



**Australian
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Working for business.
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Senate Education and Employment Legislation Committee

Company Name

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Parliament House

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Email: eec.sen@aph.gov.au

Dear Committee Secretariat,

RE: Building and Construction Industry (Improving Productivity) Amendment Bill 2017

The Australian Chamber supports the passage of the *Building and Construction Industry (Improving Productivity) Amendment Bill 2017* (Bill), which will introduce sensible changes to encourage arrangements compliant with the Code for the Tendering and Performance of Building Work 2016 (2016 Code).

The Australian Chamber was a strong supporter of the *Building and Construction Industry (Improving Productivity) Act 2016*, which re-established the Australian Building and Construction Commission (ABCC) and strengthened laws and penalties in response to unlawful industrial action and coercion.

During the negotiation of the passage of the legislation a number of concessions were made. Of particular note, an amendment was accepted to enable contractors to continue to submit expressions of interest, tender for and be awarded Commonwealth-funded building work until 29 November 2018, even if they have enterprise agreements in place that are not compliant with the 2016 Code.

The 2016 Code sets out the Government's expected standard of conduct for all building industry participants that seek to be, or are, involved in Commonwealth-funded building work. It is designed to achieve objectives including:

- (a) to promote an improved workplace relations framework for building work and promote compliance with the law and encourage the development of safe, healthy, fair, lawful and productive building sites for the benefit of all building industry participants;
- (b) to assist industry stakeholders to understand the Commonwealth's expectations of, and requirements for, entities that choose to tender for and/or are awarded Commonwealth funded building work;

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- (c) to increase efficiency and cost savings in the work performed by code-covered entities;
- (d) to increase the likelihood of timely, predictable, and cost-efficient delivery of Commonwealth-funded building work through the use of building contractors and building industry participants that consistently adhere to the 2016 Code and laws;
- (e) to help funding entities to identify and work with building contractors and building industry participants with track records of compliance;
- (f) to reduce execution delays and costs in relation to Commonwealth funded building work; and
- (g) to establish an enforcement framework under which building contractors and building industry participants may be excluded from tendering for, or being awarded, Commonwealth-funded building work if they do not comply with the 2016 Code.

The 2016 Code works to achieve these outcomes by, for example, regulating the enterprise agreement content of code-covered entities, including by prohibiting the anti-competitive practice of making agreements with terms that restrict or limit the form and type of subcontractor engaged. Such practices may act to prevent small contracting businesses sharing in Commonwealth-funded work. The Australian Chamber believes measures need to be introduced to address them as soon as possible.

As such, the Australian Chamber welcomes the Bill's proposal to bring forward the start date of the 2016 Code to September this year, rather than late 2018.

We also note that building industry participants with a non-code-compliant enterprise agreement (made before 2 December 2016) will still, pursuant to proposed subsection 34(2E), be able to submit expressions of interest or tender for relevant building work until the end of 31 August 2017, 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. This amendment is fairer to construction businesses that did the right thing in negotiating their enterprise agreements and who are compliant with the 2016 Code.

Yours sincerely,

AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY