



27 September 2016

Committee Secretary
Senate Standing Committee on Education and Employment
Parliament House
Canberra ACT 2600

[Submission to the Senate Education and Employment References Committee Inquiry into the Building and Construction Industry \(Improving Productivity\) Bill.](#)

The Plumbing Trades Employees Union (PTEU) makes this submission in response to the Senate Education and Employment References Committee Inquiry into the Building and Construction Industry (Improving Productivity) Bill.

The PTEU is firmly opposed to the reestablishment of the Australian Building and Construction Commission (ABCC). The creation of a separate workplace relations framework for the construction industry is discriminatory, unreasonable and unneeded.

There is a significant body of evidence to demonstrate that the removal of the ABCC has had no detrimental effect on the construction industry and has not contributed to any substantial increase in industrial disputes. Further, the abolition of the ABCC is strongly correlated with an improvement in workplace safety in the construction industry.

The PTEU is committed to a safe and fair construction industry, where employees enjoy the same rights and freedoms afforded all Australians, in safe working conditions and without discrimination.

[About the PTEU](#)

The PTEU represents plumbers nationally, both industrially and acting as a guardian for the trade. We have a history of more than 100 years of activism and making a real and practical difference to our member's lives.

We are particularly proud of our efforts in helping those who society has failed. Since 2004, there have been 40 young Indigenous men and women who have studied and worked for their apprenticeship through the Indigenous Apprenticeship Scheme. In 2009 the first group graduated as fully qualified plumbers. The non-completion rate for apprentices, at less than 20%, is far less than the industry standard and all who have completed the program are now in employment. Many of these apprentices go back to work in the remote communities from which they are recruited,

improving sanitation and health outcomes in those communities, where access to skilled trades is limited.

The union also is a major stakeholder in the Plumbing Industry Climate Action Centre (PICAC), a unique industry led training facility in Brunswick, Melbourne. The centre is a 5 Star Green Star rated building and is a working example of innovative design and sustainable plumbing. Through providing access to a training resource without peer, our industry is taking up the challenges of new technology, risks and approaches.

PICAC is an industry partnership supported by the Plumbing Trades Employees Union, Master Plumbers and Mechanical Services Association of Australia, National Fire Industry Association, Air Conditioning and Mechanical Contractors Association, United Association and Plumbing Joint Training Fund. Employers and unions work together for the betterment of their industry through PICAC, which represents a model for industry training and cooperation.

The PTEU is a force for good in modern Australian society. We are transparent and condemn corruption. Our union has subjected itself to forensic audit and has implemented a range of measures to ensure we function with the upmost probity. We have nothing to fear from the re-establishment of the ABCC, but oppose it as it represents bad and discriminatory public policy.

Equity and powers

Our members will be directly affected by the proposed legislation, and their rights in the workplace will be diminished.

While our members have a strong track record of commendable conduct in the workplace, the proposed reintroduction of the ABCC - an anti-corruption body targeting only the construction industry – stands to unfairly target them. As a result, our members will be subjected to treatment and conditions inferior to all other industries throughout Australia, and will forego basic human rights and common law rights that all other Australians enjoy.

The Law Council of Australia has voiced similar concerns, opposing this legislation and the reestablishment of the ABCC on the basis inappropriate delegations of power, overly broad discretionary powers, concerning coercive powers, the ability to enter a premises without consent or warrant, the lack of right to silence, the reversal of the onus of proof, unfair penalties, exclusion of judicial review, and the retrospective nature of these powers¹.

These concerns have been echoed across the industry, as the proposed legislation will effectively strip our members and other participants in the construction industry of their rights, discriminating on the basis of industry.

The PTEU is firmly opposed to corruption, and wishes to see a fair and cohesive construction industry. We support the establishment of a national broad-based anti-corruption body, which aims to address issues of corruption without prejudice, while treating all industries and professions equally.

¹ Law Council of Australia, Submission to Senate Education and Economics Legislation Committee, Re-establishment of the Australian Building and Construction Commission, 19 February 2016

Industrial disputes

Much of the political discussion around the proposed reintroduction of the ABCC has focussed on the number of working days lost due to industrial disputes in the construction industry, as a proxy for overall productivity. While industrial disputes alone are a poor representative of productivity, when looking at the statistics in detail it becomes clear that the purported benefits associated with the ABCC are questionable.

