



PROPOSED COMMONWEALTH GOVERNMENT FUNDING CONDITIONS UNDER THE '*BUILDING COOPERATIVE WORKPLACES BILL 2026*'

Background

On 3 June, the Albanese government introduced the '*Workplace Relations Legislation Amendment (Building Cooperative Workplaces No. 1) Bill 2026*'.¹ The bill will amend the *Fair Work Act* to remove provisions that protect businesses from discrimination on the grounds that they do not have union collective agreements in place.²

The legislation would allow Commonwealth government agencies to discriminate against businesses on this ground as a condition of them receiving Commonwealth financial assistance, or as a condition of any 'contractual arrangement' with any Commonwealth entity.³

The government has indicated that such discrimination will be one element of its proposed '*Secure Australian Jobs Code*', which intends to impose a range of pro-union workplace conditions on Commonwealth funding and contracts.

This is a highly alarming development that threatens to impose a wave of unproductive and uncompetitive workplace arrangements across large tracts of the mining industry (see below).

The MCA has identified around \$50 billion worth of potential Commonwealth government contracts that could be used to impose such measures on the mining industry.

The bill implements an element of the government's 2022 election policy, which proposed a '*Secure Australian Jobs Code*', which would impose certain obligations on recipients of Commonwealth government funding in relation to their workplace arrangements. The government issued a 'consultation paper' on this proposal in December 2025.⁴

The paper contained no tangible details of what was proposed and left open the possibility that such a Code could require recipients of government-funding to enter into union-determined workplace arrangements against their will as a condition of such funding. The bill will now provide the legal framework to achieve this goal.

Provisions of the bill

Discrimination allowed for in government funding and procurement

The bill will remove existing protections against workplace discrimination that currently apply under the *Fair Work Act*. It will enable the Commonwealth government to discriminate against particular businesses if they do not have a collective agreement in place, or have a non-union collective agreement in place.⁵

¹https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7494

² Part 9 of the bill

³ Proposed section 354(2A)

⁴ <https://www.dewr.gov.au/secure-australian-jobs-code>

⁵ Proposed section 354(2A)

Such discrimination will be allowed if it is for the purpose of decisions relating to Commonwealth funding, which can include financial grants, government procurement, or 'contractual arrangements'.

Ministerial discretion to determine the scope of discrimination

The bill also gives the relevant Minister in each portfolio the power to determine any type of 'contractual arrangement' for which the discrimination will be allowed. Such arrangements may extend beyond funding or grant arrangements. The ability to discriminate could extend to any form of benefit or arrangement to which any Commonwealth agency is a party.

How the bill will work in practice

The bill does not mandate discrimination in government funding decisions. Instead, it provides a legal framework in which such discrimination will be lawful if a Minister or government agency decides to set such terms. For example, the terms of tenders or grant application processes could be legally 'rigged' in such a way as to only allow for applications from businesses with approved types of union agreements; or to give undue weight to such factors in funding decisions.

The government has not indicated how it intends to use this power, nor did its previous 'consultation paper' provide any clarity on this issue. The consultation paper hinted at how such policies could be implemented in practice. For example, it suggested favouring business that:

- *'contribute to the shared goals of Australia'*
- *'do the right thing by workers'*
- *'meaningful consultation between employers and workers'*
- *'ensure that enterprise agreements used on government-funded projects are genuinely agreed'*

These are all politicised and 'loaded' terms that have a particular meaning for the union movement. They will be interpreted very differently by unions and governments than they will by businesses. In the language of the union movement, they mean compulsory union-endorsed collective agreements and specific union-endorsed rules, including greater powers for union delegates in workplaces and mandatory union 'consultation' (i.e veto) powers.

Fundamental flaws with the bill

The bill reverses decades of workplace legislation that respected freedom of association – the right of workers to join or not join unions, and the right of businesses and their workforces to determine their own workplace arrangements. Until now, it had been an unchallenged, bipartisan policy position that neither workers or businesses should be discriminated for or against on any of these grounds.

The government's '*Secure Australian Jobs Plan*' policy of 2022 raised the possibility that the government would introduce a 'Secure Australian Jobs Code' that would allow for such discrimination.

The MCA was strongly critical of this proposal, arguing in its submission in response to the proposal that:⁶

'if the intention of the Code is to impose additional obligations, such as mandatory union representation in workplaces, this should be clearly spelt out by the Consultation Paper. If this is the government's intent, then the MCA strongly opposes such a measure. Freedom of association requires that employees be genuinely free to choose if, and by whom, they wish to be represented. Employers should be obliged to respect that choice, either way. A particular outcome should not be imposed by government policy.'

