

# Australia: Howard government announces draconian new industrial legislation

Terry Cook  
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The Howard government is moving to push through draconian new industrial legislation attacking the rights of workers in Australia's \$50 billion construction industry.

The new 200-page Building Industry and Construction Improvement Bill was unveiled by former Workplace Relations Minister Tony Abbott in Federal Parliament on September 18, just weeks before Prime Minister Howard announced a major ministerial reshuffle. The cabinet changes saw Abbott himself shifted from his industry portfolio to health, where the government is facing widespread opposition from doctors, health workers and working people to the deep going crisis in the public health system.

The controversial building industry legislation is destined to go to the Senate for debate in November, guided by newly appointed Workplace Relations Minister Kevin Andrews. The provisions of the new Bill are based on 120 recommendations brought down by the recently completed \$60 million Royal Commission Inquiry into the Building Industry set up by the Howard government in 2001 and headed by retired Supreme Court judge Terrance Cole.

While the government claimed the Royal Commission inquiry was needed because of endemic corruption and union violence in the construction industry, the move was widely recognised as a pretext for the introduction of legislation to attack building workers and undermine construction unions. Industrial relations analyst Marcus Priest noted as much in a recent article in the *Australian Financial Review*: "In effect, Cole was being required to make findings on the basis of a low threshold of evidence so that he could make reform recommendations."

The Building Industry and Construction Improvement Bill beefs up the already existing anti-strike laws, enshrined in the government's 1996 Workplace Relations Act, that bar all industrial action except during the negotiating period for a new enterprise agreement. Under the new laws construction unions will be required to hold a secret ballot overseen by the Electoral Commission before any industrial action is taken. If the ballot supports going on strike, the employer must then be given a further seven-days notice. Strikes will be limited to 14 days followed by a 21-day cooling off period. Breaches of the new provisions will see unions face fines of \$110,000 dollars and individual workers \$22,000.

The legislation will also restrict the right of union officials to enter work sites. They will be required to give a written 24-hour notice of entry, providing details of any suspected award breach to

the employer and to the Australian Building and Construction Commission (ABCC), the new industry watchdog to be set up under the legislation. If union officials are permitted to enter a site for recruitment purposes, they will not be entitled to a follow-up revisit during the following six months.

The legislation outlaws so-called industry-wide pattern bargaining, the practice of unions pursuing common conditions in enterprise agreements across the industry and seeking to maintain common expiry dates. The Bill will require the Australian Industrial Relations Commission (AIRC) to cancel or suspend a bargaining period for agreements deemed by the ABCC to be pattern bargaining.

The ABCC will be an industry-specific policing force under the direction of the Workplace Relations Minister. The force, described by Abbott as a "new industry watchdog" and "a cop on the beat", will employ an army of more than 200 investigators and inspectors backed up by a team of lawyers, financial analysts, industry experts and support staff. It will have extensive powers to enter work sites, investigate, bring prosecutions, and compel witnesses to testify, enforce judgments and seek damages from unions for unauthorised stoppages.

Some idea of the type of activity that the ABCC will pursue can be judged by the operation of the current interim building industry task force set up by Abbott in October 2002 before the Royal Commission officially brought down its recommendations. Armed with \$6.5 million in funding, the interim force has 25 full-time staff that work closely with the Australian Federal Police, the taxation office and the government's competition watchdog, the Australian Competition and Consumers Commission (ACCC).

A government media release announcing the task force last year declared it was mandated to investigate and prosecute breaches of Commonwealth industrial law on construction sites, refer breaches of criminal and civil law to the appropriate agencies, and to action matters referred by the Royal Commission into the Building and Construction Industry.

Since its inception, the task force has visited over 300 sites, launched more than 50 investigations, brought three prosecutions and referred nine other matters to state police, the Australian Federal Police and the ACCC for further action. The prosecutions and referrals have mainly targeted union officials. The force is still operating.

The government has come under increasing pressure from powerful corporate circles over stalled industrial relations reform.

It wants to impose the new laws in the building industry as a precedent for introducing similar measures more generally.

Speaking to the media on the new legislation last month, Abbott declared: “If they (the new laws) are successful, in that respect you’d be an idiot not to at least consider extending them to other industries.” Only last week, Abbott’s replacement Kevin Andrews announced he was preparing legislation that will outlaw strikes by university staff, teachers, nurses and other workers in the “caring professions”.