The Australian Bureau of Statistics has long held records regarding industrial disputes in Australia, helping to identify the real effect of the removal of the ABCC. This data indicates that industrial disputes have followed a downward trajectory over several decades, and have remained relatively steady since 2006, with the removal of the ABCC making no real impact. This view is supported by the Productivity Commission, which stated “there is no robust evidence that the new industrial relations environment specific to construction had significant effects on the costs and productivity performance of the construction industry as a whole.”²

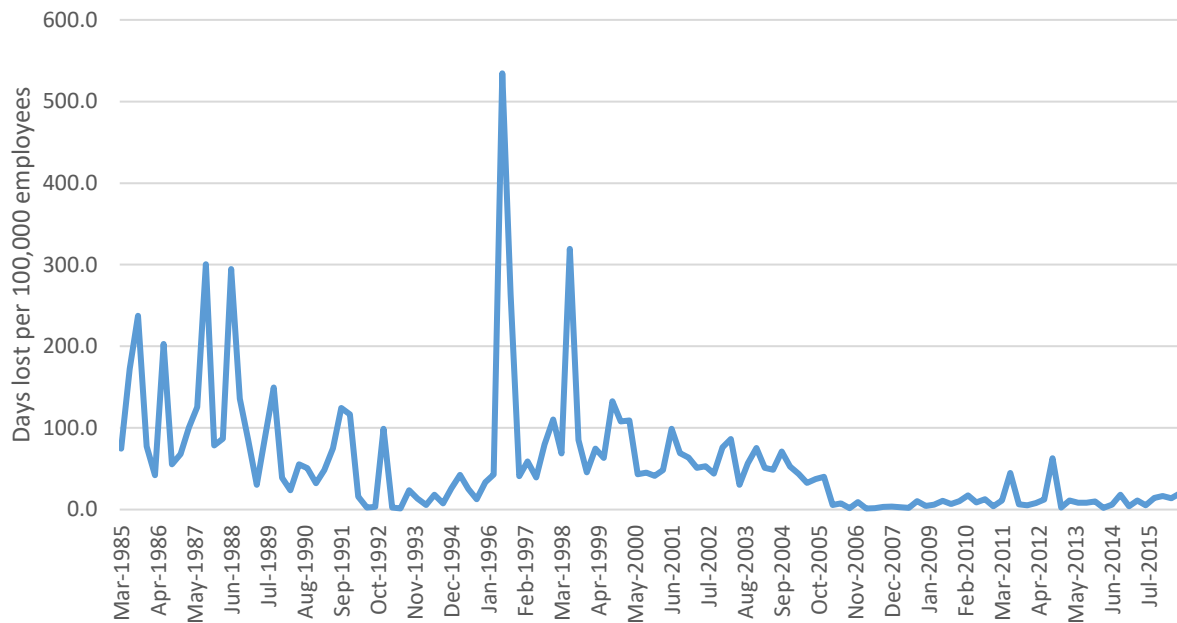
Those arguing for the reintroduction of the ABCC have selectively raised individual months and years as evidence of alleged lost productivity, pointing to fluctuations in working days lost. However, the statistics have been used arbitrarily, and have not painted a fair representation of the construction industry. The data shows that working days lost in the construction industry over the past 12 months totalled 50,700. This figure is comparable with the level during the final 12 months of the ABCC, when 49,000 working days were lost³. Similarly, over the past 12 months, the construction industry has averaged 16.1 working days lost per 1,000 employees⁴. This level is the same as during the final 12 months of the ABCC, which also recorded 16.1 working days lost per 1,000 employees.

Some coverage has pointed to a slight increase in average working days lost per 1,000 employees since the removal of the ABCC. However, the difference is due almost entirely to a single quarter in September 2012. When the effect of this quarter is removed, the average working days lost per 1,000 employees since the removal of the ABCC is 10.2, compared with 9.5 during the period of the ABCC. These results are very comparable, and demonstrate clearly that **the removal of the ABCC has had no detrimental effect on the industry.**

² Productivity Commission, Public infrastructure inquiry report, May 2014

³ ABS Catalogue 6321.0.55.001 Industrial Disputes, Australia, Table 2a: Industrial disputes which occurred during the period, Working days lost, Industry

⁴ ABS Catalogue 6321.0.55.001 Industrial Disputes, Australia, Table 2b: Industrial disputes which occurred during the period, Working days lost per thousand employees, Industry

Figure 1: Working days lost per 100,000 employees due to industrial disputes

Source: ABS Catalogue 6321.0.55.001 Industrial Disputes, Australia

Safety in the workplace

The construction industry is inherently more dangerous than many other industries, with employees working alongside heavy machinery, and often at height. Employees place their safety on the line every day, as even the safest construction workplace presents risks. A fundamental part of mitigating these risks is the encouragement of workers to report dangerous conditions, and the ability of workers to take action where their concerns are not adequately resolved.

