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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**BUILDING AND CONSTRUCTION INDUSTRY (IMPROVING PRODUCTIVITY)
AMENDMENT BILL 2017**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment,
Senator the Honourable Michaelia Cash)

**BUILDING AND CONSTRUCTION INDUSTRY (IMPROVING PRODUCTIVITY)
AMENDMENT BILL 2017**

OUTLINE

The Building and Construction Industry (Improving Productivity) Amendment Bill 2017 amends a provision of the *Building and Construction Industry (Improving Productivity) Act 2016* (the BCI Act) that transitionally exempts building industry participants from the requirement to comply with any enterprise agreement content rules in a document issued under section 34 of the BCI Act as a condition of eligibility to submit expressions of interest, tender for or be awarded Commonwealth funded building work.

FINANCIAL IMPACT STATEMENT

Nil

NOTES ON CLAUSES

In these notes on clauses, the following abbreviations are used:

BCI Act	<i>Building and Construction Industry (Improving Productivity) Act 2016</i>
2016 Code	<i>Code for the Tendering and Performance of Building Work 2016</i>
Transitional Rules	<i>Building and Construction Industry (Consequential and Transitional Provisions) Rules 2016</i>
2013 Code	<i>Building Code 2013</i>

Clause 1 – Short title

1. This is a formal provision specifying the short title of the Bill.

Clause 2 – Commencement

2. This clause sets out when the provisions of the Bill commence.

Clause 3 – Schedules

3. This clause provides that legislation that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule has effect according to its terms.

SCHEDULE 1 – AMENDMENTS

Building and Construction Industry (Improving Productivity) Act 2017

Item 1 – Subsection 34(2E)

4. Subsection 34(1) of the BCI Act provides that the Minister may, by legislative instrument, issue one or more documents that together constitute a code of practice that is to be complied with by persons in respect of building work.
5. On 2 December 2016, the Minister issued the 2016 Code. It applies in relation to Commonwealth funded building work for which an expression of interest or tender was submitted after it commenced.
6. The Transitional Rules deem the 2013 Code, as in force immediately before the commencement of the BCI Act, to be a document issued under section 34 of the BCI Act in relation to building work to which it applied immediately before the commencement of the BCI Act. The 2013 Code will not apply to any building work for which an expression of interest or tender is submitted on or after 2 December 2016.
7. Both the 2016 Code and the 2013 Code contain requirements in relation to enterprise agreement content that affect a building industry participant’s eligibility to submit expressions of interest, tender for or be awarded Commonwealth funded building work.
8. Subsection 34(2E) of the BCI Act currently provides that if a document issued under subsection 34(1) includes requirements in relation to the content of building enterprise agreements, a building industry participant may, before 29 November 2018, submit expressions of interest, tender for and be awarded building work funded (whether directly or indirectly) by the Commonwealth or a Commonwealth authority even if a building enterprise agreement, made before the document is issued, that covers the building industry participant does not comply with any one or more of the requirements.
9. This subsection gives building industry participants that are covered by enterprise agreements made before 2 December 2016 a transitional exemption from any relevant enterprise agreement content rules.
10. Item 1 amends subsection 34(2E) by bringing forward the expiry of the exemption to the end of 31 August 2017.
11. 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.

Item 2 – Subsection 34(2E) (note)

12. Item 2 repeals the note under subsection 34(2E) and replaces it with two notes.
13. 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.

14. 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.

Item 3 – Application of amendments

15. Item 3 provides that the amendments made to subsection 34(2E) of the BCI Act by Schedule 1 to the Bill only apply in relation to expressions of interest, or tenders, for building work submitted after Schedule 1 commences.

16. This means that subsection 34(2E), as in force immediately before Schedule 1 commences, continues to apply in relation to expressions of interest, or tenders, for building work submitted before Schedule 1 commences.

17. 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.

18. 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.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Building and Construction Industry (Improving Productivity) Amendment Bill 2017

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

Overview of the Bill

The Building and Construction Industry (Improving Productivity) Amendment Bill 2017 amends a provision of the *Building and Construction Industry (Improving Productivity) Act 2016* (the BCI Act) that transitionally exempts building industry participants from the requirement to comply with any enterprise agreement content rules in a document issued under section 34 of the BCI Act as a condition of eligibility to submit expressions of interest, tender for or be awarded Commonwealth funded building work. This provision only applies in respect of enterprise agreements made before the BCI Act commenced.

Subsection 34(1) of the BCI Act provides that the Minister may, by legislative instrument, issue one or more documents that together constitute a code of practice that is to be complied with by persons in respect of building work.

Subsection 34(2E) of the BCI Act currently provides that if a document issued under subsection 34(1) includes requirements in relation to the content of building enterprise agreements, a building industry participant may, before 29 November 2018, submit expressions of interest, tender for and be awarded building work funded (whether directly or indirectly) by the Commonwealth or a Commonwealth authority even if a building enterprise agreement, made before the document is issued, that covers the building industry participant does not comply with any one or more of the requirements.

The Bill amends subsection 34(2E) to:

- bring forward the expiry of the exemption to the end of 31 August 2017; and
- limit the scope of the exemption to submitting expressions of interest or tenders.

The Bill also makes appropriate transitional arrangements to ensure that if a building industry participant (to whom subsection 34(2E) applied) submitted an expression of interest or tendered for relevant building work before the commencement of this amendment, they remain eligible to be awarded that work.

The Bill does not introduce any new requirements.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

The amendments to the BCI Act contained in the Bill are compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they do not engage any of those rights or freedoms.

Minister for Employment, Senator the Hon Michaelia Cash