

14 November 2013 3:10pm

The re-established ABCC will have significantly broader powers than its 2005 incarnation, under legislation introduced by the Abbott Government this morning that extends its reach into offshore construction, the transport and supply of goods to building sites, and picketing.

Tabling the [Building and Construction Industry \(Improving Productivity\) Bill 2013](#) and [explanatory memorandum](#), House of Representatives leader Christopher Pyne said it represented the government's commitment to the reinstatement of the rule of law in a sector "in which conventional standards of commercial and industrial behaviour do not apply".

As flagged by *Workplace Express* on Tuesday (see [Related Article](#)), the bill contains extensive new powers aimed at stopping disruptive pickets, and these will include a "reverse onus" requiring individuals to prove they were not motivated by industrial objectives to escape the maximum \$34,000 penalty. Unions face a maximum fine of \$170,000.

Clause 47 of the bill says that a person must not engage in or organise in an unlawful picket, which is defined to include action that is industrially motivated and restricts persons from accessing or leaving a building site, has that purpose, or "would reasonably be expected to intimidate" such persons.

The prohibitions also apply to "ancillary sites", defined in clause 9 to include sites from which building goods or participants are transported, or project or head offices.

Under clause 57, picketers will be presumed to be industrially motivated unless they prove otherwise. The reverse onus of proof will also apply to a series of reinstated coercion offences, including pressure to engage or not engage particular persons or independent contractors on building sites, make, vary or terminate agreements, or nominate preferred super funds.

The higher maximum fines of \$34,000 for individuals and \$170,000 for unions will apply to these offences, and to the taking of unlawful industrial action.

As heralded by the Coalition before the election, the ABCC's jurisdiction will extend offshore as far as Australia's exclusive economic zone or waters above the continental shelf (see clause 11).

More significantly, it will encompass the transport or supply of goods to building sites, including resource platforms. The explanatory memorandum says this does not extend to the manufacture of those goods (see para 12).

Pyne said this was a change from the previous ABCC legislation and "is included to ensure that large resource construction projects cannot be indirectly disrupted through coordinated 'go slows' on the supply of materials to those projects".

The Bill does not cover the domestic housing industry, except for a development involving at least five houses.

It also drops provisions in the Fair Work (Building Industry) Act that prevented the regulator from continuing or initiating proceedings after the parties had reached a settlement of the issues between them.

Most of the other features of the Bill are drawn from the abolished BCII Act, including:

- coercive examination powers exercised by the ABC commissioner or deputies and overseen by the Commonwealth Ombudsman;
- a narrowing of protected industrial action to exclude action taken with "unprotected" persons;
- a reverse onus for unions and employees relying on the health and safety exception for industrial action;
- making project agreements unenforceable;
- powers for the ABCC to intervene in court and FWC proceedings; and
- a requirement for the FWC to notify the ABCC of the lodgement and result of any building industry matters before it.

The Bill gives the ABC Commissioner an explicit power to delegate his or her compulsory examination functions to a deputy commissioner, or SES employee if no deputies have been appointed, to avoid the problems exposed by the Ark Tribe case (see [Related Article](#)).

The Greens voted with the ALP today to refer the Bill to a Senate inquiry.

Pyne also tabled a consequential and transitional provisions [Bill](#) and [explanatory memorandum](#).

Bill compatible with human rights: Abetz

In the Bill's Statement of Compatibility with Human Rights attached to the explanatory memorandum, Employment Minister Eric Abetz defends limitations on the presumption of innocence, the privilege against self-incrimination, the right to peaceful assembly and freedom of expression as "reasonable, necessary and proportionate".

Senator Abetz says the limitation on peaceful assembly "pursues the legitimate aim of prohibiting picketing activity that is designed to cause economic loss to building industry participants for industrial purposes".

"Although infrequent, this type of action is almost entirely unique to the building and construction industry and can have a severe impact on participants in this sector. The most high profile example of this came in August 2012 when members of the Construction, Forestry, Mining and Energy Union engaged in protests and obstructed free access and egress to building sites in Melbourne that were operated by Grocon Pty Ltd. This action did not involve workers from the sites in question but was undertaken in connection with an industrial dispute, such that the primary remedies available were in common law."

Senator Abetz says in the statement that the "primary safeguard" in the bill is that

picketing activity that is not industrially motivated or otherwise unlawful will not be prohibited.

"This will ensure that in cases where picketing action is lawful, the purpose of the action is the key determinant of whether it is prohibited. Action that seeks to draw attention to a social, environmental or community issue, for example, will not be unlawful unless the action involves unlawful behaviour such as trespass."

[Building and Construction Industry \(Improving Productivity\) Bill 2013](#)

[Explanatory memorandum](#)

[Second Reading Speech by Leader of the House of Representatives, Christopher Pyne, November 14, 2013](#)

[Building and Construction Industry \(Consequential and Transitional Provisions\) Bill 2013](#)

[Explanatory memorandum to Consequential and Transitional Bill](#)