Building and Construction Industry (Improving Productivity) Amendment Bill 2017

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Law and Bills Digest Section

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Date introduced: 8 February 2017
House: House of Representatives
Portfolio: Employment
Commencement: The day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at February 2017.
Key issues and provisions

New transition period and arrangements proposed by the Bill

Application of amended transition period and arrangements

Table 2: application of proposed amendments
Purpose of the Bill

The purpose of the Building and Construction Industry (Improving Productivity) Amendment Bill 2017 (the Bill) is to amend the Building and Construction Industry (Improving Productivity) Act 2016 (the Act) to adjust provisions that transitionally exempt building industry participants from the requirement to comply with the ‘enterprise agreement content rules’ in a Code issued under section 34 of the Act as a condition of eligibility to submit expressions of interest, tender for, be awarded, or perform Commonwealth-funded building work.

Background

A detailed examination of the background to the Act is provided at pages 4-8 of Bills Digest No. 3, 2016–17. Briefly, however, the Act was passed with the support of a number of the cross-bench Senators, following a number of amendments. One of the Senators who supported the Act in its amended form, Senator Derryn Hinch, reconsidered his position regarding the length of the transition period for the Code issued under section 34 of the Act and noted:

Over the summer break, I spoke to a lot of people, subcontractors and middle-sized construction companies ... they told me the legislation was killing them. My view is that I listen to people, and that's what I did. I contacted Malcolm Turnbull and told him we needed to look at this again.

The Bill will introduce a shorter transition period, as originally intended as well as reducing the scope of the transitional exemption from the enterprise agreement content rules in the Code.

The Code

Section 34 of the Act enables the Minister to, via legislative instrument, issue one or more documents that, together, constitute a ‘Code of practice’ (Code) that is to be complied with by persons in respect of building work. Without limiting the content of the Code, subsection 34(2) provides that the Code may deal with procurement matters relating to building work, as well as work health and safety matters relating to building work.

Subsection 34(2E) of the Act then provides that, if the Code includes requirements in relation to the content of enterprise agreements, a building industry participant with a non-Code compliant enterprise agreement made before the Code was issued, may, before 29 November 2018:

- submit expressions of interest, tender for and
- be awarded Commonwealth-funded building work.

However, an enterprise agreement made after the Code was issued must comply with the requirements if the building industry participant is to tender for (and, by extension, be awarded and perform) building work.

The practical effect of subsection 34(2E) is that enterprise agreements made before 2 December 2016 are exempt from the enterprise agreement content rules of the Code until 29 November 2018.

Outline of the Code

On 2 December 2016, the Minister for Employment issued the Code for the Tendering and Performance of Building Work 2016 (Code) under section 34 of the Act.

The Code is an opt-in scheme: it only applies to building industry participants that want to seek and be awarded Commonwealth-funded building work. The Code sets out the Government’s standards for all building industry participants involved in Commonwealth-funded building work. It contains requirements related to the content of enterprise agreements, and therefore affects the eligibility of building industry participants to submit expressions of interest, tender for, or be awarded Commonwealth-funded building work. Briefly the Code:

- prohibits the use of unregistered written agreements and other agreements (that is, agreements not registered under the Fair Work Act 2009) that deal with matters prohibited by section 11 of the Code;

2. The amendments proposed to the Building and Construction Industry (Improving Productivity) Bill 2013 and the schedule of amendments made by the Senate can be found at the Bill homepage for the Building and Construction Industry (Improving Productivity) Bill 2013.
provide for terms, conditions or benefits of employment of employees of the employer or the employer’s subcontractors; or that restricts or limits the form or type of engagement that may be used to engage subcontractors\(^4\) and

- provides that, to be compliant with the Code, a building industry participant’s enterprise agreement must not contain clauses that, broadly speaking, would impose limits on the right of the entity to manage its business or to improve productivity.\(^5\)

### Committee consideration

**Senate Education and Employment Legislation Committee**

The Bill was referred to the Senate Education and Employment Legislation Committee for inquiry and the Committee reported on 15 February 2017. Details of the inquiry, its terms of reference and report can be found on the inquiry homepage.\(^6\)

