

16 August 2018

Jeremy Hanson
Chair, Standing Committee on Economic Development
ACT Assembly, Canberra ACT 2600
Via Email: LACommitteeEDT@parliament.act.gov.au

Dear Chair,

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

I am pleased to provide the Standing Committee a copy of the UnionsACT submission to the Inquiry into the Secure Local Jobs Code Amendment Bill.

UnionsACT is the peak council for the ACT's union movement, representing 24 unions and over 33,000 union members. Many tens of thousands more have their conditions of employment shaped by the work and representation performed by our affiliates, and more than 20,600 Canberra community members support the work we do and campaigns we undertake.

Formed in 1931 as the Trades and Labour Council of the ACT, UnionsACT and our affiliated unions have campaigned for, and successfully won, a wide array of rights and entitlements for working people in the ACT.

The ACT has the highest average wages, the lowest unemployment and one of the highest productivity rates in Australia. This is no accident. The high standards of wages, and workplace rights and safety, that working people in Canberra enjoy is due to the work of the Canberra union movement. Over the decades, unions have supported the creation of the secure jobs that most Canberrans enjoy today.

However, in the past decade, an increasing number of businesses have made a decision to avoid their obligations under the Fair Work Act and WHS Act, and related laws. The Fair Work Ombudsman, in two recent audits of Canberra businesses, found that 40 percent of businesses are breaking one or more of their legal obligations under the Fair Work Act. Similar audits by Worksafe ACT have found widespread noncompliance with workplace safety laws.

UnionsACT's own research corroborates this: we have found widespread incidents of wage-theft, unsafe work practices and bullying & harassment across all ACT industries, including many contractors of the ACT Government. This includes cleaning companies, medical services companies, waste disposal, security, maintenance, construction, traffic control, event management and more.

For an increasing number of businesses, including those contracting with the ACT Government, breaking the law is a calculated risk. Federal and ACT regulators have taken a compliance approach ill-suited to the problems, which place inappropriate emphasis on education and awareness raising. As a result, Fair Work and WHS regulators are unwilling to enforce penalties, and unwilling to undertake prosecutions – which makes breaking Fair Work and WHS laws a viable economic decision for many businesses.

Low levels of compliance activities by the industrial and safety regulators, including infringement notices and other penalties, means that businesses wilfully disregarding IR and safety laws can 'roll

the dice', only paying the price if something goes wrong, with the knowledge that the price (for the business) is very low. Simply put, there are diminishing prospects that a non-compliant business will be caught, and few consequences for those who are.

The ACT Government is a major procurer of services – in fact the second largest buyer in the Territory, after the Commonwealth – with over \$1.8 billion spent on contracting out. Most of these service contracts involve labour. Major contracts include maintenance services for public housing, and public facilities (e.g. schools, hospitals), major events (e.g. Multicultural Festival, Floriade, event services), or construction contracts (e.g. roads, buildings, light rail). Furthermore, the ACT Government procures over \$400 million in human services from the community sector (e.g. counselling, housing, financial and other advice).

The real effect of these procurement contracts is to transfer the employment of construction, maintenance, property services or community service workers from being direct ACT government employees, to being employees of contractors.

Reviews of various service contracts (e.g. Spotless and public housing, school cleaning, hospital cleaning) have found that under outsourced arrangements, the workers performing the contracted services have all seen reduced incomes because of the contracts.

The ACT Government has demonstrated that it is not currently capable of managing outsourced contracts, whether large or small, to adequately prevent labour rights abuses and unlawful workplace practices by its contractors. UnionsACT has advocated for over a decade for the ACT Government to cease or reduce outsourcing, and to adequately resource contract management roles for major procurements.

The ACT Government has substantial powers, through the use of the Government Procurement Act and commercial contract terms, to require certain practices of companies with which it does business. Other governments, including the Federal and Victorian Governments, have used their procurement powers to establish safety and industrial standards, and to achieve industry policy objectives – such as supporting local job creation.

In other jurisdictions, the use of procurement powers by governments in this manner is highly prescriptive, regulating almost every element of the industrial relations activities of contractors including rates of pay, transmission of employment practices, requirements for inductions, engagement of apprentices and more.

UnionsACT supports the proposed Bill and Code. We have a long-held view that the ACT Government procurement policy must be used to advance a progressive, pro-worker social and economic agenda, entrench good conditions and high wages, and promote local industry capabilities, skills, secure jobs and sustainable economic growth.

The Government Procurement Act (Part 2A 22A) requires that procurement by a territory entity "must pursue value for money", the definition of which includes consideration of:

- a) Probity and ethical behavior
- b) Management of risk
- c) Open and effective competition
- d) Optimising whole-of-life costs
- e) Anything else prescribed by regulation

The proposed Bill gives greater legislative clarity to territory entities when they assess value for money of a procurement activity. It is manifestly the "best available procurement outcome" for

contracts to be awarded to ethical contractors that invest in local job creation and obey Fair Work and WHS laws, rather than to companies that avoid those obligations and commit wage theft.

