

Chapter 1

Introduction

Reference

1.1 The Building and Construction Industry (Improving Productivity) Amendment Bill 2017 was introduced into the House of Representatives on 8 February 2017 by the Hon. Peter Dutton MP, Minister for Immigration and Border Protection.¹

1.2 The Selection of Bills Committee recommended that the bill be referred for inquiry, as it 'requires investigation on the consequences of a shorter proposed transition period'.²

1.3 On 9 February 2017, the Senate referred the provisions of the Building and Construction Industry (Improving Productivity) Amendment Bill 2017 (the bill) to the Education and Employment Legislation Committee (the committee) for inquiry and report by 15 February 2017.³

Background to the bill

1.4 In late 2016, the government re-established the Australian Building and Construction Commission (ABCC) with the *Building and Construction Industry (Improving Productivity) Act 2016* (the BCI Act). The ABCC commenced in December 2016, and is intended to ensure:

...that building work is carried out fairly, efficiently and productively in the building and construction industry.⁴

1.5 A key component of the regulatory framework supporting the ABCC Act is the Code for the Tendering and Performing of Building Work 2016 (2016 Code). The Code was issued by Senator the Hon. Michaelia Cash, Minister for Employment (Minister) on 2 December 2016.⁵

1.6 The 2016 Code stipulates that any building companies seeking to undertake Commonwealth-funded building work must have enterprise agreements (EAs) with employees that comply with:

...right of entry laws for union officials, freedom of association provisions protecting workers' rights to join or not to join a union, and work health

1 *Votes and Proceedings*, No. 29, 8 February 2017, p. 497.

2 Selection of Bills Committee, *Report No. 1 of 2017* (9 February 2017), Appendices 2 and 3.

3 *Senate Hansard*, 9 February 2017, p. 25.

4 ABCC, 'About' at www.abcc.gov.au/about, (accessed 9 February 2017).

5 Senator the Hon. Michaelia Cash, Minister for Employment, 'New building code to improve conduct and boost productivity on building sites', *Media Release*, 2 December 2016.

and safety and security of payment laws or risk losing access to Commonwealth-funded building work.⁶

1.7 According to the Explanatory Memorandum, the BCI Act contains a transitional provision that temporarily exempts some building companies from the requirement to comply with the 2016 Code.⁷ Essentially, this means that all building contractors who had active EAs when the Code was issued on 2 December 2016 are able to apply to be awarded Commonwealth building work until 29 November 2018, even if their EAs are not Code-compliant.⁸

1.8 The bill currently being considered seeks to bring forward the expiry of this exemption, from 29 November 2018 to 31 August 2017.

Purpose of the bill

1.9 In the second reading speech introducing the bill into the House of Representatives, the Hon. Peter Dutton MP, Minister for Immigration and Border Protection, highlighted that the building industry is a vital sector of the Australian economy and noted:

Ensuring an efficient, safe and law-abiding building and construction industry is crucial to promoting jobs, driving economic growth and managing the transition to a more diversified economy.

This is why the government last year re-established the Australian Building and Construction Commission to ensure building work is carried out fairly, efficiently, lawfully and safely for the benefit of all Australians.⁹

1.10 Minister Dutton also outlined how the 2016 Code drives reform of, and boosts productivity in, the building sector by:

...prohibiting restrictive clauses in enterprise agreements that limit the ability of a contractor to manage its business or improve productivity, as well as those that give unions disproportionate power on building sites.¹⁰

6 Senator the Hon. Michaelia Cash, Minister for Employment, 'New building code to improve conduct and boost productivity on building sites', *Media Release*, 2 December 2016.

7 Building and Construction Industry (Improving Productivity) Amendment Bill 2017, *Explanatory Memorandum*, p. i.

8 This means active enterprise agreements that had been voted on and approved by employees. Senator the Hon. Michaelia Cash, Minister for Employment, 'New building code to improve conduct and boost productivity on building sites', *Media Release*, 2 December 2016. See also subsection 34(2E) of the *Building and Construction Industry (Improving Productivity) Amendment Act 2016* and section 11 of the Code for the Tendering and Performing of Building Work 2016.

9 The Hon. Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 8 February 2017, p. 6.

10 The Hon. Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 8 February 2017, p. 6.

1.11 Minister Dutton also spoke of the benefits that the bill would bring, particularly how it would increase productivity and reduce costs in the construction sector:

These amendments will ensure key provisions of the Building Code that seek to improve productivity and reduce costs will be achieved in a more timely fashion.