The Committee recommended that the Bill be passed.\(^7\) The Opposition and Australian Greens, in separate dissenting reports, recommend that the Bill not be passed.\(^8\)

**Senate Standing Committee for the Scrutiny of Bills**

At the time of writing the Bill had not been considered by the Senate Standing Committee for the Scrutiny of Bills.\(^9\)

### Policy position of non-government parties/independents

**The Opposition**

The Opposition opposes the Bill, stating:

The new amendments will reverse a position settled only months ago, leaving building companies and unions less than three months to try and renegotiate previously agreed lawfully binding enterprise agreements... The ABCC legislation is bad legislation. When the ABCC was last in place, worker fatalities went up and productivity went down. The draconian Building Code will result in less apprentices and more temporary work visa holders on building and construction sites.\(^10\)

**The Australian Greens**

The Australian Greens oppose the Bill, stating:


5. Specific examples include clauses that: discriminate, or have the effect of discriminating against certain persons, classes of employees, or subcontractors; prescribe the number of employees or subcontractors that may be employed or engaged on a particular site, in a particular work area, or at a particular time; restrict the employment or engagement of persons by reference to the type of contractual arrangement that is, or may be, offered by the employer; require, or result in, discrimination between classes of employees because of the basis on which they are lawfully entitled to work in Australia (for example, the type of visa a migrant worker may hold); require the entity to consult with, or seek the approval of, a building association or an officer, delegate or other representative of the building association in relation to the source or number of employees to be engaged, or type of employment offered to employees or the engagement of subcontractors; prescribe the terms and conditions on which subcontractors are engaged (including the terms and conditions of employees of a subcontractor); prescribe the scope of work or tasks that may be performed by employees or subcontractors; limit or have the effect of limiting the right of an employer to make decisions about redundancy, demobilisation or redeployment of employees based on operational requirements or prohibit the payment of a loaded rate of pay (whether or not expressed as an annual amount); Code for the Tendering and Performance of Building Work 2016, section 11.


10. B O’Connor (Shadow Minister for Employment and Workplace Relations), *Chaotic government secret deal will cause mayhem in construction industry*, media release, 8 February 2017, p. 1.
The original ABCC legislation caused chaos in the building and construction industry and the latest move by Derryn Hinch and Nick Xenophon is a recipe for this chaos to return. By removing the grace period before some of the worst parts of this legislation came into effect, agreements that had already been struck between companies and workers will now be up in the air ... The Greens will not be party to any grubby deal that the crossbench Senators have negotiated.\textsuperscript{11}

\textbf{Other non-government parties and independents}  
Media reports suggest that Senator Derryn Hinch, Liberal Democrat Senator David Leyonhjelm, the Nick Xenophon Team and One Nation Senators will support the Bill.\textsuperscript{12} The position of other non-government Members and Senators is not clear at this time.

\textbf{Position of major interest groups}  
At the time of writing, seven submissions from industry stakeholders to the Senate Education and Employment Legislation Committee’s inquiry into the Bill had been received.

\textbf{Australian Chamber of Commerce and Industry}  
The Australian Chamber of Commerce and Industry (ACCI) supports the Bill.\textsuperscript{13} The ACCI noted:

\ldots 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.\textsuperscript{14} (emphasis added).

\textbf{Australian Council of Trade Unions}  
The Australian Council of Trade Unions (ACTU) opposes the Bill.\textsuperscript{15} The ACTU argues that the Code prohibits ‘clauses that are often negotiated by unions on their members’ behalf and with their endorsement, because they are in their members’ interests’, such as clauses related to maximum daily working hours and parity of pay for subcontractors.\textsuperscript{16} Therefore the ACTU argued:

What the Bill (in conjunction with a new or amended Code) therefore seeks to achieve is to disqualify unionised companies from Commonwealth funded work, by narrowing the field of eligible tenderers to companies that have agreements that lack the features typical of union agreements. In doing so, it gives a competitive edge to those companies that were loyal to the government’s legacy of proposed but undelivered policy announcements and places other law abiding companies at a competitive disadvantage. Moreover, it rewards companies who are unwilling to even agree on some most basic conditions with their workforce that are important for their safety, learning and well being in the workplace and which contribute to building and maintaining industry skills.\textsuperscript{17}  

