



# Electrical Trades Union of Australia

*Proud to be Union*

## SUBMISSION

Senate Education and Employment Committee

### **Building and Construction Industry (Improving Productivity) Amendment Bill 2017**

January 2017



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We thank the Committee for the opportunity to make submissions in relation to its current examination of the *Building and Construction Industry (Improving Productivity) Amendment Bill 2017*.

The *Building and Construction Industry (Improving Productivity) Act 2016* (the BCI Act) enables the Minister for Employment to issue a code of practice that is to be complied with by persons in respect of building work, where a person is:

- a building contractor that is a constitutional corporation;
- a building industry participant and the work is to be carried out in a Territory or Commonwealth place; or
- the Commonwealth or a Commonwealth authority,

can be required to comply with that code of practice. As the Committee is well aware, we have made previous submissions that detail the reasons for our opposition to the BCI Act (Attachment A). Our opposition and reasoning stand but we will not re-prosecute those arguments in this submission.

The *Building and Construction Industry (Improving Productivity) Amendment Bill 2017* (the Act) has two main effects. Firstly, it amends a provision of the BCI Act that transitionally exempts building industry participants from the requirement to comply with any enterprise agreement content rules under the BCI Act, and secondly it changes the condition of eligibility to submit expressions of interest, tender for or be awarded Commonwealth funded building work.

The Bill reduces the transitional period under the BCI Act from 29 November 2018 to 1 September 2017. Builders now have fourteen months less have to secure code-compliant agreements by the end of August this year if wish to be eligible to tender for contracts that involve commonwealth funding.



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### Transitional Period

The Bill amends the transition period of two years for builders to bid on federally-funded projects for the next two years even if they have enterprise agreements that do not comply with the 2016 Code. The changes mean that an estimated minimum of 1,500 agreements that have been struck but are thought not to comply with the 2016 Code must be renegotiated and by August.

### Eligibility for Commonwealth Funding

The new Bill also limits the scope of the exemption for builders with non-code compliant enterprise agreements, meaning they can submit expressions of interest or tenders, but would need a code-compliant enterprise agreement before they can be awarded a contract.

Given These amendments will significantly reduce the pool of available contractors for Commonwealth taxpayer-funded construction work. Large, small and intermediate contractors will all be affected.

The consequences will flow out beyond the construction sector. We are already aware of an instance where a large essential service provider, who holds commonwealth contracts, is seeking a compliant agreement. Apart from the clearly erroneous application of the code in applying to an essential service provider, the amendments will mean that the provider will be at risk of its ability to be awarded commonwealth funds unless it can negotiate a new agreement by 1 September 2017.

We will be making further representations to the Committee on this matter when it conducts Hearings.



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### Consultation

For the public record, it should be noted there was no consultation or discussion with unions or workers about the proposed amendments by the cross-bench Senators who are the proponents of this change.

We would also like to place on record our concern with the total inadequacy of the timeframes surrounding calls for submissions.

It is our understanding that there was a possibility that the Act would not be referred to the Committee for examination, so we are appreciative of those that supported the Committee referral but that the Committee is familiar with the legislation and has examined the BCI Act previously should not detract from the due and proper consideration of the amendments that are in the Act currently before the Committee.

The amendments will directly impact thousands of employer and tens of thousands of employees and to have the Bill rushed through the Committee process undermines integrity.

### Government Hypocrisy

The Employment Minister has been quoted on the public record arguing the "simple amendment would create a level playing field in the industry" but it is hard to see this broad, ubiquitous statement as anything more than hollow government puffery.

However, as recently as three months ago, during debate on the BCI in relation to the transitional period and the ability to bid for work Senator Cash, on behalf of the government, gave the following position:

*Senator CASH (Western Australia—Minister Assisting the Prime Minister for the Public Service, Minister for Employment and Minister for Women) (10:09): The government supports the amendment moved by Senator Hinch with the revised form of words he has outlined this morning. **We understand that there are concerns in***



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***relation to whether this covers the undertaking of work on projects that are tendered for during this two-year transitional period. I can confirm that this will be the case.***

*Senator CAMERON (New South Wales) (10:10): Minister, can you guarantee that the amendment ensures that contractors with current agreements with terms prohibited by your 2014 Building Code will be able to continue doing government building work without having to renegotiate or change the existing EBAs?*

*Senator CASH (Western Australia—Minister Assisting the Prime Minister for the Public Service, Minister for Employment and Minister for Women) (10:10): Yes.*

*Senator CAMERON (New South Wales) (10:11): Minister, will the position that has been achieved this morning be reflected in the code?*

*Senator CASH (Western Australia—Minister Assisting the Prime Minister for the Public Service, Minister for Employment and Minister for Women) (10:11): Yes.*

Not only was the position of the government unequivocal, it acknowledged and accepted that the very consequences of unreasonable and unrealistic transitional arrangements, such as those contained in the Bill, would be disastrous.

The Government now stands condemned by its own blatant hypocrisy, as do those that support the transitional amendments contained in the Bill.

We urge the Committee to reject the Bill in its entirety.