UnionsACT rejects any suggestion that obligating businesses to meet legislated workplace laws or safety laws will unduly increase procurement costs to the government. Procurement in the ACT already requires businesses to comply with Federal and ACT laws. Were costs to increase, it would be evidence that that prior to the enactment of the Bill contractors were not obeying laws with respect to workplace rights or safety.

Further, UnionsACT believes that the Government should require more than mere compliance with legal minimums by contracting companies. The ACT Government has previously made clear that it aims to meet the highest standards for workplace safety for its own work and contracted-out work. We believe this position should hold true for workplace rights, wages and conditions.

High legislated requirements on labour standards in ACT Government procurement will contribute to the ACT Government's economic goal of ensuring a high-wage economy that promotes a high standard of ethical and safe business practices.

UnionsACT supports the establishment of the proposed Code. The Code creates legal obligations on companies seeking to provide services to the ACT Government. We support the strengthening and expansion of the long-standing IRE policy, a regulatory system that was established over a decade ago at the instigation of UnionsACT and the union movement. While the IRE policy was ground-breaking a decade ago, lack of enforcement means that it is no longer effective in ensuring contractors obey industrial or safety laws.

We note that when the ACT Government contracts a service or activity to the private sector, that private sector entity becomes a de-facto provider of a public service. The contractor should therefore be held to similar or identical standards to the public service, in terms of accountability, transparency and labour standards

The benefits of a Code as presented include:

- improved transparency in the provision of services by private businesses;
- fairer competition between companies who bid for ACT Government contracts;
- increased productivity through greater industrial consultation and harmony;
- stronger safety standards, leading to fewer workplace injuries.

UnionsACT also strongly supports the proposal to require as part of the Code the right of freedom of association for workers, and workers' rights to access industrial representation. These long-standing rights have been eroded federally by successive Commonwealth Governments. UnionsACT advocates for the principle that the high standards the ACT Government agrees to for its own employees (e.g. workers' access to union representation, consultation, delegate rights, etc) should be the standard it insists for employees of contractors with ACT Government contracts.

UnionsACT supports the following objectives of the proposed Bill:

- Ensure contracts are awarded to companies that meet the highest ethical and labour standards across their business. Canberrans rightly expect that taxpayer funds will be awarded to good businesses who do the right thing in all of their business, employ local workers, and invest in skills and training. Similarly, Canberrans rightly expect that contracts who avoid their obligations or disregard them completely should not win lucrative government contracts.
- Ensure that the creation of local jobs is a key consideration in awarding government contracts. Taxpayer funds should be used to promote local, secure job creation, and

contractors who employ local workers should be preferred when tendering for ACT Government contracts.

- Introduce measures to promote job security, including by eliminating sham contracting. Canberrans need jobs they can count on, and contractors of the ACT Government should be held to the same job security standards that the community expects for public servants.
- Ensure workers have freedom of association rights, and access to representation in the workplace and at inductions. Workers' rights to representation and association are enshrined in Federal laws, and it is reasonable for the ACT Government to use its contracting powers to ensure that these rights are upheld, absent the active presence of the Federal Fair Work regulator.
- Create a clear and transparent process is established for contracts to be awarded, disputes to be resolved and that contracts are continually monitored for performance. Setting strong labour standards ensures that contractors compete on the basis of the quality of their work, rather than on driving down costs by breaking workplace laws or lowering wages. Similarly, the disputes process for tendering and contracting is improved, by allowing decisions to be appealed to ACAT.
- Simplify the contracting process by introducing standard terms for all contracts. Standard contract terms will provide greater certainty for tendering contractors, and reduce costs and time when finalising contracts.

UnionsACT notes that the content of the Government Procurement (Secure Local Jobs) Amendment Bill 2018 and the related Secure Local Jobs Code, were publicly announced by the Chief Minister in 2016. The announcement formed part of the Government's 2016 election commitments. UnionsACT and many of our affiliated unions, prominently campaigned in 2016 in support of these changes.

The resounding re-election of the Labor Government demonstrates the community's support for stronger requirements on contractors to obey Fair Work and safety laws as a condition of tendering for ACT Government funded work.

UnionsACT opinion polling in 2018 of over 1000 ACT residents, conducted by ReachTel, found that over 76 percent of Canberrans support stronger laws for contracting out that would prevent wage-theft. Similarly, our own research with working people confirms strong support for laws that would stop dodgy contractors from winning government contracts by undercutting reputable local businesses.

UnionsACT would like to address some of the statements made by opponents of the proposed Bill. We note that the primary opponents of the Bill, especially Federal Liberal small business minister Craig Laundy, Canberra Liberals industrial relations spokesman Andrew Wall, and the ACT Master Builders Association, have demonstrated an ideological hatred of unions, including opposing the legitimate involvement of unions in workplace safety and industrial relations matters.