The ACTU argues that by narrowing of the field of potential government contractors and reducing the scope of competition ‘the bald statement in the Explanatory Memorandum that the expected financial impact of the intended change is “nil” is highly contestable’.\textsuperscript{18}

\begin{itemize}
\item[11.] A Bandt (Greens Industrial Relations spokesperson), \textit{'Human Headline' becomes 'Human Backflip' by reneging on ABCC deal: Bandt}, media release, 8 February 2017, p. 1.
\item[12.] P Kelly, \textit{‘ABCC win after Hinch flip’}, The Australian, 8 February 2017, p. 4.
\item[14.] Ibid., p. 2.
\item[16.] Ibid.
\item[17.] Ibid.
\item[18.] Ibid.
\end{itemize}
Construction, Forestry, Mining and Energy Union

The Construction, Forestry, Mining and Energy Union (CFMEU) opposes the Bill.\(^9\) The CFMEU argues that ‘virtually any clause’ in an enterprise agreement ‘which favours the interests of workers can be ruled as ‘non-compliant’ with the Code by the new ABCC’.\(^{20}\)

The CFMEU argues that the measure proposed by the Bill would ‘significantly reduce the pool of available contractors for Commonwealth taxpayer-funded construction work’ leading to Australian taxpayers being ‘deprived of the benefits of the ordinary competitive commercial tender process that is essential to the delivery of quality and value-for-money construction work’.\(^{21}\)

The CFMEU argued:

Existing agreements bargained for by unions are more likely to contain beneficial clauses for workers that will offend the new Code. Many of these clauses promote broader social objectives which are in the public interest. These include clauses that promote the engagement and training of young people and apprentices, clauses that restrict anti-social working hours and clauses that require workers’ health and wellbeing initiatives (such as health checks, suicide prevention, screening for dust diseases, drug and alcohol awareness). By immediately excluding contractors with these clauses in their agreements the amendment will legitimize discrimination against contractors and workers on political and ideological grounds, rather than on their commercial capacity to deliver a project on time and on budget.\(^{22}\)

The CFMEU also argued that the Bill would:

... give a competitive advantage to those who do not have agreements and are therefore exposed to lawful protected industrial action as attempts are made to secure agreements. This means Government projects will be more exposed to delays caused by protected industrial action than they would be if the change were not made.\(^{23}\)

Electrical Trades Union

The Electrical Trades Union (ETU) opposes the Bill.\(^{24}\) The ETU noted:

• an estimated minimum of 1,500 enterprise agreements ‘that have been struck but are thought not to comply with the 2016 Code must be renegotiated and by August’ and

• whilst the Bill allows building industry participants with non-Code compliant enterprise agreements to submit expressions of interest or tenders they ‘would need a code-compliant enterprise agreement before they can be awarded a contract’ and this ‘will significantly reduce the pool of available contractors for Commonwealth taxpayer-funded construction work’.\(^{25}\)

The ETU also argued that ‘the consequences will flow out beyond the construction sector’ and stated:

We are already aware of an instance where a large essential service provider, who holds Commonwealth contacts, 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.\(^{26}\)

Housing Industry Association

The Housing Industry Association (HIA) supports the Bill on the basis that:

\(^{19}\) Construction, Forestry, Mining and Energy Union (CFMEU), Submission to Senate Education and Employment Legislation Committee, Inquiry into the Building and Construction Industry (Improving Productivity) Amendment Bill 2017, 10 February 2017, p. 3.

\(^{20}\) Ibid., p. 2.

\(^{21}\) Ibid., pp. 2–3.

\(^{22}\) Ibid., p. 4.

\(^{23}\) Ibid., p. 4.

\(^{24}\) Electrical Trades Union (ETU), Submission to Senate Education and Employment Legislation Committee, Inquiry into the Building and Construction Industry (Improving Productivity) Amendment Bill 2017, 10 February 2017, p. 3.

\(^{25}\) Ibid., p. 3.