The government’s campaign for the new building industry legislation, however, does not have the support of many major construction companies that are opposed to disrupting their long-standing relationship with the Construction Forestry Mining and Energy Union (CFMEU) and other construction unions. In return for the companies maintaining collective bargaining and guaranteeing the unions’ place at the table, construction union officials have policed building workers to ensure industrial peace on major projects. Over the last decade, this arrangement has allowed a significant section of building employers to push through substantial attacks on working conditions.

The reluctance of large construction companies to support the latest industrial relations push was demonstrated in early September, just as Abbott was preparing to release details of the new legislation. Building giant Bovis Lend Lease signed a deal with the CFMEU for a new national enterprise work agreement that included the phasing in of a 36-hour working week in return for concessions. Snubbing the government, Bovis Industrial Relations Manager Eric Hensley said that the company was “mindful of what came out to the Royal Commission” but the agreement “provides the flexibility we want.”

Other corporate circles, however—those more directly affected by international competition—are seeking industrial reforms to remove anything that inhibits their ability to increase flexibility and cut costs in a constantly changing and increasingly competitive global market. They have become hostile to a process that obliges them to participate in what they consider to be long, drawn out and tedious negotiations with the unions.

International investors looking to set up production facilities and headquarters in Australia are demanding an end to all restrictive work practices, such as defined starting and finishing times and ceilings on overtime. They are not only looking for construction projects at the lowest cost but also absolute guaranteed completion times.

Typical is the case of Japanese restaurant chain Saizeriya. In 2001 the company threatened to abandon a \$400 million investment in a new food-processing factory in Victoria unless there was a crackdown on the state branch of the Australian Manufacturing Union after industrial action by the union’s members held up work on the company’s construction site.

To hammer construction companies into line, the government has adopted a series of punitive measures. These include withholding Commonwealth funding for building federal and state building projects if companies fail to comply with what the government deems an “acceptable code of practice”. Presently the government spends over \$5 billion a year on infrastructure construction and building projects with about half going to various

state governments.

Abbott has already overridden a tender awarded by Australia Post to builder Hansen Yuncken to construct a new \$30 million security facility at Melbourne airport. The runner-up tender from Baulderstone Hornibrook was also rejected. Abbott announced he had vetoed the tenders because they contained work agreements that had a “strong union encouragement” which, in his opinion, “breached federal industrial relations standards”.

The government also plans to use its competition watchdog, the ACCC, to overturn enterprise work agreements struck through so-called pattern bargaining between the unions and large building companies. It argues that such agreements breach the competition provisions of the Trades Practices Act because they are used to force similar conditions on smaller companies, thus denying the smaller firms the ability to impose the work practices they require to compete against larger rivals.

Although thousands of building workers in capital cities throughout Australia demonstrated against the introduction of the Building Industry and Construction Improvement Bill on October 6, the building unions made clear they had no intention of leading any broad industrial and political struggle to defeat it.

The unions contend that the “best option” available to construction workers is to appeal to the Australian Democrats and other minor Senate parties to block the bill’s passage when it goes to the Upper House. In a campaign leaflet opposing the legislation, the CFMEU pleads for the Senate “again to reject the Howard government’s plans to push through its workplace agenda”.

Shackling workers behind the minor Senate parties is the same strategy pushed by the unions in 1996, when the Howard government introduced the Workplace Relations Act containing fundamental attacks on workers conditions and rights. While restricting workers to impotent protest stoppages, the Australian Council of Trade Unions and its affiliates appealed to the Democrats to block the Act in the Senate. Rather than “rejecting” it, the Democrats played the pivotal role in allowing it to pass with only minor amendments.

Despite recent statements by Democrats leader Andrew Bartlett that his party will not be “rushed into making a decision” on the construction industry legislation, neither he nor his colleagues have any principled differences with it. Addressing a gathering of building workers on October 2, Bartlett said that it was “improbable that we’d (Democrats) support it (the bill) as it stands” but “there’s lots of scope for agreement from all sides”.

Speaking to the media on the legislation last month, Democrat Senator Andrew Murray emphasised that his party’s major objection was that the new measures would be restricted to attacking workers in the construction industry. “They (the government) want an industry-specific institution. It’s probably us who are more interested in broad national laws...” he said.



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