



## Defeat this police-state law for construction workers!

*All out on 30 November: support the ACTU day of action*

THE Howard government's Building and Construction Industry Improvement (BCII) Act, legislated in late 2005 but made retrospective to March 2005, bans almost all industrial action in the construction industry.

All the fierce restrictions of the Work Choices legislation also apply to construction workers. But they also face further, more drastic, policing, under special laws which apply only to building and construction.



UNDER the Act, all industrial action, even a brief stop-work meeting, is "guilty until proven innocent". It is unlawful unless it is one of three exceptions:

- Protected action for a new enterprise agreement; or
- Action for health and safety where *each individual worker* taking action can *prove* that his or her *individual* safety was at risk, and that the employer had not offered him or her safe alternative work (it is down to the worker to prove the work unsafe, not to the employer to prove it safe); or (don't laugh!)
- Action authorised in advance and in writing by the employer.



INDIVIDUAL workers taking industrial action face fines of up to \$22,000. Unions face fines of up to \$110,000.

Action which is "protected" under state industrial relations legislation is "unlawful" under the BCII Act unless it is also protected under Work Choices. Action over an enterprise agreement before the expiry of the agreement is "unlawful", even if it is over an issue not covered in the agreement. It is "unlawful" even to demand payment of strike days, or removal of rogue subcontractors, or rejection of AWAs, let alone to take action on those issues.



THE BCII Act sets up a special police force for the industry - the ABCC, mostly staffed by former police officers. The ABCC "investigates" and prosecutes breaches of the BCII Act and the Workplace Relations Act. In dealing with workers "accused" of industrial action, it has powers greater than the regular police have, even when they are dealing with charges of

murder or rape.

Workers or union officials hauled before the ABCC have no right to silence - no right to refuse to answer questions, even where it might incriminate them, and even where it is against the public interest for them to speak. Unions must notify the ABCC of everyday activities, such as going on site or serving notices on employers. Employers must notify the ABCC of union activities. Failure to do what the ABCC instructs brings fines or a six-month jail sentence.

The ABCC can instruct workers not to tell anyone other than their lawyer what has been said in an ABCC interview. And the ABCC can refuse workers the right to have the lawyer of their choice at an ABCC interview. According to a Federal Court ruling in October 2006, the ABCC can exclude a lawyer from an interview on the grounds that he or she is acting for

another worker in the same case, and so knows about the other evidence. In ordinary criminal proceedings, it is commonplace for lawyers to act for several people accused in the same case. The same decision found that the ABCC could require an undertaking not to disclose what had been said at interview.

The ABCC has been known to carry out covert surveillance, such as tape-recording interviewees without their knowledge or consent.



ALREADY 107 construction workers on the Perth to Mandura rail project face fines of up to \$28,600 under this legislation - \$22,000 for taking industrial action over the sacking of their health and safety rep, and \$6,600 for not complying with ABCC instructions. Their union could face further penalties.

Check out the latest on <http://www.cfmeuwa.com/cfmeuwa/supportthe107>.



MOST construction employers, and especially the small subcontractors who account for most of the employment in the industry, will not want to go for drastic and lengthy court cases over short stoppages, let alone over stop-work meetings. Knowing that, the Howard government has taken the matter out of the hands of the individual employer. The ABCC can investigate and prosecute whether the employer likes it or not.



THE BCII Act has no parallel in other industries in Australia, not even under John Howard's Work Choices legislation. It has no parallel in any industry in any more-or-less democratic country. The only possible near-parallel is where governments have made illegal all strikes by workers in what they judge to be "essential services" (Germany, Italy, Greece, Argentina, South Africa, South Korea, and Spain, in different ways), and legislated for binding arbitration instead.

There is certainly no parallel to the ABCC elsewhere. The Howard government has launched this special attack on the construction industry for one reason, and one reason alone: that in recent years construction workers have been the most confident and combative workers in Australia. Construction workers are the group most likely to take the bold solidarity action which could defeat the Howard government's legislation across the board. The Howard government has imposed the ABCC handcuffs on construction workers primarily to stop them taking action to help the other, more vulnerable groups of workers who will be the first to be hit by AWAs and the loss of basic conditions.



THE legislation will also be used to worsen conditions and wages in the construction industry itself. In November 2006 the Howard government more-or-less banned common-law agreements containing such items as prompt dispute settlement procedures involving union delegates, rights for paid leave to attend union-provided health and safety training, or internal review of dismissal decisions. It changed the Building Industry Code to deny companies with such arrangements access to federal government funded construction work.



THIS legislation is not easy to defeat or to circumvent. Already it has led to a drastic drop in the level of strike action in the construction industry. But it can be defeated. Strikers can be penalised, but penalising mass "community pickets" will be much harder. The ABCC can make the courts fine, or even jail, 107 workers. If 1,070,000, or even 107,000, workers defied it, all standing in solidarity, the ABCC would not be able to jail or fine them all.

To move towards that sort of mass action, we can start today with a strong and energetic political campaign, exposing the legislation, supporting those penalised by it, and demanding that the Australian Labor Party commit itself to the full repeal of the Howard government legislation and its replacement by laws including an effective right to strike for all workers, a right to union representation for every individual worker, and an effective right of access to workplaces for union organisers.