\(^{26}\) Ibid., p. 3.
The earlier that the Building Code has universal application to all industry participants, the sooner the construction industry and broader community will experience the cultural and productivity improvements the Building Code and restoration of the Australian Building and Construction Commission (ABCC) are designed to address.  

The HIA noted that, in relation to building industry participants who have entered into non-Code compliant enterprise agreements:

HIA does not criticise those building contractors that made commercial decisions to enter into such agreements with the unions. At the same time however, many builders and contractors in the industry refused to sign non-compliant enterprise agreements.  

The HIA concluded that, as the ‘Code and the operation of the ABCC more broadly, are intended to establish a fair and level playing field for all builders and contractors seeking to undertake construction projects for the Commonwealth government’, the proposed nine-month transition period ‘is a sensible and pragmatic compromise’ that will enable building industry participants ‘that desire to work on future Government projects’ to enter into Code-compliant enterprise arrangements ‘whilst recognising that many building contractors are already compliant’.  

**Master Builders Australia**

Masters Builders Australia (MBA) supports the Bill. Whilst noting that it would ‘have preferred that no transition exist in the first instance’ and that the Code was ‘implemented as per statements of Government and advice to industry’, MBA nonetheless noted that the reduced transition period provided by the Bill ‘will reduce the extent of problems arising from it’. 

The MBA noted that, in relation to building industry participants who have entered into non-Code compliant enterprise agreements:  

... building unions encouraged the adoption of enterprise agreements that were not consistent with the requirements of the 2014 Code ... While some building industry employers signed agreements that were not compliant, the majority either made agreements that were compliant (or purported to be) or have held out for a compliant agreement. Those who did sign non-compliant agreements did so with awareness they would not be able to tender for or undertake Commonwealth funded building work in the event the ABCC was re-established.  

In relation to the proposed nine-month transition period, the MBA argued that it would address ‘many of the problems created by the two year transition period’ currently provided by the Act and would ‘restore a level playing field amongst industry participants’ in the following ways:

- as all participants will need to be Code compliant if they are to be awarded Commonwealth funded building work ‘this will assist in delivering cultural change immediately on Commonwealth funded construction work and deliver better value for money to taxpayers’
- as the period by which all participants will need to achieve Code compliance will be greatly reduced ‘this will bring forward the period in which overall industry cultural change will be realised’
- the shorter transition period ‘will create a time pressure on building unions to secure and enhance the prospect of stable, productive and ongoing work for their members’ and thus ensure that ‘industry employers are eligible to undertake Commonwealth funded building work’ and

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28. Ibid., p. 5.
29. Ibid., p. 5.
31. Ibid., pp. 1–2.
32. Ibid., p. 5.
• the shorter transition period ‘will remove the disparity between building industry participants arising as a consequence of the two-year transition period and reduce disparity insofar as tender eligibility’. 33

The MBA concluded that the nine-month period within which compliance must be achieved ‘is an appropriate and reasonable compromise that accommodates the overwhelming majority of circumstances faced by building industry participants’. 34

**Master Electricians Australia**

Master Electricians Australia (MEA) supports the Bill. 35

The MEA argued that the current two-year transition period provided by subsection 34(2E) of the Act was incompatible with and did not achieve the Act’s main objective, which is:

... to provide an improved workplace relations framework for building work to ensure that building work is carried out fairly, efficiently and productively, without distinction between interests of building industry participants, and for the benefit of all building industry participants and for the benefit of the Australian economy as a whole.36

The MEA argued that:

... the current legislative timeline of 2018 will result in a slow and drawn out implementation whereby participants, employers and employees will be in a state of flux waiting for the change to be in place. This could cause tension and unrest within the industry and would, in fact, be counterproductive to the main objective outlined in section 3(1) of the Act.37

Whilst supporting the Bill, the MEA noted that there were three groups of employers who would be impacted in different ways by the Bill, and recommended a number of concessions for certain groups as set out in the table below.