⁶ <https://minerals.org.au/wp-content/uploads/2026/03/MCA-submission-Secure-Australian-Jobs-Code-Consultation-20-Feb-2026.pdf>

The 'general protections' provisions of the *Fair Work Act* currently prohibited any party – including governments – from discriminating in favour or against a business on the grounds of whether or not it has a particular type of workplace agreement.

The government's bill will now create a deliberate loophole to allow it to discriminate in favour of union-imposed outcomes. It will make legal conduct that would otherwise be illegal.

Impact on the mining industry

Direct impacts

The powers could be used to discriminate against mining industry businesses in any area in which the Commonwealth provides financial assistance or contracts with businesses for other reasons. These would include, but not be limited to:

- Concessional loans for critical minerals projects under the 'National Reconstruction Fund'
- Research and Development funding through Co-operative Research Centres (CRCs)
- 'Community Benefit Principles' attached to 'Future Made In Australia' assistance
- Northern Australia Infrastructure Fund
- Export Finance Australia (currently providing assistance to businesses to manage minimum fuel inventory stocks)
- Funding support for various smelters to remain operational

Indirect impacts

Any business that deals with the Commonwealth will be required to have union-approved workplace arrangements. They will then flow through to the private sector, wherever such business also perform work elsewhere.

For example, an Indigenous-owned business that received Commonwealth funding and benefits from Commonwealth procurement rules requiring minimum levels of contracts to be awarded to indigenous businesses could be forced into a union agreement as a condition of funding on a publicly funded project. It would then be stuck with this agreement covering its workforce, which would then also apply to any similar type of work that it undertook on private-sector projects.

In this way, any business that provides a service to a publicly funded project and seeks to provide the same service on a mining project will be laboured with the government-imposed terms on its workforce.

Implementing ACTU policy

The intent of the government's policy is clear. It is consistent with the intent spelt out in the ACTU's policy on government procurement. The Commonwealth government is the biggest spender on goods and services in Australia. It has been a long-standing goal of the union movement to leverage this position to impose pro-union outcomes throughout the economy.

The ACTU's 'Procurement' policy states:⁷

'(ACTU) Congress calls for all forms of Government support to promote key principles. That support includes not only procurement, but also grants, loans, investments, tax incentives and other forms of assistance that the Government provides directly or indirectly to any entity, including businesses, public or not-for-profit.

Those principles should include...

⁷ <https://www.actu.org.au/wp-content/uploads/2023/12/ACTU-Congress-2024-Procurement.pdf>

...Collective agreements with unions and good faith bargaining behaviour'

The government's legislation is consistent with this objective. The second reading speech by Minister Rishworth stated that its purpose was to:

*'enable Commonwealth spending to encourage the use of good faith bargaining which supports secure jobs and fair conditions. The bill allows Commonwealth government spending to preference employers with enterprise agreements negotiated in good faith and genuinely agreed, where appropriate to do so... how and when it would be appropriate to do so is being carefully considered as part of the development of the Secure Australian Jobs Code...'*⁸

The ACTU's policy provides further details of how the 'Secure Australian Jobs Code' is likely to work in practice:

Congress seeks for these Principles to be embedded in the following ways.

Secure Australian Jobs Code

Congress calls for the establishment of a Secure Australian Jobs Code (SAJC) that would apply to every Government dollar spent or invested across all projects, partnerships and funding arrangements.

Congress calls for it to have the following features:

- a. across-the-board minimum standards for labour and social benefit, (that would complement other industry-specific measures)*
- b. A two-gate tender process, requiring entities to initially secure a certificate to demonstrate compliance across their entire businesses and all subcontracting arrangements with the Principles of Support.*

The costs to the mining industry and the Australian economy

It is not hard to predict that outcome of such policies, as direct precedents already exist under state governments, most notably in Queensland and Victoria.

In Queensland, the former 'Best Practice Industry Conditions' for government procurement in the construction industry mirrored many of the proposed elements of the 'Secure Australian Jobs Code'. In practice, the BPIC requirements were little more than a 'cut and paste' version of the CFMEU's favourite enterprise agreement terms. The Queensland Productivity Commission found they had contributed to a decline in industry productivity of 9 per cent since 2018.⁹ Moreover, they also led to highly questionable and corrupt practices, as the union effectively became the 'gatekeeper' in determining which businesses could tender for government-funded work. This is entirely consistent with the ACTU's proposed 'two-gate' tender process, in which potential tenderes must first qualify for union approval before even being considered for government work.

