Australia: Labor government appoints new construction watchdog chief

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The new federal Labor government last week appointed lawyer Leigh Johns to head the Australian Building and Construction Commission (ABCC), the building industry watchdog that has extraordinary powers to harass and prosecute construction workers.

The Labor government that took office after the 2007 election retained the ABCC, established by the former Coalition government in 2005 and all its coercive and punitive powers. These include the power to force workers to answer questions under the threat of a six-month jail term. The Labor Party promised to replace the ABCC by 2010.

John's appointment, just one day after former ABCC head John Lloyd ended his five-year term on September 28, is a signal that the minority Labor government established after the August 21 election will fully support the agency's ruthless crackdown on any attempt by building workers to defend their jobs and conditions.

Before the election, Prime Minister Julia Gillard had informed Lloyd that his tenure would not be renewed. A new appointment could not be announced by the caretaker government during the election campaign and was further held up by the horse trading that eventually produced a Labor government backed by the Greens and independents.

Lloyd, a senior public servant, played a central role in advising the former Howard government during the Cole Royal Commission that was the vehicle for the setting up the ABCC. In a media statement on September 22 urging the retention of the ABCC, Lloyd boasted that under his stewardship the agency's coercive powers had been used 200 times. It had "conducted hundreds of investigations," had "begun 108 legal proceedings" and the courts had "levied penalties totalling $3.6 million," he said.

Currently the ABCC has 90 investigations and 38 court cases underway, including the prosecution of South Australian construction worker Ark Tribe, who faces six months jail for the "crime" of refusing to answer ABCC questions over an allegedly unlawful strike.

Under the new ABCC head, there will be no lessening of its punitive measures against building workers. Johns was the ABCC deputy commissioner for seven months before leaving on January 31 this year. He took up the position of chief counsel in the Office of the Fair Work Ombudsman, part of the Labor government's industrial relations policing agency, Fair Work Australia (FWA).

In a statement on the ABCC web site in January announcing John's departure, Lloyd praised his former deputy as an "energetic and able leader who managed the affairs of the ABCC's largest division, the Operations Group, with a high degree of professionalism".

"During Mr Johns's tenure the ABCC undertook a number of very complex and sensitive investigations," Lloyd said. In particular, he highlighted Johns's role during a strike by workers in defence of jobs on Melbourne's West Gate Bridge construction project. ABCC inspectors harassed the strikers, by following them around, taking photographs and recording their conversations.

These "investigations" led to the charging of 12 strikers with serious offences resulting in heavy penalties. The Construction, Forestry, Mining and Energy Union (CFMEU) and Australian Manufacturing Workers Union (AMWU), the two unions in the dispute, were hit with $1.3 million in fines, which they duly paid without a fight.

The corporate establishment recognised that the

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Gillard government's prompt appointment of a new ABCC head was a further confirmation of Labor's pledge to "keep a tough cop on the beat in the construction industry".

Master Builders Association (MBA) chief executive Wilhelm Harnisch declared that filling the ABCC position was "a sign to the industry [that] the government remains committed to the ABCC and to the rule of law". He added that the MBA had had a "constructive relationship" with Johns.

Australian Mines and Metals Association chief executive Steve Knott said "some people had genuinely feared the government may leave this crucial role unfilled". He congratulated Gillard for "taking steps to overcome these concerns". Praising Lloyd for "enforcing the rule of law in the construction industry," Knott added: "We hope to see Commissioner Johns continue to deliver just as an objective, fair and pragmatic approach to ridding the industry of these problem practices."

In appointing Johns, Workplace Relations Minister Chris Evans reiterated the government's support for the anti-working class body. "I look forward to working closely with him and the ABCC in bringing about continued improvements in workplace relations in the building and construction industry," he said. "Labor has made it clear that industrial lawlessness and thuggery will not be tolerated".

Evans also restated that the government's commitment to replacing the ABCC with a specialist division within the FWA policing regime to be known as the Fair Building Industry Inspectorate (FBII). The new watchdog will retain all of the ABCC's coercive powers for at least five years.

The FBII was due to be established by February 2010, but faced opposition in the Senate. The Liberals accused the government of "watering down" the ABCC, but Labor's so-called safeguards are purely cosmetic. The "safeguards" included subjecting the use of coercive powers by the new agency to approval by a presidential member of the Administrative Appeals Tribunal. Given Labor's commitment to continuing a "tough" regime in construction industry, it is unlikely that FBII requests would be denied.

Other "safeguards" included allowing workers brought in for interrogation to access a lawyer of their choice. The Commonwealth Ombudsman would also be required to "review" all of the inspectorate's compulsory interviews and report to parliament—that is after the event. And the penalties for refusing to answer would still stand.

As the required legislation has not been passed, the ABCC remains in place.

Last week as the Gillard government appointed Johns to head the ABCC, the Greens introduced legislation into parliament to abolish the body. While the Liberal opposition denounced the move as a "conspiracy" between Labor and the Greens, it is more than likely that the Labor Party will join the opposition in blocking the bill. As for the Greens, for all their posturing as defenders of workers' rights, the party only objects to the ABCC's special powers, not the punitive powers against all workers under the existing FWA regime.

The unions have had next to nothing to say about Labor's new agency. In response to Johns's appointment, ACTU secretary Jeff Lawrence called only for the abolition of the ABCC declaring the appointment did not change the unions' view that "the ultimate goal must be one set of laws for all workers, regardless of the industry they work in"—that is, all should be equally penalised.

This response is in line with the unions' support for the Labor government's overall FWA industrial relations regime, which they specifically endorsed at two Labor Party national conferences in 2007 and 2009. The FWA legislation places even tougher restrictions on industrial action than the previous Coalition government's WorkChoices law.

The unions' endorsement of Labor's industrial relations laws make clear that the unions have no fundamental objection to the penalisation of construction workers and have no intention of mounting a genuine campaign against the construction watchdog, whether it is the ABCC or FBII. The only changes that the unions continue to seek are those that further enshrine their role as the industrial police for enforcing productivity speedups and suppressing wages.

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