**Table 1: groups of employers impacted by the Bill and suggested concessions**

<table>
<thead>
<tr>
<th>Group</th>
<th>Characteristics of the group and impact of Bill</th>
<th>Recommended concessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Employers using modern award arrangements or Code-compliant enterprise agreements</td>
<td>This group is currently, and will continue to, operate under the Code. The advantage being that the desired behaviours and culture change will start to be demonstrated by these employers and employees. We see little impact on these employers of changing this date. In terms of Award participation, this represents a large number of employers.</td>
<td>Nil.</td>
</tr>
<tr>
<td>(2) Employers with enterprise agreements created since April 2014 that have not passed</td>
<td>This Group is subject to the proposed legislation as presented with a date of 31 August 2017. This Group of employers have entered into agreements knowing that the Federal Government’s</td>
<td>Nil.</td>
</tr>
</tbody>
</table>

33. Ibid., pp. 5–6.
34. Ibid., p. 6.
37. MEA, Submission, op. cit., p. 2.
<table>
<thead>
<tr>
<th>Group</th>
<th>Characteristics of the group and impact of Bill</th>
<th>Recommended concessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>the agreement’s nominal expiry date</td>
<td>policy was to establish the Code. The Code has had some changes since the 2014 draft, however the behaviour targeted by the Code was well known to employers and unions. The parties made a conscious decision to agree to what would, in all likelihood, be against the Code. As such, we see no reason why the proposed date amendment to the 31 August 2017 should not apply to those parties.</td>
<td></td>
</tr>
<tr>
<td>(3) Employers with enterprise agreements that have passed their nominal expiry date</td>
<td>This group of employers have, in many cases, been waiting and adhering to the Government’s position and have committed to active engagement in changing the culture of the industry. However, we believe the amendment disadvantages these employers for behaving responsibly. Employers who, in many cases, bore the brunt of industrial pressure from the construction unions. Further, this proposed amendment would result in an employer being removed from site after this date by virtue of a breach of the Code. The removal from site and subsequent retendering of the remaining work would have a drastic impact on the productivity of the project.</td>
<td>(1) <strong>The date for group three employers to have 2016 Code compliant agreements be delayed to 30 November 2017.</strong> This group are in all likelihood currently negotiating an agreement or are waiting for the Union to settle on a position and strategy before being approached. This will allow these employers to review what the Unions and parties’ positions are. We expect that those with non-Code compliant Group 2 agreements will be prioritised by the parties due to the urgency of the 31 August date. We also foresee that the large number of agreements in some states that will need to be changed will cause unions to be unavailable in some circumstances. (2) <strong>That group three employers who have already signed contracts and commenced work on projects prior to the 2 December 2016 be able to complete and remain working on those sites until such time as:</strong> a. A new agreement is negotiated, or b. The parties agree to terminate the offending Enterprise Bargaining Agreement in the Fair Work Commission or c. the project is completed, whichever occurs first. However, ‘no future works could be awarded to an employer who has not complied with the content requirements of the Code’.</td>
</tr>
</tbody>
</table>

Source: MEA, [Submission](#), op. cit., pp. 2–3.
The MEA concluded that, if passed, the Bill would ‘bring about the productivity gains sought by the introduction of the agreement content requirements’ contained in the Code ‘without excessively drawing out the transitional period for parties to amend their agreement content’.  

Financial implications

The Explanatory Memorandum to the Bill states there will be no financial implications arising from the Bill.  

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.  

Parliamentary Joint Committee on Human Rights

At the time of writing the Parliamentary Joint Committee on Human Rights had not considered the Bill.

Key issues and provisions

New transition period and arrangements proposed by the Bill

As noted above, currently subsection 34(2E) of the Act provides that building industry participants with non-Code compliant enterprise agreements may (before 29 November 2018) submit expressions of interest, tender for, be awarded, and perform building Commonwealth-funded building work.  

Items 1 and 2 of the Bill would amend subsection 34(2E) to bring forward the expiry of the exemption from the enterprise content rules of the Code for building industry participants with non-Code compliant enterprise agreements entered into before the commencement of the Code to 1 September 2017.