In Victoria, a similar approach continues to apply to state government-funded infrastructure projects. The 'Watson Report' into corruption in the Victorian building industry¹⁰ estimated (conservatively) that the cost of inefficiency and corruption added 15 per cent to the overall costs – a total of \$15 billion.

⁸https://parliinfo.aph.gov.au/parliInfo/genpdf/chamber/hansardr/29162/0009/hansard_frag.pdf;fileType=application%2Fpdf

⁹ 'Opportunities to improvement productivity of the construction industry' Final Report, QPC: https://qpc.qld.gov.au/docs/construction-productivity/QPC_Final%20Report%20Summary_24%20Oct%202025.pdf

¹⁰ G. Watson SC, 'Rotting from the Top: The CFMEU in Victoria during the Setka Era': https://www.cfmeuinquiry.qld.gov.au/_data/assets/pdf_file/0005/897476/gw-13-watson-report-victoria-redacted.pdf

The extent of corrupt and unlawful practices that have been recently documented in media reports and in the 'Watson Report', which revealed how such practices has led to 'systemic corruption' in which:¹¹

'EBAs were bought and sold as commodities on a kind of black market. According to the black market, different types of EBAs had different values. Unsurprisingly, labour hire and traffic management EBAs were the most valuable. There were many accounts to suggest that a labour hire EBA will cost \$500,000, there was one account (mentioned above) where the asking price was \$1 million. There was hard evidence that eager contractors paid \$250,000 to obtain a civil construction EBA and that \$250,000 had been agreed for a demolition EBA. We also know that, at least usually, the way the black market operated involved an arrangement made before the EBA was allocated – the corrupt businessman paid someone to have a new EBA drawn up and agreed..'

The MCA has identified around \$50 billion worth of potential Commonwealth government contracts and financial assistance that is open to the mining industry and which would be subject to the proposed 'Secure Australian Jobs Code' conditions. Such conditions, combined with such large amounts of money, together with such large levels of unaccountable union influence, are certain to encourage corrupt behaviour.

¹¹ 'The Black Market: Buying and Selling EBAs', page 61

MINING INDUSTRY EXPOSURE TO PROPOSED 'SECURE AUSTRALIAN JOBS CODE' FUNDING CONDITIONS

Incentive / Program	Instrument Type	Amount	Form of Support
Critical Minerals Production Tax Incentive (CMPTI)	Refundable tax offset (10 percent)	~\$7 billion (starts 1 July 2027, ceases on 30 June 2040)	Refundable tax offset, capped at 10 years eligibility per project/facility.
Critical Minerals Facility - Export Finance Australia (EFA)	Concessional finance	\$4 to 5 billion facility (current envelope)	Concessional loans / guarantees
Northern Australia Infrastructure Fund (NAIF)	Concessional infrastructure/project finance	~\$5 billion total facility	Co-finance loan; conditional support
CEFC (Clean Energy Finance Corporation)	Concessional/strategic investment (decarbonisation-linked)	\$30 billion plus (economy-wide)	Debt finance; Equity participation
Direct Commonwealth co-investment (EFA / NAIF / National Reconstruction Fund Corporation)	Loans and equity	\$1 to 2 billion per major project (indicative pipeline)	Equity and loans
Industrial processing support - Australian Renewable Energy Agency (ARENA) and other specific support	Grants / conditional funding / revenue support / demonstration funding	\$400m (industrial transformation), plus \$1.5billion (FMA Innovation Fund) and targeted program	Support packages for specific projects to retain production (Cwlth & QLD govts)
Critical Minerals Development Program (2023)	Grants	\$50m total grants	Direct grants (\$1 to \$30 million per project)
Austrade facilitation	Investment attraction	No defined funding envelope	Non-financial support through contractual arrangements (FDI, offtakes, partnerships)
Future Made in Australia (FMA)	Policy / funding framework covering various programs	Various commitments and obligations under specific programs	'Community Benefit Principles' as a condition of funding.
Critical Minerals Strategic Reserve	Supply chain resilience and incentivise development of critical minerals projects in distorted or immature markets	\$1.2 billion initial commitment	Price support to de-risk project finance, including virtual stockpiling between strategic partner govts
Total funding exposure		\$48.65 to \$50.75 billion	