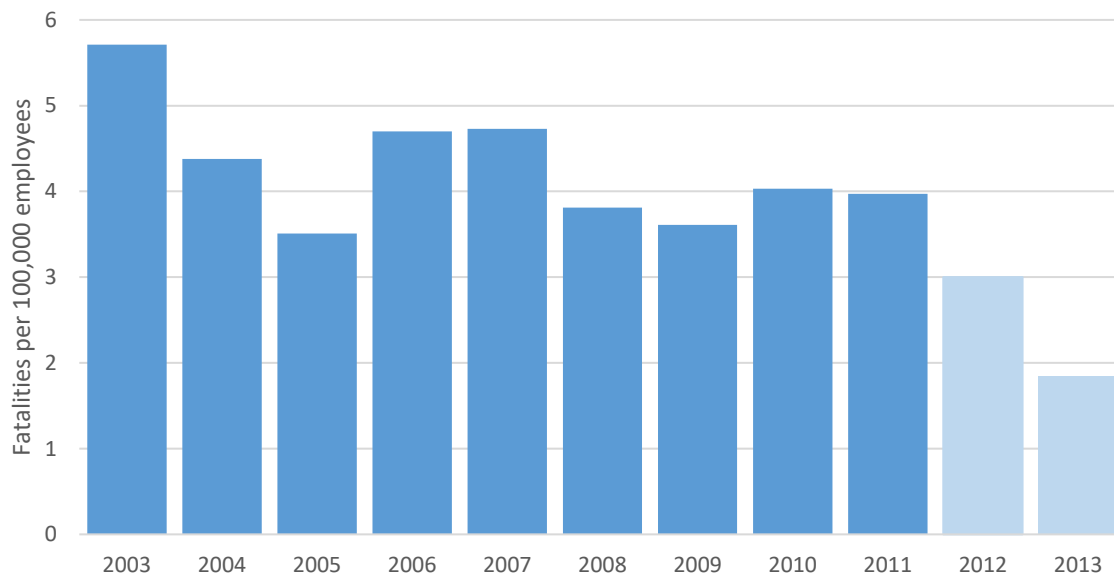
The ABCC dramatically reduces the rights of workers with regards to safety. Since the dissolution of the ABCC in May 2012, the fatality rate and serious injury rate have both declined markedly. Employees are able to effectively voice their concerns and undertake industrial action where needed, and their safety has improved as a result. Crucially, the rate of working days lost (presented above) has not increased markedly since the abolition of the ABCC, indicating that construction sector employees are in no way abusing their rights.

According to the most recent data from Safe Work Australia, serious injuries in the construction industry average 6.4 working weeks off work (44.8 days), and a median compensation payment of \$11,000.⁵ These figures have grown steadily over the past decade, and would both likely be even higher now, with medical care becoming increasingly vigilant.

These figures indicate that **the safety of workers should be the primary consideration when approaching the productivity of the construction industry, and the reestablishment of the ABCC will significantly decrease the ability of construction industry employees to respond to dangerous work conditions.**

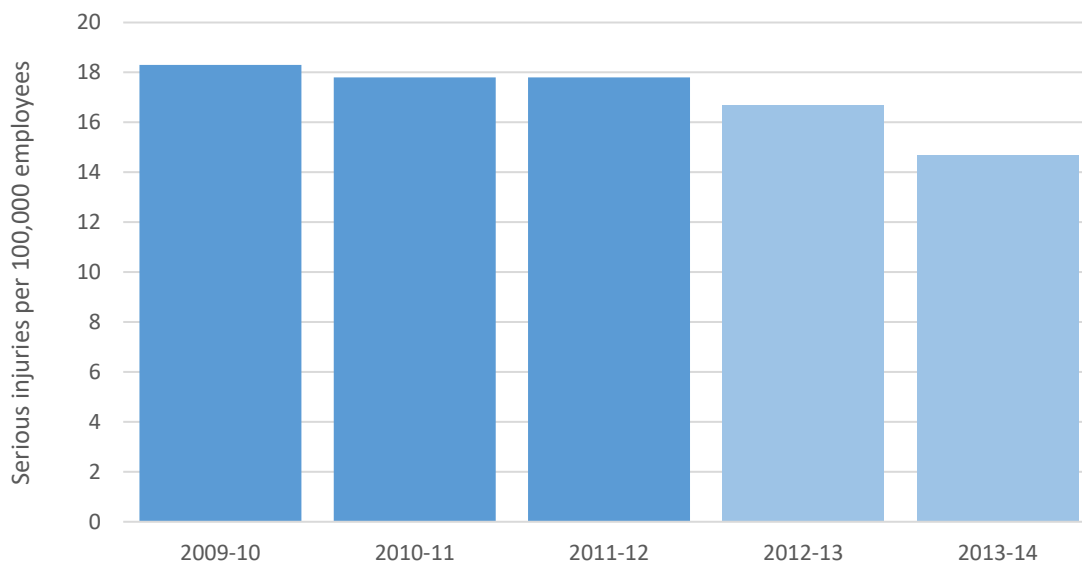
⁵ Safe Work Australia, Work-related injuries and fatalities in construction Australia 2003 to 2013, June 2015