However, by removing the words ‘and be awarded’ from subsection 34(2E) of the Act, item 1 also limits the scope of the exemption to the submission of expressions of interest or tenders. The practical effect of removing the exemption from the enterprise content rules of the Code for building industry participants with non-Code compliant enterprise agreements entered into before the commencement of the Code being awarded Commonwealth-funded building work is:

- building industry participants with non-Code compliant enterprise agreements made before the Code commenced can submit expressions of interest or tender for relevant building work but
- before they can be awarded (and therefore perform) a contract for such Commonwealth-funded building work they must have a Code-compliant enterprise agreement in place.

Item 2 (proposed Note 2) states that the exemptions provided in subsection 34(2E) as amended will not apply in relation to enterprise agreements made after the commencement of the Code.

Application of amended transition period and arrangements

As amended by the Bill, subsection 34(2E) of the Act would apply in relation to Commonwealth-funded building work in the manner outlined in the table below.

Table 2: application of proposed amendments

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>• building work was <strong>awarded before</strong> the commencement of the Bill and</td>
<td>The building industry participant is entitled to perform or</td>
</tr>
<tr>
<td>• the building industry participant’s enterprise agreement was made <strong>before</strong> the commencement of the Code and is not Code-compliant</td>
<td>continue to perform, the Commonwealth-funded building work after the proposed amendments commence.</td>
</tr>
</tbody>
</table>

38. Ibid., p. 3.
40. The Statement of Compatibility with Human Rights can be found at pages 4–5 of the Explanatory Memorandum to the Bill.
<table>
<thead>
<tr>
<th>Scenario</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>• an expression of interest was submitted by a building industry</td>
<td>The building industry participant is eligible to be <strong>awarded</strong> building work until the end of 28 November 2018, and can perform that work.</td>
</tr>
<tr>
<td>participant between the commencement of the Code and the commencement of the Bill</td>
<td></td>
</tr>
<tr>
<td>• the building industry participant’s enterprise agreement was made</td>
<td></td>
</tr>
<tr>
<td><strong>before</strong> the commencement of the Code and is not Code-compliant</td>
<td></td>
</tr>
<tr>
<td>• between the commencement of the Bill and 31 August 2017 and</td>
<td>The building industry participant is eligible to submit the expression of interest or tender, but <strong>could not be awarded</strong> or perform the relevant building work until the enterprise agreement is Code-compliant (or terminated and the relevant modern award applies).</td>
</tr>
<tr>
<td>the building industry participant’s enterprise agreement was made</td>
<td></td>
</tr>
<tr>
<td><strong>before</strong> the commencement of the Code and is not Code-compliant</td>
<td></td>
</tr>
<tr>
<td>• from 1 September 2017 and</td>
<td>The building industry participant would not be eligible to submit an expression of interest, tender for, be awarded or perform Commonwealth-funded building work until a Code-compliant enterprise agreement is in place (or the non-Code compliant enterprise agreement is terminated and the relevant modern award applies).</td>
</tr>
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</tr>
<tr>
<td>the building industry participant’s enterprise agreement was made</td>
<td></td>
</tr>
<tr>
<td><strong>after</strong> the commencement of the Code and is not Code-compliant</td>
<td></td>
</tr>
</tbody>
</table>


**Item 3** provides that the amendments made to subsection 34(2E) of Act will only apply in relation to expressions of interest, or tenders, for building work submitted after the Bill commences. That means that current subsection 34(2E) will continue to apply in relation to expressions of interest, or tenders, for building work submitted before the Bill commences.\(^{41}\)

This means that the Bill would not change current arrangements in relation to tenders submitted before the Code commenced, and as such if a building industry participant submitted an expression of interest or tendered for building work between the commencement of the Code and the commencement of the Bill, it would be eligible to be awarded that building work until 28 November 2018 even if it is covered by a non-Code compliant enterprise agreement. **Item 3** also ensures that where a building industry participant was awarded Commonwealth-funded building work before the commencement of the Bill, it is entitled to perform or continue to perform that work after the Bill commences.\(^{42}\)

\(^{41}\) [Explanatory Memorandum, Building and Construction Industry (Improving Productivity) Amendment Bill 2017, p. 3.](#)

\(^{42}\) [Ibid.](#)