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PARLIAMENTARY DEBATES



THE SENATE

BILLS

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

Second Reading

SPEECH

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BY AUTHORITY OF THE SENATE

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Speaker Xenophon, Sen Nick

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Senator XENOPHON (South Australia) (12:28): Last year the expression 'post-truth' was the Oxford Dictionary's word of the year. Now post-truth is defined as relating to or denoting circumstances in which objective facts are less influential in shaping public opinion that appeals to emotion and personal belief. Post-truth politics has been described as a political culture in which debate is framed largely by appeals to emotion disconnected from the details of policy and by the repeated assertion of talking points to which factual rebuttals are ignored. As one Washington political commentator has noted, post-truth politics means disseminating phoney facts which pass into history unchallenged. Sadly, that is what the CFMEU has done in recent days. They have used members' fees to conduct a large-scale media campaign targeting me for supporting changes in the Building and Construction Industry (Improving Productivity) Amendment Bill 2017. The campaign is not just post-truth; it is dishonest, it is devious, it is misleading, it is mischievous, it is manipulative, it is aggressive, it is unethical and, dare I say, it is corrupt. The CFMEU's campaign against me is using billboards, robocalls, radio, television and newspaper ads to spread a pack of unsubstantiated lies based on emotion and falsehoods. I want to address those in due course. What we have at stake here is a debate about whether we need these changes. These changes are needed because small and medium operators in the building sector will suffer unduly if they are not brought into place.

As we are all aware, the Senate passed legislation restoring the ABCC at the end of last year. The restoration of this controversial statutory body was the subject of a double dissolution election. At the core of it is the effectiveness of the code. I noted in my second reading speech on 28 November last year that there had been agreement in the past from the opposition that the building and construction sector needs a strong regulator—words no less than the current opposition leader talking about this sector needing a different set of rules. There was acknowledgement that there was need for a specialist division to deal with these issues. The real issue has been the Building Code. The government claims that the Building Code is essential to drive reform and to effect cultural change. The unions, in particular the CFMEU, claim that it will reduce the number of apprentices, increase the number of foreign workers on building sites and make worksites more unsafe. These claims are false. They are lies. This debate was intense.

I had many productive discussions with the CFMEU last year, which led to my office securing a number of amendments. These amendments included: introducing judicial review for the first time; legislating for impartiality of the ABCC Commissioner and for the right of the union to take the commissioner to court if there was no impartiality—a right they did not have before; maintaining safeguards for the use of examination powers; and also reversing the onus of proof that stop-work meetings were taken for safety reasons, which was unfair and onerous on unions, so it was in line with the Fair Work Act. On any objective measure these were good amendments that strengthened the rights of the union and strengthened the rights of workers. I also secured a range of amendments to the Building Code, including a strengthened security of payments framework that is now underway so that contractors who do not comply with security of payment legislation face exclusion from Commonwealth funded building work.

We are now seeing a lot of these issues being debated again. It is worth mentioning that we have seen, as a result of negotiations in the debate on that bill, the biggest changes ever to Commonwealth procurement rules to ensure not only that the steel used in Commonwealth funded work not only complies with Australian standards and takes into account Australian work practices, employment practices and environmental practices but also, fundamentally, that any work over \$4 million must take into account for the first time the economic impact of procuring locally. These are big changes. These are changes that no less than Senator Kim Carr, the shadow industry minister, praised. He made it very clear that he opposed the ABCC legislation but acknowledged that these were real, significant and stunning changes to procurement laws in this country that will make a real difference to Australian standard goods being used in construction work.

We are seeing these issues being debated again, and we are dealing with the issue of the commencement of the Building Code. I supported the legislation last year and I supported a shorter, nine-month transition. The Senate

passed an amendment initiated by Senator Hinch that pushed this date to 29 November 2018. We have heard that over the course of the summer break Senator Hinch changed his mind. Despite claims to the contrary, he did this because of the small-to-medium subcontractors in the building industry, who feel that they are being bullied and threatened and intimidated. That is my position. That is the position of our team. We need to bring this on. I too have spoken to those smaller and medium contractors who feel that they do not have the protection needed and that this will force them out of business if we have an undue delay.

That has triggered a campaign by the CFMEU. I say, more in sorrow than in anger, that I have now had to seek legal advice in relation to billboards. We will see how the defamation laws of this country deal with that matter. The CFMEU says I have betrayed the steel industry. The changes to Commonwealth procurement laws are dramatic and will be enforced from March this year. This will give local industry an advantage in bidding for a share of the \$60 billion annual procurement expenses that the Commonwealth government incurs each year. These changes will favour local steel producers in particular. No less than the Australian Steel Institute came out saying that these are big changes that will make a very real difference to the Australian steel industry. These changes have been welcomed by no less than Mark Mentha, the administrator of Arrium, who has spoken out about this and who at the moment is going through a process of selling Arrium to a number of potential bidders. These procurement rules will make it easier to secure the future of Arrium and the many thousands of jobs in Whyalla and around the country that rely on the future of our steel industry.

