



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM  
Mr Jeremy Hanson MLA (Chair), Mr Michael Pettersson MLA (Deputy Chair),  
Ms Suzanne Orr MLA, Mr Mark Parton MLA

## Submission Cover Sheet

### Inquiry into Government Procurement (Secure Local Jobs) Amendment Bill 2018

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# CFMEU

## CONSTRUCTION

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Mr Jeremy Hanson  
Chair, Standing Committee on Economic Development and Tourism  
Legislative Assembly Building  
London Circuit  
CANBERRA ACT 2601

*By email – LACommitteeEDT@parliament.act.gov.au*

Dear Chair

The CFMEU (the Union) welcomes the opportunity to provide the Standing Committee a submission to the Inquiry into the Secure Local Jobs Code Amendment Bill.

The CFMEU represents over 2,000 construction workers in the ACT. The Union seeks to improve the lives of our members by bargaining for higher pay and conditions, while also supporting improvements in workplace health and safety. The Union also campaigns on other social justice issues that are relevant to our members and the community more generally.

Our Union has long supported governments using procurement practices to establish decent working conditions. Globally, it is common practice for government to utilise their purchasing power for the purpose of achieving social objectives.

The ACT Government's proposed Government Procurement (Secure Local Jobs) Amendment Bill 2018 is well aligned with these goals. Essentially, the Bill proposes that the ACT Government better utilise its significant expenditure to improve conditions for all workers in the Territory. This is of particular relevance for workers in the construction industry, with construction-related outlays consistently representing a significant proportion of the ACT Government's budget from year to year.

To that end, the CFMEU supports the introduction of this Bill and would ask the Committee to recommend to the Assembly that the Bill be enacted.

### **Background**

The CFMEU has consistently supported the ACT Government using its expenditure power to improve the conditions of workers in the Territory.

In 2011, the Union supported the introduction of the Industrial Relations and Employment (IRE) Obligations Strategy, which was aimed at:

1. improving workplace and management culture in the ACT construction sector;
2. promoting better employer and employee relationships; and
3. improving industrial relations planning and management at both the enterprise level and on specific projects.

The primary purpose of the Strategy, as stated by the Government, was to *“ensure that industrial relations and employment compliance best practice is part of the culture of the construction industry, particularly with respect to ACT Government contracts.”*

While the introduction of the IRE Obligations Strategy was leading edge at the time, close to a decade of minimal or no enforcement has resulted in it no longer being taken seriously by the industry. As such, it is poorly equipped to ensure that contractors in the ACT obey industrial or safety laws.

Similarly, the Memorandum of Understanding (MoU) between UnionsACT and the ACT Government while honourable in its objectives, has proved insufficient to address some contractors' refusal to meet their industrial obligations.

The evidence of widespread non-compliance by contractors in the ACT is substantial.

In July 2016, the Fair Work Ombudsman released the findings of a recent campaign in the ACT which found that of the 76 businesses audited:

- 43% were not compliant with their workplace responsibilities
- 25% were not paying their employees correctly, and
- 24% were not compliant with their record-keeping and pay-slip obligations

In December 2017, the Fair Work Ombudsman released additional findings of a further audit undertaken. This audit was specifically targeted at businesses that had previously been found to be falling short of their workplace obligations. Concerningly, despite these businesses having previously been informed they were failing to comply, 40% of businesses re-audited remained non-compliant with their obligations.

This is supported further by research undertaken by Unions ACT, which found widespread incidents of wage-theft, unsafe work practices and bullying and harassment across all ACT industries.

Unfortunately, the ACT Government has not been immune from engaging contractors that also fail to comply with industrial and safety laws. In May this year, the Union discovered instances of wage theft on the \$300 million ACT Government project at Constitution Place. This company continues to undertake ACT Government work, and was just recently awarded a \$1.4 million contract.

More recently, the Union has initiated proceedings in the Federal Court alleging instances of wage theft occurring on the ACT Government's Light Rail project, totalling over \$700,000. This lawsuit details 55 breaches of workplace laws by John Holland (one of the principal contractors) and sub-contractors engaged on the project.

These low levels of compliance indicate that under existing legislation, too many contractors believe that it is a viable business strategy to fail to comply with their obligations and hope that they are not discovered. To address this culture, the consequences of non-compliance must be greater.

