

Dissenting Report by Independent Senator Nick Xenophon & DLP Senator John Madigan

‘Time to fly the flag for Aussie jobs’

1.1 The Australian Government’s current procurement rules are stacked against local manufacturers and suppliers. While the flag currently flying above Parliament House is currently Australian made, the fact that this is not a requirement for all flags used by the Commonwealth to be made in Australia is a national embarrassment.

1.2 The committee has squandered an important opportunity to support Australian flag makers at a time when Australian manufacturing is at a crisis point. Since the Global Financial Crisis in 2008 over 82,000 manufacturing jobs have been lost in Australia.¹ Successive governments have taken a literalist approach to free trade and this is damaging Australia’s manufacturing industry. Rigid and inflexible international free trade agreements are taking precedence over providing support for Australian jobs. The decline in Australia’s manufacturing industry has also been exacerbated by weak anti-dumping laws.

1.3 The purpose of the Flags Amendment Bill 2014 is to ‘ensure that Australian flags flown, used or supplied by the Commonwealth are only manufactured in Australia from Australian materials’.² Similar legislation already exists elsewhere. For example in the United States all national flags flown over military establishments must be manufactured from 100 per cent US content. It is disappointing that despite the widespread support for the intention of this bill there remains little desire on the part of the Commonwealth to take similar steps to strengthen our local manufacturing industry.

1.4 The United States’ approach to free trade agreements contrasts sharply with Australia’s. The US supports local manufacturers and this was discussed at the committee’s public hearing on 28 April 2014:

Senator XENOPHON: ...My first question to you goes to the fact that the United States has the Buy American legislation. There are two pieces of legislation in the US. There is the Buy American Act, that has been in place since President Hoover in 1933; there is also more recent legislation that requires flags on US government buildings and defence establishments to

1 Bernard Salt, ‘Before and After: GFC triggers the great divide’, *The Australian*, 3 April 2014, available at <http://www.theaustralian.com.au/business/opinion/before-and-after-gfc-triggers-the-great-divide/story-e6frg9jx-1226872733742#>, accessed 12 June 2014.

2 Flags Amendment Bill 2014, Explanatory Memorandum, p. 2.

be made in the United States. How do you say that those key pieces of legislation in the US sit with the US's interpretation of the free trade agreement that we have with them?

Dr Seddon: I have always been puzzled by that. I have never understood how America can enter into these agreements and have legislation like that at home. It baffles me.³

1.5 What is really baffling is that Australian does not have similar legislation in place here. It seems the Americans are prepared to do what is in the national interest first and foremost – but Australia does not. There is a wide spread perception amongst many manufacturers and workers that successive Australian governments have tripped over themselves to get ‘brownie points’ in world trade forums to the nation’s detriment.

1.6 The Australian Companies Institute Ltd also expressed concern about Australia’s approach to local procurement versus that of other countries:

Australia has few requirements for Australian companies’ participation. The issue of international obligation does not appear to deter other countries from closing their doors to support their own, although it is an excuse here to open our markets to competition.⁴

The Commonwealth Procurement Rules

1.7 As set out in the committee’s majority report, the Commonwealth Procurement Rules set out the policies and procedures under which agencies must comply when making purchasing decisions. All procurements must comply with six sub rules of value for money, encouraging competition, efficient, effective, economical and ethical procurement, accountability and transparency, risk management and procurement methods.

1.8 At the heart of the issue is the principle that procurement processes must be non-discriminatory. The CPRs state “all potential suppliers to government must... not be discriminated against due to their... degree of foreign affiliation or ownership, location, or the origin of their goods and services”.⁵

3 Dr Seddon, *References Committee Hansard*, 28 April 2014, p. 3.

4 References Committee Inquiry, The Australian Companies Institute Limited, *Submission 44*, p. 3.

5 Paragraph 5.3, CPRs, 1 July 2012, p. 17.

1.9 While provisions exist within the CPRs to encourage the government to consider small to medium enterprises ('SMEs') for procurement contracts, these provisions lack clarity and are often counterproductive to Australian manufacturing.

1.10 As noted by Dr Seddon at the committee's hearing on 28 April 2014:

If you look very closely at the CPRs, they are not very well drafted on this particular thing because they say that government agencies, when making purchasing decisions, must not discriminate against SMEs. That does not answer the question: can they discriminate in favour of SMEs—that is, give them a bit of a boost?⁶

1.11 Given local industry concern that foreign made flags continue to be purchased by the Australian government, it appears that desirable discrimination in favour of SMEs does not take place here. As Mr Wayne Gregory of Carroll & Richardson Flagworld told the committee:

...while the Commonwealth procurement rules seek to be non-discriminatory, in reality they offer a free kick to many importers. We do not compete with overseas suppliers who want to sell here; they sell through local importers. Obviously, the manufacturer overseas does not have to comply, so it is not a level playing field with regard to legislative requirements, regulations, standards, fair work, income tax, payroll tax, superannuation, and occupational health and safety. Clearly the local importer has to, but the local importer may well be two people and a little factory out the back.⁷

1.12 In its majority report the committee outlined statistics provided by the Department of Finance in relation to the likely level of engagement with Australian suppliers in terms of procurement. We question the veracity of these figures, particularly given the only factors used by the Department to identify Australian suppliers are ABNs and business addresses.⁸ The Department was brought to task on this issue during Senate Estimates in May 2014 in an exchange with Senator Madigan:

Senator MADIGAN:... Having an ABN does not mean the product is made in this country. It means you are a registered business, but that does not mean that a product is manufactured on our shores.

