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Building and Construction Industry (Improving Productivity) Amendment Bill 2017

Written submission

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Master Electricians Australia (MEA) is a national employer association representing the interests of electrical contractors and the broader electrotechnology industry. As one of the longest running organisations of its kind, MEA has established itself as the leading voice of the electrotechnology sector. MEA is recognised by industry, government and the community as the electrical industry's foremost business partner, knowledge source and advocate. The organisation's website is: www.masterelectricians.com.au.

MEA and its members appreciate the opportunity to comment on this Bill and provide feedback concerning the amendment.

Current Legislation

The *Building and Construction Industry (Improving Productivity) Act 2016 (BCI Act)* at section 34(2E) currently provides the following:

"If a document issued under subsection (1) includes requirements in relation to the content of building enterprise agreements, a building industry participant may, before 29 November 2018, submit expressions of interest, tender for and be awarded building work funded (whether directly or indirectly) by the Commonwealth or a Commonwealth authority even if a building enterprise agreement, made before the document is issued, that covers the building industry participant does not comply with any one or more of the requirements."

MEA believes that the as it currently stands does not achieve the Act's main objective section 3(1); namely

"The main object of this Act is to provide an improved workplace relations framework for building work to ensure that building work is carried out fairly, efficiently and productively, without distinction between interests of building industry participants, and for the benefit of all building industry participants and for the benefit of the Australian economy as a whole."

The building and construction industry has a behavioural pattern and culture that is difficult to change. This is evident in the findings of the Heydon and Cole Royal Commissions and in various judgements of the Federal Court. The building and construction industry's track record of dispute days from the ABS (see table below) also demonstrates the industry's unrest at a rate approaching 400% of any other single industry and 200% of combined industries.

	Coal	Metal Manufacturing	Construction	Transport	Education	Other
Jun 2014	0	0	4.8	1.0	9.8	2.3
Sep 2014	0	1.5	13.7	0	4.9	2.0
Dec 2014	0.1	0.4	3.2	1.6	3.5	7.2
Mar 2015	0	5.0	8.7	0.2	0.6	0.9

Jun 2015	0	1.5	4.2	0.3	0.4	7.6
Sep 2015	0.7	0.5	10.8	2.9	1.2	8.9
Dec 2015	0	0.3	12.9	0	2.2	2.5
Mar 2016	0	0.6	10.8	0	4.2	10.1
Jun 2016	0.1	2.9	16.2	1.7	0.1	3.4
Sep 2016	4.3	1.0	14.5	1.9	0.5	10.7
Total	**5.2**	**13.7**	**99.8**	**9.6**	**27.4**	**55.6**

ABS 6321.0.55.001 Industrial Disputes, Australia These figures were chosen to coincide with Senator Abetz announcement of the proposed 2014 Code and that agreements would need to be compliant from April of 2014.

It is MEA's view that the current legislative timeline of 2018 will result in a slow and drawn out implementation whereby participants, employers and employees will be in a state of flux waiting for the change to be in place. This could cause tension and unrest within the industry and would, in fact, be counterproductive to the main objective outlined in section 3(1) of the Act.

Proposed Legislation

We would argue that the changes detailed in subsection 34(2E) improve on the current implementation plan and provide greater certainty for the industry, likely leading to a much smoother transition to the new regulatory environment. We support the legislation and believe that in the long term the aims of Section 3 will be achieved far sooner than expected.

As part of the Inquiry, MEA would suggest that the Committee consider the impact of the 31 August 2017 implementation date on the following three groups:

GROUP ONE Employers with Award arrangements and 2016 Code compliant agreements

This group is currently, and will continue to, operate under the 2016 code. The advantage being that the desired behaviours and culture change will start to be demonstrated by these employers and employees. We see little impact on these employers of changing this date. In terms of Award participation, this represents a large number of employers.

GROUP TWO Employers with EBA's created since April 2014 and not passed the agreement's nominal expiry date.

This Group is subject to the proposed legislation as presented with a date of 31 August 2017. This Group of employers have entered into agreements knowing that the Federal Government's policy was to establish the Code. The Code has had some changes since 2014 draft, however the behaviour targeted by the Code was well known to employers and unions. The parties made a conscious decision to agree to what would, in all likelihood, be against the code. As such, we see no reason why the proposed date amendment to the 31 August 2017 should not apply to those parties.

GROUP THREE Employers with EBA's that have passed the nominal expiry date.

This group of employers have, in many cases, been waiting and adhering to the Government's position and have committed to active engagement in changing the culture of the industry. However, we believe the amendment disadvantages these employers for behaving responsibly. Employers who, in many cases, bore the brunt of industrial pressure from the construction unions. Further, this proposed amendment would result in an employer being removed from site after this date by virtue of a breach of the Code. The removal from site and subsequent retendering of the remaining work would have a drastic impact on the productivity of the project. As such, we believe that the legislation should provide these employers with the following two concessions:

Concession 1 The date for group three employers to have 2016 Code compliant agreements be delayed to 30 November 2017. This group are in all likelihood currently negotiating an agreement or are waiting for the Union to settle on a position and strategy before being approached. This will allow these employers to review what the Unions and parties' positions are. We expect that those with non-Code compliant Group 2 agreements will be prioritised by the parties due to the urgency of the 31 August date. We also foresee that the large number of agreements in some states that will need to be changed will cause unions to be unavailable in some circumstances.

Concession 2 That group three employers who have already signed contracts and commenced work on projects prior to the 2 December 2016 be able to complete and remain working on those sites until such time as:

1. A new agreement is negotiated, or
2. The parties agree to terminate the offending Enterprise Bargaining Agreement in the Fair Work Commission or
3. the project is completed, whichever occurs first.

However, it would be the position of MEA that no future works could be awarded to an employer who has not complied with the content requirements of the Code.

Concluding Statement

MEA supports the intent of the proposed amendment to section 34(2E). It would bring about the productivity gains sought by the introduction of the agreement content requirements that the legislation seeks to effect; without excessively drawing out the transitional period for parties to amend their agreement content.

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