In turn, this will create the conditions needed to fund the construction of more schools, hospitals and other important social infrastructure, at a price we can afford.¹¹

Overview of the bill's provisions

1.12 The bill has one schedule containing three items, which will be discussed in turn.

1.13 Item 1 would amend subsection 34(2E) of the BCI Act to bring forward the expiry date of the exemption from 29 November 2018 to 31 August 2017. The Explanatory Memorandum states that:

It also limits the scope of the exemption to only enabling the submitting of expressions of interest or tenders. The effect of this change is that a building industry participant with a non-code compliant enterprise agreement (made before 2 December 2016) can still submit expressions of interest or tender for relevant building work, but would need to ensure that they have a code compliant enterprise agreement before they could be awarded a contract to perform the relevant building work.¹²

1.14 Item 2 would amend the note under subsection 34(2E), replacing it with two notes. The Explanatory Memorandum summarises the effect of these notes:

Note 1 explains that the effect of subsection 34(2E), as amended, is that while building industry participants may submit expressions of interest or tender for building work before 1 September 2017, they cannot be awarded (and perform) that work unless and until they meet the relevant enterprise agreement content requirements.

Note 2 replicates the note that was repealed. It explains that subsection 34(2E) does not apply in relation to enterprise agreements made after the commencement of the 2016 Code.¹³

1.15 Item 3 clarifies that amendments made to subsection 34(2E) of the BCI Act would 'only apply in relation to expressions of interest, or tenders, for building work submitted after Schedule 1 commences'.¹⁴

11 The Hon. Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 8 February 2017, p. 6.

12 Building and Construction Industry (Improving Productivity) Amendment Bill 2017, *Explanatory Memorandum*, p. 2.

13 Building and Construction Industry (Improving Productivity) Amendment Bill 2017, *Explanatory Memorandum*, pp. 2-3.

1.16 The Explanatory Memorandum outlines the effects of this amendment:

The practical consequence of this application provision is that if a building industry participant submitted an expression of interest or tendered for building work between 2 December 2016 and the commencement of Schedule 1, the building industry participant would remain eligible to be awarded that building work until 28 November 2018 even if a building enterprise agreement that covers the building industry participant does not comply with any one or more of the requirements of the 2016 Code.

For the avoidance of doubt, if a building industry participant submitted an expression of interest or tendered for building work on or after 2 December 2016 and was awarded that work before the commencement of Schedule 1, the building industry participant is entitled to undertake, or continue to undertake, that work after the commencement of Schedule 1.¹⁵

Financial implications

1.17 The Explanatory Memorandum includes a financial impact statement that notes the bill would have no fiscal impact.¹⁶

Compatibility with human rights

1.18 The bill's statement of compatibility of human rights states that the bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.¹⁷

Scrutiny of Bills Committee

1.19 At the time of drafting, the Senate Standing Committee for the Scrutiny of Bills had not reported on the bill.

Conduct of the inquiry

1.20 Details of the inquiry were made available on the committee's website.¹⁸ Owing to the short timeframe of the inquiry, the committee decided not to make a general invitation for written submissions. Instead, the committee chose to contact a

14 Building and Construction Industry (Improving Productivity) Amendment Bill 2017, *Explanatory Memorandum*, p. 3.

15 Building and Construction Industry (Improving Productivity) Amendment Bill 2017, *Explanatory Memorandum*, p. 3.

16 Building and Construction Industry (Improving Productivity) Amendment Bill 2017, *Explanatory Memorandum*, p. ii.

17 Building and Construction Industry (Improving Productivity) Amendment Bill 2017, Statement of Compatibility with Human Rights, *Explanatory Memorandum*, p. 4.

18 Senate Standing Committee on Education and Employment, Building and Construction Industry (Improving Productivity) Amendment Bill 2017, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/ConstructionAmendment (accessed 10 February 2017).

limited number of relevant organisations to invite submissions. Submissions were received from nine organisations, as detailed in Appendix 1.

1.21 A public hearing was held in Canberra on 13 February 2017. A list of witnesses who appeared at the hearing is available in Appendix 2.

Structure of this report

1.22 This report consists of two chapters:

- This chapter provides a brief background and overview of the bill, as well as an overview of the administrative details of the inquiry.
- Chapter 2 discusses the issues raised by submitters to the inquiry. It also outlines the committee's views and recommendations.

Acknowledgement

1.23 The committee thanks those organisations which contributed to the inquiry by preparing written submissions and giving evidence at the public hearing.

Notes on references

1.24 References in this report to the Hansard for the public hearing are to the Proof Hansard. Please note that page numbers may vary between the proof and official transcripts.

