

# Australia's ABCC Bill: A far-reaching assault on workers' rights

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After trying for three years, the Liberal-National Coalition government this week finally secured the passage of the draconian Australian Building and Construction Commission (ABCC) Bill, following a complex series of last-minute deals with various Senate “crossbenchers.”

The ABCC legislation is the second of the two industrial relations bills that the government used as a trigger for the July 2 double dissolution election of all members of both houses of parliament.

The central purpose of the ABCC bill is to outlaw and suppress all strikes, stoppages and work bans by workers throughout the construction, transport and offshore oil and gas industries, as well as solidarity action via picket lines involving other workers and supporters.

Prime Minister Malcolm Turnbull declared the bill “a vital element in our national economic plan.” The peak employer body, the Master Builders Association, claimed its passage was a victory against “bullying” on construction sites. Media commentators spoke of ending “union thuggery” in the building industry.

In reality, the target is not the trade unions, which have secured mutually-beneficial enterprise bargaining agreements (EBAs) with many major companies to enforce their requirements for ever-higher rates of productivity and profit, but workers in a wide range of construction-related industries.

Formally titled the Building and Construction Industry (Improving Productivity) Bill 2013, the ABCC Bill was first introduced by Turnbull’s ousted predecessor Tony Abbott after the 2013 federal election. As far as the corporate elite was concerned, it was supposed to be the first instalment of a stepped-up offensive against workers’ jobs, wages and conditions, starting with building workers.

The bill reinstates and expands the coverage and powers of the ABCC, which was first established by the previous Howard Coalition in 2005, with extraordinary coercive powers and punitive measures, including heavy fines on construction workers for taking “unlawful” industrial action.

The Rudd and Gillard Labor governments, which took office in 2007, retained the ABCC until 2012, and used it to attack workers taking industrial action on major construction projects, including Woodside Petroleum’s liquefied natural gas plants in Western Australia and the West Gate Bridge upgrade in Melbourne. In each case, the trade unions isolated the disputes and sought to prevent any political and industrial movement against the Labor government.

Labor then replaced the ABCC with a Fair Work Building Industry Inspectorate, with similar but slightly modified powers. It was intended to work more closely with the unions, particularly the Construction Forestry Mining and Energy Union (CFMEU), which covers most construction-related workers, to curtail resistance by workers.

For the past three years, the Coalition government has employed Labor’s inspectorate to harass, intimidate and prosecute building workers. The agency’s 2015–16 annual report boasts of a 30 percent increase to \$1.8 million in penalties imposed on unions and workers, 34 legal proceedings and 17 compulsory interrogations—a 21 percent rise.

With the passage of the ABCC Bill, this punitive assault on construction workers will be ramped up. First, penalties for unlawful industrial action or supposed coercion have tripled to \$36,000 for individual workers and \$180,000 for trade unions.

What is “unlawful” will remain determined by the Fair Work Act, first introduced by the previous Labor

government with the support of the unions. It prohibits all industrial action outside narrow “enterprise bargaining periods”—usually only once in three or four years—policed by the unions.

Second, these penalties have been extended to any other workers, or family members or supporters, who join pickets or blockades seeking to support any struggle to defend construction workers’ conditions.

Third, the agency’s powers have been expanded beyond building sites to also cover workers involved in off-site prefabrication of building parts, the transporting or supplying of goods for building work, and offshore oil and gas platforms. This scope also can be extended by ministerial regulations.

Fourth, the ABCC has a range of new powers, including to prosecute workers and unions even after they have settled or abandoned a dispute with an employer, and to pursue legal costs and uncapped compensation—potentially millions of dollars—for damage allegedly suffered by a company. Employers can also now apply for court injunctions to stop industrial action or picketing.

These provisions all provide greater scope for the use of the ABCC’s police state-style coercive powers. It can compel workers or other witnesses to answer questions, hand over documents, provide information or testify in secret hearings. Anyone who refuses to comply can be jailed for up to six months. These powers overturn fundamental rights, such as to remain silent and not to self-incriminate.

To gain the vote of one “crossbench” senator, the government agreed to retain the current fig leaf of scrutiny, introduced by Labor, of requiring an Administrative Appeals Tribunal member to approve the use of these powers. This deal also reversed the bill’s onus of proof on workers to prove that any industrial action was taken lawfully. However, workers still bear an “evidential burden”—they must produce evidence of their “justification” for taking action.

Finally, the industry code issued by the government under the bill will ban a host of clauses in enterprise agreements, including any that limit casualisation, excessive overtime or retrenchments, thus opening the way for unfettered sackings and replacement of workers by casual or body-hire labour. Companies that agree to such clauses also will be barred from tendering for federal government-funded infrastructure projects

As a result of a split among the employers, this code will not commence for two years. Two major companies, Lendlease and ProBuild, joined the CFMEU in a lobbying push for this delay. Together with an estimated 1,500 other companies, they have signed agreements with the CFMEU since 2014 that contain such clauses, in return for the union suppressing workers’ discontent. Some agreements provide for employer-paid union delegates, whose essential function is to police the deals.

The final horse-trading on the ABCC Bill this week highlighted the promotion of reactionary nationalism and protectionism, under the guise of defending jobs and conditions.

In return for voting for the bill, Senator Nick Xenophon secured an agreement from the government on new procurement rules to require suppliers bidding for government projects worth more than \$4 million to use Australian-produced materials and hire local workers.

Above all, these measures are directed against imports of Chinese-made steel, in line with campaigns by the trade unions and the Labor Party to blame Chinese workers—tens of thousands of whom are also losing their jobs—for the corporate destruction of steelworkers’ jobs in Australia. The Labor Party immediately congratulated Xenophon and the government for striking the deal.

Likewise, Labor Senator Doug Cameron, an ex-union leader, successfully moved an amendment to the bill’s industry code, requiring employers to employ Australian residents wherever possible, not overseas workers. This is part of a reactionary campaign by Labor and the unions to bar or expel foreign workers who entered the country on temporary work visas.



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