It should also be noted that the introduction of this legislation was announced prior to the 2016 Territory election, and formed an integral part of the CFMEU's and the union movement's campaign to support the ACT Government. As such, the enactment of this legislation is a fulfilment of an election commitment.

In addition, the objectives of the Bill receive broad support throughout the ACT community. Opinion polling commissioned by Unions ACT in 2018, which polled over 1,000 residents,

found that over 76% of Canberra's support stronger laws for contracting out that would prevent wage theft. This aligns with the Union's own discussions with our own members, as well as with contractors who believe that they are being unfairly disadvantaged in competing for ACT Government work.

### **Improving working conditions through procurement**

The CFMEU believes that procurement policy should be used to advance a pro-worker agenda, that supports good conditions and high wages, as well as promoting local industry, skill development, and secure jobs.

We reject the view put forward by some that government procurement should merely consider the lowest price. While businesses are predominantly driven by profit, government should draw on a great number of factors other than price. This should include considerations around how purchasing decisions can have larger flow on consequences throughout the rest of the economy.

Globally, it is common practice to use procurement as a method from which to improve workplace conditions throughout the economy.

In the debate over the use of government procurement to improve working conditions, one of the more overlooked instruments is the International Labour Organisation's Convention 94, *the Labour Clauses (Public Contracts) Convention, 1949*. This Convention has been ratified by sixty-two countries, but regrettably, is yet to be ratified by Australia.

The instruments objectives are described as:

*"First, to remove labour costs being used as an element of competition among bidders for public contracts, by requiring that all bidders respect as a minimum, certain locally established standard.*

*Second, to ensure that public contracts do not exert a downward pressure on wages and working conditions, by placing a standard clause in the public contract to the effect that workers employed to execute the contract shall receive wages and shall enjoy working conditions that are not less favourable than those established for the same work in the area where the work is being done by collective agreement, arbitration award or national laws and regulations."*

A 2008 review of the Convention noted that in contracting for the execution of works or the supply of goods, public authorities should concern themselves with the working conditions under which the operations are carried out. This concern stems from the acknowledgement that government contracts are often awarded to the lowest bidder, and those competitive forces might lead to contractors seeking to lower their prices by economising on labour costs.

However, it is generally recognised that governments should not engage workers at a condition below a social minimum. In contrary, government should seek to set an example to the economy more broadly by acting as a model employer. Utilising procurement laws to improve working conditions simply acknowledges the fact that when the government contracts works to the private sector, that contractor is essentially providing a public service.

As such, these contractors should be held to a similar standard to which the public service is held to, with regard to their compliance with industrial and safety obligations.

Indeed, other governments in Australia have used their purchasing power to regulate the behaviour of contractors. The Victorian Government, and more recently the Queensland

Government, have outlined how they intend to use procurement to establish safety and industrial standards, and to improve local job creation.

While Australia has not ratified ILO Convention 94, the ACT Government has the opportunity through this Bill to implement many of the core objectives which it incorporates. The ACT Government is the seconded largest buyer in the Territory (following the Commonwealth), with over \$1.8 billion spent on services.

The use of these procurement powers is of particular importance of construction workers in the ACT. Construction workers in the ACT, and around Australia, are already experiencing the negative effects of a Federal Liberal Government's *Code for the Tendering and Performance of Building Work 2016*.

This Building Code 2016 actively uses the Commonwealth's purchasing powers to undermine conditions, and promote insecure work in the construction industry. In addition, the Federal Building Code seeks to diminish the capacity of workers and unions to address these problems through negotiation with employers.

To summarise, the use of procurement legislation to improve working conditions is well accepted globally and in Australia. Given the large purchasing power of the ACT Government in the Territory, it has a significant opportunity to greatly improve the working conditions of people in the ACT through improving procurement practices.

### **Benefits of the Bill**

The CFMEU believes the Code as presented proposes a number of key provisions that would have a direct benefit to working people in the ACT.

Firstly, the Union believes that government contracts should never be awarded to companies that fail to meet the highest ethical and labour standards that are expected practice within the public sector. Taxpayer funds should never be awarded to businesses who fail to meet their obligations or who completely disregard them. Private companies contracted to work on government sites must therefore be held to the same standards as public corporations.