Ms Mason: That is correct. It is an indicator.

6 Dr Seddon, *References Committee Hansard*, 28 April 2014, p. 1.

7 Mr Gregory, *Committee Hansard*, 28 April 2014, pp. 27-28.

8 References committee inquiry, answers to questions on notice from the hearing on 28 April 2014, provided by the Department of Finance on 16 May 2014, pp. 3-4.

Senator MADIGAN: So saying 'ABN' is a misleading comment to infer that the product is Australian made.

Ms Mason: It is an indicator, and it is the information that we hold.

Senator MADIGAN: It is not an indicator, Ms Mason. It does not mean that a product is Australian made. Just because a company has an ABN does not mean it is made with Australian hands or Australian labour.⁹

1.13 The Department of Finance must improve their gathering and recording of information pertaining to the origin of goods procured by the Government. Relying on ABNs and registered business addresses is a lame, flimsy and lazy approach to record management which must be improved.

The impact of the CPRs on local suppliers

1.14 Carroll & Richardson Flagworld Pty Ltd told the committee of the difficulties they face as a local supplier competing with overseas companies:

In recent times we have seen a shift in purchasing emphasis by the Australian Government that places at risk the ability of companies such as ours the opportunity to compete fairly with overseas sourced flags. Local importers can easily bring in container loads of flags and swamp our market with cheap and inferior products. The manufacturing plants they source these imported products do not have the meet the stringent conditions placed on local companies to meet a host of legislative and regulatory requirements.¹⁰

1.15 Carroll & Richardson Flagworld continued:

We have seen the most difficult customer to convince of the need to support and buy Australian Made Flags is the Commonwealth Government itself through its departments. The reason offered by public servants is that their hands are tied because of the requirement they have under the present Commonwealth Procurement Procedures and our WTO obligations. I cannot think of any other country in the world that would allow its National Flags to be made in another country and then imported to the detriment of local companies who are willing and capable of making the flag.¹¹

9 Senate Finance and Public Administration Legislation Committee, *Senate Estimates Hansard*, 28 May 2014, p. 79.

10 Carroll & Richardson Flagworld Pty Ltd, *Submission 1*, p. 1.

11 *Ibid*, p. 2.

The case for a ‘national pride’ category

1.16 The Australian Made Campaign argued the case for a national pride category within the procurement rules:

The procurement guidelines should also recognise the need to treat certain purchases as being in a special category of ‘national pride’. This would include defence materiel as well as items used at official venues or ceremonial occasions where the context needs to reflect all things ‘Australian’. Examples are: Australian flags, particularly those being used in an official or ceremonial context...¹²

1.17 This proposition has strong support from flag producers in Australia:

We particularly endorse the position that the Australian Made Campaign put in their submission to your inquiry that suggests that the CPR needs to treat certain purchases as being in a special category of national pride or national interest. It is not something that you usually see in a tender document, where they ask things such as, 'Is there a national interest issue here? Is there something of national pride that needs to be recognised in the procurement?' Certainly that would be the case, for example, for the flag that flies over this house.¹³

Public perception and expectations regarding Australian flags

1.18 The committee heard from Mr Umit Erturk, Manager of Spear of Fame regarding the public attitude towards Australian flags flown at government buildings:

Senator MADIGAN: ...Mr Erturk, do you believe there is a perception within the Australian community that Australian flags should be manufactured in Australia—that Australians assume that the flags that are on our government buildings and used by our defence forces should be Australian made and are Australian made?

Mr Erturk: Yes. I believe that that is quite clear from the general public. But when I was invited to address this Senate committee, I gathered my staff... I said to them: 'Have a look. This is the situation. I am going to address a committee regarding what we are doing here. What do you think about the Australian flag, not any other flag but the Australian national

12 References Committee Inquiry, Australian Made Campaign Limited, *Submission 27*, p. 3.

13 Mr Gregory, *Committee Hansard*, 28 April 2014, p. 27.

flag? Should it be made in Australia?' You would not believe the reaction I got, saying: 'Of course it should be. That's our national pride.'¹⁴

Remedying the criticism of the bill

1.19 Australian flag makers quite rightly pointed out that requiring Australian flags to be made from materials manufactured in Australia would be very difficult to achieve. As Bainbridge International Pty Ltd pointed out:

There is no textile manufacturing capacity in Australia at the moment available or prepared to invest in the manufacture of flag base fabric to supply a small % (Commonwealth demand) of a relatively modest total national demand.¹⁵

1.20 The Australian Flag Company advised the committee that the “lack of competitive local input materials” is a further challenge faced by flag makers, particularly when trying to keep the cost of the product down.¹⁶

1.21 The Government and Opposition appear to be scrounging for lame excuses not to support a common sense initiative already adopted by some of our free trade partners. The bill should be amended to remove reference to the requirement that flags be manufactured from Australian materials. We believe this will make the bill easier to implement from the point of view of Australian flag producers while simultaneously allowing the government to support local jobs and the Australian manufacturing industry.

1.22 The fact the committee did not even consider supporting the bill in an amended form is greatly disappointing. It is indicative that successive Australian governments have lost their way with both free trade agreements and local procurement rules.

14 Mr Umit Erturk, *Committee Hansard*, 28 April 2014, p. 29.

15 Bainbridge International Pty Ltd, *Submission 6*, p. 1.

16 Australian Flag Company Pty Ltd, *Submission 5*, p. 1.

Recommendation 1

The bill is passed with appropriate amendments as set out in this report.

NICK XENOPHON

JOHN MADIGAN

