifications unique to the respondent and whether the policy would apply to certain processes and situations within their agency.

A number of respondents made comments about providing proponents with incentives, rewards or compensation for original ideas if their proposal is put out to an EOI process or pursued through a government led process.

One respondent suggested that government provide a funding stream for the MLP Policy and incentives for private sector investors to develop proposals.

Some respondents requested that the exclusions outlined in the MLP Policy be presented more clearly.

There was also a suggestion that provision be made within the pre-qualification template in Appendix 1 of the Supplementary Guidelines to allow greater discretion and require less detail commensurate with the complexity of the proposal.

Several of the submissions noted that the MLP Policy and Supplementary Guidelines encompassed earlier consultations held with DPC on the development of the policy.
5. What happens next?

DPC has received substantial feedback on the proposed MLP Policy and Supplementary Guidelines throughout its development and the public consultation process. This information and feedback will continue to be considered as the policy is implemented by the Government.

The Government proposes to establish a MLP Secretariat within the Department of Finance to coordinate implementation of the MLP Policy and provide ongoing support to the MLP Steering Committee.

The MLP Steering Committee will also be established and will comprise Directors General/Chief Executive Officers of the agencies identified in the MLP Policy.

It is anticipated the MLP Policy will commence operation in early 2019.

Proponents and government agencies may forward MLPs to the MLP Secretariat at the Department of Finance once established.

MLPs can also be lodged via the Department of Jobs, Tourism, Science and Innovation’s Invest and Trade Western Australia online portal once established. These proposals will be redirected to the MLP Secretariat at the Department of Finance.

The MLP Policy and Supplementary Guidelines will be comprehensively reviewed after 12 months of operation and then at intervals not exceeding five years.