

# Australia: Construction worker threatened with jail

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South Australian construction worker Ark Tribe is currently before the courts facing up to six months imprisonment on charges relating to his refusal to be interrogated by the Australian Building and Construction Commission (ABCC). The building industry “watchdog” was established by former Prime Minister John Howard in 2005 and retained by Kevin Rudd’s Labor government.

While the ABCC has hit workers and construction unions with fines totalling millions of dollars, Tribe is the first worker to be threatened with jail. If he is convicted and imprisoned, the building unions have warned that they expect workers in the industry to strike in protest across Australia.

Tribe’s “crime” was to have participated in a stop-work meeting held on May 30, 2008 at a building site at Adelaide’s Flinders University. The workers discussed serious and persistent safety issues and voted to strike for the rest of the day. The building company operator, Hindmarsh Constructions, responded by calling the police and locking out the workers the following day. ABCC officials subsequently descended onto the site to gather evidence for a prosecution over unauthorised industrial action.

The ABCC has powers normally associated with the security agencies of dictatorial regimes. Workers subjected to an investigation are asked to “voluntarily” cooperate, but can be legally obliged to attend an “examination” and, under oath, answer all questions and submit whatever documents are demanded. This includes all questions and documents relating to internal and private meetings among workers. Those interrogated are then bound not to reveal to anyone else what questions were asked or what evidence they provided. Refusal to cooperate with any aspect of this process can result in the ABCC referring the case to the Commonwealth Director of Public Prosecutions, with workers liable to six months imprisonment or a \$22,000 fine.

According to a recent ABCC report on the exercise of its “compliance powers,” between October 2005 and March 2010, 197 examinations were conducted. Small numbers of union officials, company management, government officials, and independent witnesses were among these, but the large majority, 135 out of 197, were ordinary workers. Of all the examinations, just 55 percent of those questioned had legal representation.

Tribe has taken an important and principled stand against the anti-democratic ABCC, and has won wide support throughout the construction industry and the working class. He appeared in the Adelaide Magistrates Court on Tuesday, with about 1,500 building workers rallying in a show of support. Tribe spoke briefly before the court hearing, thanking his mother and teenage son for their support.

Also addressing the crowd were Gerry Conlon, of the Guildford Four, and Paddy Hill, of the Birmingham Six—both falsely imprisoned on trumped-up terrorist charges in Britain in the 1970s. The two men now help run the Miscarriages of Justice Organisation. Conlon told the ABC’s “Lateline” program that the ABCC legislation reminded him of the British terrorism laws under which he was convicted.

Representing Tribe, Michael Abbott, QC, told the court on Tuesday that the charges ought to be thrown out because under federal law only the ABCC Commissioner John Lloyd or an authorised delegate could bring charges against workers. In Tribe’s case, Abbott continued, the charges were laid by an ABCC staffer without Lloyd’s authorisation. For the prosecution, Brind Woinarski, QC, conceded that this was the case, but insisted that under the relevant legislation “anyone” could bring forward charges. Magistrate David Whittle has adjourned the hearings until Friday morning, in order, he said, to examine the cited precedents and consider the different arguments.

Whatever the verdict, Tribe's prosecution stands as an indictment of the Rudd government. Before taking office in 2007, Labor pledged to retain the ABCC for two years, before renaming the agency and incorporating it into the new Fair Work Australia industrial relations tribunal. This formed part of Rudd's right-wing pitch to big business and finance capital.

The Rudd government has since demonstrated its determination to ruthlessly suppress any moves by construction workers to take independent action in defence of their interests. Deputy Prime Minister and Employment and Workplace Relations Minister Julia Gillard has repeatedly threatened workers with the "full force of the law" if they take strike action outside of the draconian restrictions imposed under the Fair Work Act. In one particularly provocative intervention, addressing the Australian Council of Trade Unions (ACTU) congress last June, she smeared workers who had taken industrial action at Melbourne's West Gate Bridge project in defence of their jobs.

In an interview with the *Age* published yesterday, Gillard declared that she "understood community concern" over Ark Tribe's prosecution, but said Labor was committed to retaining a "tough cop on the beat focussed on those areas of the industry beset with unlawful activity". The deputy prime minister blamed the opposition Liberal Party for blocking the legislation in the senate to transfer the ABCC's powers to Fair Work Australia. The *Age* reported: "She said many people in the union movement understood the government's position, and those who wanted change could get it by instead putting pressure on the Liberal and National parties to change their votes in the Senate, or by voting for Labor at the next election."

Gillard's remarks on the trade unions' "understanding" of the government's position points to the direct complicity of the unions with Labor's industrial relations regime under which Tribe is being prosecuted. The unions play the central role in policing the industrial relations setup and in preventing any movement of workers emerging outside of this framework and in opposition to the Labor government.

The Construction, Forestry, Mining and Energy Union (CFMEU) has postured as Tribe's defender and as an opponent of the ABCC. For all its rhetoric, however, the union has a long record of collaborating with the ABCC. It has paid numerous fines for alleged unlawful industrial activities without challenge. In the aftermath of the West

Gate Bridge dispute, the CFMEU and two of its officials agreed to pay more than \$1 million. Moreover, various union officials have agreed to appear before ABCC examinations. Only one, CFMEU Victorian senior vice-president Noel Washington, refused to testify, but prosecutors dropped the charges brought against him in 2008 before the case reached court.

In Tribe's case, the CFMEU cooperated with the watchdog's investigation into the 2008 dispute at the Flinders University site, agreeing to pay a fine totalling \$20,000 imposed on it and a union official over the incident. In other words, without any explanation to its members or the working class, the CFMEU chose not to defy the ABCC together with Tribe and instead accepted the fine, thereby effectively accepting that the industrial action in which the worker had been involved had been unlawful.

These manoeuvres underscore the hollowness of the CFMEU's threatened national strike in the event that Tribe is jailed. Such a strike will only be successful to the extent that it opposes the Rudd government, its state Labor accomplices, and Labor's industrial relations regime as a whole. But this is precisely what the unions reject above all else—which is why the building union bureaucrats have made only the vaguest strike threats and have not developed any plan, prepared in advance and discussed among the rank and file, for a coordinated campaign in defence of Tribe if he is convicted.

In the event of a national strike erupting, the unions' first priority will be to shut it down as quickly as possible. If it were up to the union bureaucracy there would be no discussion whatsoever of unauthorised nation-wide strikes, but it is clearly under enormous pressure from ordinary workers who are increasingly hostile to the Rudd government and to the Labor Party in general.



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