I have been a vocal supporter of stronger anti-dumping protections to minimise the amount of imported Chinese steel that floods the market. Several years ago Brendan O'Connor, as minister, acknowledged that the Labor government was forced to bring about some changes as a result of the bill that I put up, and Senator Cameron had a very constructive part to play in that process. We still need to reform dumping laws even further, and there will be a resolution in the Senate tomorrow on this.

The claim about making workplaces unsafe is the worst of all. This claim is not backed with any evidence, and this is just appalling. Clause 9.3 of the Building Code is explicit in ensuring workplace health and safety laws are key to this code. Companies put their ability to undertake Commonwealth funded work at risk if they breach workplace health and safety requirements. The Building Code does not make any changes to the right of entry for safety purposes. As I said earlier, the rules were strengthened to give unions the right to stop work without the onerous provisions of the previous code under the previous act. These are matters that must be taken into account.

Senator Cameron: Just admit you've sold out.

Senator XENOPHON: I will not be lectured to by anyone in this chamber or by the unions when it comes to industrial safety, given that I pushed for industrial manslaughter laws which I still support.

Senator Cameron: You're a hero!

Senator XENOPHON: Do not be so rude, Senator Cameron.

Senator Cameron: You're an absolute hero to the working class!

Senator XENOPHON: Sarcastic, rude; you are not advancing this debate.

I supported for many years and continue to support industrial manslaughter laws, because if an employer puts a worker's life at risk and that worker's life is lost then the chain of responsibility needs to go to the very top of management. What I have done in the South Australian parliament is a matter of fact. When it comes to issues of asbestos and safety, in 2005 the South Australian parliament, in a very rare event, passed a private member's bill I introduced to ensure that the workplace compensation mechanisms for asbestos victims and their families were overhauled. They were radical changes that both Labor and the Liberal opposition supported at that time. They were real changes that have helped many hundreds of asbestos victims in South Australia and are still in place.

I want to go to the issue of the code. The 2016 code contains a workplace health and safety conduct clause, but Labor's 2013 code was silent on this issue. The 2016 code mandates compliance with safety laws and sets specific requirements for asbestos training and safety, but Labor's code was silent on these issues. The 2016 code contains penalties for not complying with workplace health and safety laws, but Labor's code was silent on this issue. The 2016 code requires tenderers to demonstrate past compliance with workplace health and safety laws, but Labor's code was silent on this issue. The 2016 code prevents work going to companies that have breached workplace

health and safety laws, but Labor's code was silent on this issue. The 2016 code prevents head contractors from using subcontractors who have breached workplace health and safety laws, but Labor's code was silent on this issue. That is a matter of fact.

To say that I have betrayed apprentices is again more lies and fearmongering. The code does not prevent or restrict the employment of apprentices. During negotiations with the government, the government agreed to include a legislative note after subsection 11(3)(a) which states that it does not prevent the inclusion of clauses in an enterprise agreement that encourage the employment of apprentices.

These are the sorts of the matters that need to be put in relation to this. So, when Mr Brendan O'Connor in the other place talks about issues of asbestos and safety, those comments are unfounded. They are false. It is part of the post-truth world we now live in.

In 2005, those laws for asbestos compensation were adequately overhauled. In 2004, the industrial manslaughter legislation I introduced into the South Australian parliament was not supported by the major parties, but, interestingly, the Australian Greens in the South Australian parliament picked up on those laws and to their credit they acknowledged the work that I had done a number of years earlier in relation to that. These Commonwealth procurement rules are something that the Labor Party never brought into play when they were in power. They had an opportunity to do the right thing by Australian industry and by Australian workers. As a result of good faith negotiations with the government those rules have now been changed, significantly and substantially. Dare I say, I am sure there are some in the Labor Party and I daresay in the coalition—and Senator Cash is nodding her head—who probably were pretty nervous about these changes brought into play. But these changes are a big deal for Australian jobs and for Australian industry, and I do appreciate the comments of Senator Carr in relation to this.

In terms of foreign workers, Senator Cameron knows that we worked together on a Senate inquiry in 2012 on 457 visas and other visas and called for tighter rules to give preferences to local jobs. The security of payments legislation reforms will make a big difference to many thousands of subcontractors who have been duded in the past.

In conclusion, we will have a substantial committee stage for this bill. My colleagues and I do not support a gag on debate. This will go on as long as it needs to so that all the questions can be asked—so that everyone can ventilate their point of view. We do not support a gag, in the way that senator Cameron and others did and in the way that the Greens did in previous debates. We are in the grip of post-truth politics, where it is more important to tell the story you want rather than tell the story that the people should know. That is why this legislation is important for making sure that the code does what it is meant to do. What is in it for us? That is a question that was posed by Senator Hanson-Young. It is about the small and medium operators not being pushed around. It is to ensure that we have a strong construction sector they can employ more and more Australians on decent wages and conditions.