

Australian Greens Dissenting Report

1.1 The Building and Construction Industry (Improving Productivity) Amendment Bill 2017 (the bill), represents the triumph of big business over the independence of the Senate.

1.2 If passed the bill will remove transitional arrangements previously agreed to by the Senate and instead, in effect, require immediate compliance with the new Building Code by any company wishing to successfully tender for government work.

1.3 Evidence to the committee and discussions in the media have highlighted the chaos this will impose on the building industry.

1.4 Thousands of agreements will need to be negotiated or renegotiated and many companies will not be able to tender for government work over the next 12 months, as agreements covering the workforce will not comply with the Building Code.

1.5 As the CFMEU stated in its submission to the committee:

The amendment will significantly reduce the pool of available contractors for Commonwealth taxpayer-funded construction work. Large, small and intermediate contractors will all be affected. The CFMEU has estimated that there are upwards of 3,000 contractors and many tens of thousands of their employees who will be prejudiced by this change. It includes those with agreements which cover trade unions and those with 'non-union' agreements. Those who have expended resources preparing tenders in the almost three months since the most recent changes were made will have their efforts reduced to nothing.

The end result will be that experienced, qualified and reputable contractors with settled industrial arrangements, and their employees, will be punished for doing no more than what was expected and required of them under the law of the day. Many of these contractors will be afraid to publicly oppose these changes because to do so would damage their commercial interests.¹

1.6 Evidence to the committee by the Electrical Trades Union also highlighted how the electricity sector in states such as South Australia could be harmed by the passage of this legislation and the Code as employers seek to widen its coverage to sectors beyond the building industry.²

1.7 Taxpayers will also be harmed by the bill:

Because of the reduction of eligible contractors, Australian taxpayers will be deprived of the benefits of the ordinary competitive commercial tender

1 CFMEU, *Submission 5*, pp. 3–4.

2 Mr Lance McCallum, National Policy Officer, Electrical Trades Union of Australia, *Proof Committee Hansard*, 13 February 2017, pp. 17 and 23.

process that is essential to the delivery of quality and value-for-money construction work.³

1.8 The Australian Greens do not support the reestablishment of the ABCC and we did not support the original Building and Construction Industry (Improving Productivity) Amendment Bill and the Building Code or the amended compromise reached between Senator Hinch and the Prime Minister.

1.9 As elaborated in evidence and submissions to the committee the Building Code will prohibit from agreements clauses that limit the casualisation of the building industry, set apprentice numbers, limit excessive overtime on health and safety grounds or restrict the use of foreign visa holders in favour of local workers. The Code will also allow the reinstated ABCC to rule many other areas of enterprise agreements that are favourable to workers as non-compliant.

1.10 Despite this we acknowledge that the role of the Senate is a House of Review and that in this case a compromise position had been reached last year that reflected the views of a majority of the Senate.

1.11 As was discussed at the time the amendments would have allowed a more realistic time frame for the industry to transition to new agreements that comply with the Code.

1.12 As the CFMEU points out in its submission:

When the rules relating to permissible enterprise agreement content change, transitional arrangements become very important. The current sections in the Act and Code recognise that those who entered into agreements whose content was perfectly lawful at the time the agreement was made should not be disadvantaged by the change to these rules. They should be given a reasonable period in which to bring their industrial arrangements into conformity with the new rules. Anything short of that would mean that the changes have a retrospective and adverse effect on law-abiding players in the industry.⁴

1.13 Instead Senator Hinch and Senator Xenophon have struck a deal with the government overturning the agreement reached by the Senate.

1.14 We do not know the complete content of the deal or what if any promises have been made. But we do know that the striking of this deal by Senator Hinch and Senator Xenophon, after big business lobbying, not only puts at risk the rights of workers and jeopardises the industry, it makes a mockery of the independence of the Senate.

1.15 It also opens to question any other position expressed by these Senators in the future. It is now clear that any agreements, on legislation or positions, struck only months before can now be reversed by these Senators. Their word can no longer be taken for granted.

3 CFMEU, *Submission 5*, p. 4.

4 CFMEU, *Submission 5*, p. 2.

1.16 Their support for this legislation is not only a betrayal of building workers and workers in their states, it is a betrayal of the role of the Senate as a proper House of review.

1.17 The Australian Greens will not participate in this further diminution of workers' rights, therefore we will vote against this bill.

Recommendation 1

1.18 The Australian Greens recommend that the bill not be passed.

Senator Lee Rhiannon