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| Mr Laundy: the Bill may "not be consistent with the federal government's building code" | The Code expressly states that it has no effect to the extent of any inconsistency with a Commonwealth Law, and that businesses can apply for exemptions if a requirement is demonstrated to be inconsistent with voluntary Federal codes such as the Building Code. |
| Mr Laundy: "many small Canberra businesses would have to choose between | Only companies that routinely break Federal or ACT laws would be precluded from tendering for ACT Government contracts. |

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| Commonwealth or ACT-funded work" | |
| The Master Builders Association: "the cost of public infrastructure increases" under the Bill | <p>The only way that cost of public infrastructure would increase under the proposed Bill is if existing contractors are engaged in significant illegal wage-theft against their workers, or disregard safety laws.</p> <p>Construction companies that currently obey industrial and safety laws will no longer be undercut by dodgy contractors.</p> |
| The Canberra Business Chamber: "the proposed legislation may be a deterrent to small-to-medium enterprise" | <p>The Bill creates a level playing field for small businesses to compete against multinational corporations.</p> <p>The Bill also advantages business that support local job creation by giving preference to tenders that create local secure jobs and invest in skills development.</p> |
| Mr Wall: "we should be having an existing harmonisation of laws" | There are no harmonised Procurement laws in Australia. |
| Mr Wall: the Bill would allow "circumventing [of] federal laws" | The Bill requires that contractors <u>obey</u> Federal laws as a condition of procurement contracts. |
| Mr Wall: the Bill would "let unions back into work places where they've been locked out under federal laws" | There are no Federal laws that "lock out" unions from workplaces. Unions in fact have a legal right of entry under Federal laws to enter workplaces. |
| Mr Wall: "very little of industry was consulted" | Industry has been consulted through two rounds of consultation, as well as through the Work Safety Council. |
| Mr Wall: the labour relations training and workplace equity plan will "not streamline the procurement process but instead add significant burden and red tape to businesses" | The Plan will create a level playing field for local businesses to compete against multinational businesses, and ensure that businesses that create local jobs and invest in skills development are preferred. |
| Mr Wall: "the secure jobs code package paper is in complete contradiction to existing commonwealth fair work laws, health and safety laws and also the National Construction Code" | The Bill requires compliance with the Fair Work Act, and WHS Act amongst other acts. It is impossible for the ACT to enact laws that contradict Federal laws. |

In November 2012, the independent Getting Home Safely Report into workplace safety in the construction sector wrote:

If some businesses won't accept this proposition, then the community also has a right to say, "If a business cannot commit to genuinely making the safety of its workers its number one priority, then this is not a business we want in our community."

This is as true now as it was in 2012 – perhaps more so, now that the full extent of unsafe, unlawful businesses practices are better known.

UnionsACT would adapt the Getting Home Safely statement: if a business cannot commit to genuinely following workplace laws or providing a safe workplace, then it is not a business that should win ACT Government contracts.

As stated earlier, UnionsACT supports the proposed Bill and Code as tabled.

Nonetheless, UnionsACT notes that there are areas where the Bill could be improved:

1. Auditing. UnionsACT recommends that the auditing function be brought within the public service. This would reduce costs for small business, and ensure that there is no question of commercial conflicts of interest by auditing firms providing other services to a company being audited.
2. LRTWE Plan: UnionsACT recommends that for large projects (over \$5 million in total value), the Plan establish mandatory quotas for employment of indigenous workers, women, people with a disability, and apprentices/trainees. For large construction contracts, UnionsACT recommends that a 10% quota for employment of apprentices be required.
3. Valid Code Certificate Period: UnionsACT recommends that the standard period for a Code Certificate to remain valid be 12 months. Further, UnionsACT recommends that stricter guidelines be adopted for the registrar to approve Certificate periods greater than 12 months.

UnionsACT also recommends that the ACT Government appropriately fund an education program at the commencement of the Bill and Code, targeting the ACT public service, industry and workers. The purpose of the education program should be to establish a state of knowledge of the requirements of the Code amongst companies considering tendering for ACT Government contracts. Further, the education program should increase awareness amongst employees of ACT Government contractors of the obligations of their employers under the Code. Once the education campaign is completed, UnionsACT expects that a proactive compliance approach would be taken by the registrar.

UnionsACT wishes to draw the Standing Committee's attention to numerous submissions made by UnionsACT and by affiliated unions, to Assembly inquiries and Government consultations, including the Inquiry into the Nature and Extent of Insecure Work, and the previous consultations for this Bill. We note that there is substantial evidence provided in those submissions demonstrating the urgent need for stronger procurement laws to prevent unethical contractors from breaking the law.

Thank you again for the opportunity to provide this submission to the Standing Committee.

I hope this submission proves useful for the Standing Committee. This submission has been published on our website.

Yours sincerely



Alex White
Secretary
UnionsACT