Secondly, supporting the creation and security of local jobs must be taken into serious consideration when awarding government contracts. Taxpayer funds should be used to employ local workers, and enshrining this in the Code is an important step towards achieving this. Employees on Government sites must also be able to rely on the security of their job. By working to eliminate sham contracting, the Code holds contracted parties to the same job security standards expected in the public sector.

Thirdly, a workers' right to freedom of association and representation in their workplace must be ensured on government sites. Commonwealth legislation has continually eroded those long standing rights that have protected workers from exploitation and substandard working conditions. These rights are already enshrined in Federal law, and must be instituted at a territory level through the use of Government's contracting powers. The high standards afforded to ACT Government employees should be replicated in the standards adhered to by companies contracted by the ACT Government.

Finally, creating greater transparency in the process of awarding contracts, settling disputes, and monitoring the ongoing performance of the contracted business is another important aspect of the Code. Establishing these stronger and more transparent labour standards ensures that businesses tendering for government contracts do so on the basis of the quality of their work, rather than through minimising costs by cutting wages and breaking workplace laws.

## **Recommendations for how the Bill could be improved**

While the CFMEU supports the introduction of this Bill, there are number of areas where it could be improved.

Most importantly, the Union maintains that the auditing function outlined within the supporting documentation should be performed by the public service, rather than by private auditors as outlined. Private, fee-for-service auditing creates an inherent conflict of interest, whereby auditors face commercial pressure to pass contractors for auditors so as to win ongoing work.

In addition to the pressure to pass contractors that might not be compliant, there is also the cost pressure to perform the work at minimal cost, which has resulted in auditors under the current IRE Strategy performing audits without undertaking proper due diligence.

In addition, the Union believes that the requirements included within the LRTWE Plan should be lifted. For large projects (over \$5 million in total value), contractors should be required to establish mandatory quotas regarding employment of indigenous workers, women, people with a disability, and apprentices. In construction, a 10% quota for apprentices would be appropriate. These targets have been sued on ACT Government projects such as Light Rail and have been effective in improving participation among marginalised groups.

## **Myths surrounding the code**

In their submission into the inquiry, UnionsACT discussed many of the statements made by those who oppose the introduction of the Code. The CFMEU believes that the submission made by UnionsACT strongly refutes the baseless claims and myths promulgated by those who oppose the Code, and we fully support the comments made by UnionsACT.

The Union also opposes the remarks that have been made by those who oppose the Bill, particularly those made by the Federal Minister for small business Craig Laundy, Canberra Liberals industrial relations spokesman Andrew Wall, and the ACT Master Builders Association (MBA). These opponents of the Code have consistently sought to undermine the involvement of unions in legitimate workplace relations as well as demonstrating an unmitigated hatred of the union movement. Their comments do nothing more than to serve their own self-interested agenda, and have no relation to the safety, wellbeing, or security of workers in the ACT.

The CFMEU would like to raise particular concern with the comments made by the ACT MBA, who claimed that “the cost of public infrastructure increases” under this Code. It is clear that costs will only increase for those existing contractors who are committing wage theft. Rather than raising costs, the Code operates against the undercutting tactics of dodgy companies, and creates a fair playing field for those contractors who treat their employees fairly.

As discussed previously, it is the belief of the Union that companies contracted by the ACT Government to complete public works should be held to an identical standard of accountability, transparency and labour standards as the public service. This Code prevents tendering contracts to anyone who fails to comply with adequate standards, and will incentivise employers to comply with industrial relations laws or be penalised through the cancellation of contracts, or the inability to tender for future works.

## **Conclusion**

The CFMEU strongly supports the provisions of the Code which aim to improve the working conditions for employees on government sites in the ACT. It is our view that procurement

policy should not merely consider the lowest price, but be used as a means of applying improving working conditions.

Importantly, the Code makes great improvements to increasing transparency, securing and protecting local jobs, and enshrining freedom of association laws. The Union also hopes, however, that the Committee take our recommendations into account, particularly concerning the use of a public auditor and lifting the requirements on the LRTWE Plan.

In conclusion, the CFMEU would like to thanks the Standing Committee for the opportunity to provide a submission into the Inquiry into the Secure Local Jobs Amendment Bill, and advises that the Committee recommends that the Bill be enacted.

Yours Sincerely,



Jason O'Mara  
Divisional Branch Secretary  
CFMEU, Construction & General Division (ACT Branch)