

# Australia: Labor moves to tighten coercive industrial powers after construction worker acquitted by magistrate

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Both the Gillard Labor government and its anti-working class construction industry watchdog, the Australian Building and Construction Commission, have pledged to overcome a legal technicality that was yesterday used by an Adelaide magistrate to acquit South Australian construction industry rigger Ark Tribe on charges arising from his refusal to be interrogated by the ABCC.

Tribe had faced up to six months' imprisonment, simply for refusing to answer ABCC questions about a stopwork meeting in May 2008 at a Flinders University building site. The ABCC has extraordinary powers to harass and penalise construction workers. On pain of jail or massive fines, it can compulsorily interrogate workers, even about private meetings among themselves to discuss industrial action.

Magistrate David Whittle cleared Tribe on the technical basis that ABCC commissioner John Lloyd had failed to legally delegate his investigatory function to his deputy, who had formally charged the rigger. Whittle also accepted defence counsel Michael Abbott's related submission that the ABCC deputy commissioner could not have formed a personal belief that Tribe could provide evidence relevant to the investigation.

Following the verdict, Tribe—the first worker to face jail for defying the ABCC—told a rally of several hundred workers outside the Adelaide Magistrates Court that he was relieved that the two-year long legal ordeal was over. Tribe declared that laws allowing the ABCC to compel workers to attend interrogations “don't belong in this country”. The 48-year-old rigger criticised Prime Minister Julia Gillard, saying: “She should decide what side she's on, I reckon.”

The main building union, the Construction, Forestry, Mining and Energy Union (CFMEU), hailed the verdict as “a win for all workers”. But the government immediately reiterated its determination to retain the coercive powers of the ABCC, which it intends to hand over to a specialist division within its Fair Work Australia policing agency. Reinforcing Gillard's previous vow to “keep a strong cop on the beat” against building workers, a spokesman for Workplace Relations Minister Chris Evans said Labor still intended to legislate to replace the ABCC with the new agency in order to crack down on “unlawful activity” in the construction industry.

The current ABCC commissioner Leigh Johns, who was recently appointed by Gillard to ensure the uninterrupted operation of the watchdog until the government's legislation passes, emphasised that he would personally oversee the use of the coercive powers in the future. Johns claimed that “the ongoing level of industrial unlawfulness in the building and construction industry, especially in Victoria and Western Australia,” meant that the continued use of the interrogation powers were “regrettably, necessary”.

The Labor government's record since taking office in 2007 has been one of unstinting support for the ABCC and absolute backing for its punitive actions against construction workers. Both Gillard and her Labor predecessor, former Prime Minister Kevin Rudd, have not only retained the draconian agency, established by former Prime Minister John Howard in 2005, but authorised the agency to conduct prosecutions resulting in hundreds of ordinary workers being fined tens of thousands of dollars for taking so-called “illegal” industrial action.

Gillard, both in her present capacity and as workplace relations minister under Rudd, has repeatedly threatened

construction workers, and others, with the “full force of the law” if they take strike action in violation of Labor’s Fair Work Act, which virtually makes all industrial action “illegal”.

The magistrate’s decision to step back from imposing on Tribe a jail term is highly political. The ruling provides a breathing space for the fragile minority Gillard government as it fine tunes the powers of the ABCC’s proposed replacement. Labor’s intent is to ensure its agencies are sufficiently armed to deal with the emerging opposition by construction workers to the dictates of the employers on key construction projects, particularly in the multi-billion dollar minerals and resources sector.

The court ruling also assists the CFMEU and other trade unions, which had appealed to outraged building workers across the country not to take immediate industrial action if Tribe were convicted. Instead, the unions had urged workers to hold off strikes until Tribe was actually sentenced. Calculating that the sentencing process could take weeks or even months, the unions had hoped that much of the seething anger would have dissipated by then. However, a CFMEU official told the *Sydney Morning Herald* that workers could walk off the job, despite the union’s call for a delay. “It’s possible some of the boys will decide to take their own action,” he warned.

While Tribe took a courageous and principled stand by defying the ABCC, the unions jumped on board only when he began to win support among broad sections of construction workers and others. In line with the unions’ craven compliance with the ABCC’s rulings, the CFMEU chose not to join Tribe in his defiance of the agency. Instead it paid a fine totalling \$20,000 imposed on the union and one of its officials over the incident at Flinders University. In effect, the union accepted that the industrial action was “unlawful” and left the rigger to face the consequences on his own.

As support for Tribe grew, the unions feared that the case could become a focal point for a movement of workers against Labor’s entire repressive Fair Work regime. Posturing as Tribe’s defenders, they intervened to contain the growing anger to a series of limited protests while they worked to come to an arrangement—and find a legal loophole—to get the issue off the radar screen.

ABCC commissioner Johns’s statement about cracking down on “industrial lawlessness” is a warning that the ABCC, fully backed by the Gillard government and policed by the unions, is preparing even more aggressive operations against construction workers. Johns had already announced the previous day that the ABCC was

investigating allegedly unlawful strike action by workers at the Wonthaggi desalination plant in Victoria, and “sympathy unlawful industrial action at other Thiess sites in Victoria, Queensland and NSW”.

The Murdoch media is using the revelations of a spying operation conducted against the Wonthaggi workers by their employer, Thiess, and the resultant walkouts to demand a coordinated government-corporate assault on wages and conditions in the construction industry. Earlier this week, the *Australian’s* economics editor Michael Stutchbury claimed that the Wonthaggi dispute showed that “many of these big construction projects remain a ‘war zone’.”

The offensive being prepared by the Labor government and the employers can be answered only by a mass political movement of the working class, fighting in opposition to the ABCC and the Gillard government’s entire industrial relations regime and pro-business program. This requires a decisive break with the unions, which act as Labor’s enforcers, and the construction of rank and file committees that will fight uncompromisingly in defence of workers’ rights and interests. Above all, this struggle must be based on a socialist perspective for the complete reorganisation of society to meet social needs, not corporate profits.

*The author also recommends:*

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