Figure 2: Fatalities per 100,000 people in the construction industry⁶



Source: Safe Work Australia

Figure 3: Serious injuries per 100,000 people in the construction industry⁷



Source: Safe Work Australia

⁶ Safe Work Australia, Work-related injuries and fatalities in construction Australia 2003 to 2013, June 2015

⁷ Safe Work Australia, Statistics on workers in Australia, Table 2.1 - number, frequency rate and incidence rate of serious claims by industry (2009-10 to 2013-14)

Impacts on productivity

There seems to be a reliance on looking at legislative solutions to driving productivity in Australia. One of the key barriers to improving productivity in Australia is a lack of skilled labour. This is an area where we as a union have been active through PICAC.

There was an overall decline in productivity occurred in Australia during the 2000s, with productivity growth at 1.3 per cent per annum, below both the weighted and unweighted OECD average, slipping to 17th from 11th in order of growth from the 1990s until the 2000s⁸. This is at a time of the ABCC, industrial relations reforms and the Royal Commission into the Building and Construction Industry.

There is no correlation between industrial relations reforms, the ABCC, Royal Commissions and productivity improvements.

In our view the government should take an integrated approach to improving productivity in the construction sector, including:

- Focussing on innovation in the industry, including on new technologies such as Building Information Modelling and modular construction;
- Investing in skilled trades training;
- Work with unions and employers to improve productivity, as was the case during our 'productivity boom' of the 1990s. We would welcome the opportunity to participate in a shared approach.

Evidence of need

The Cole Royal Commission – a massive, unwieldy and expensive exercise – was ultimately a flop. It resulted in two prosecutions following 392 findings of unlawful conduct in the public report⁹. What it represented was a very expensive exercise in futility, driven by an ideological belief that workers in the construction industry are not entitled healthy wages and conditions.

As if unsatisfied with the first Royal Commission, the Abbott Government launched yet another Royal Commission. This renewed effort seems in the most part to be based on the evidence of Kathy Jackson, who was once described by former Prime Minister Abbott as "heroic"¹⁰ and by Minister Pyne as the "lion of the union movement"¹¹. Costing approximately \$80million, the Royal Commission into Trade Union Governance and Corruption has been widely derided as an expensive stunt, resulting in only a handful of referrals. The most high-profile alleged perpetrator of corruption appears to be Kathy Jackson herself, who is now subject to some 70 charges as a result of cooperation between state and federal bodies¹².

⁸ Professionals Australia. Speech to AWPA Conference "Breaking down the barriers to workforce productivity". February, 2013.

⁹ AMWU. "Submission to Senate Standing Committee on Education and Employment", November 2013.

¹⁰ Michelle Grattan, Clay Lucas, Sydney Morning Herald, "Abbott backs Jackson", <http://www.smh.com.au/federal-politics/political-news/abbott-backs-jackson-20120410-1wne3.html>

¹¹ Nick McKenzie, Sydney Morning Herald, "Kathy Jackson the 'hyena' now accused, not accuser", <http://www.smh.com.au/national/kathy-jackson-the-hyena-now-accused-not-accuser-20160831-gr5sqd.html>

¹² Sky News, "Former HSU boss Kathy Jackson granted bail", <http://www.skynews.com.au/news/national/vic/2016/09/19/kathy-jackson-in-court-over-hsu-funds.html>

While there are widespread instances of a potentially corrupt relationships between property developers and the Liberal Party and their associated entities, as has been shown in evidence in NSW ICAC, the Federal Government has turned a blind eye. Evidence has involved some of the government's own most senior members, including one of the architects of the Prime Minister's ascension, Senator Sinodinos. The 'Free Enterprise Foundation' appears to have functioned as little more than a slush fund through which the Liberal Party could cleanse donations which are from sources prohibited under NSW laws, namely property developers, amounting to hundreds of thousands of dollars¹³. This selective action against corruption does little to inspire faith from the Australian public in the political class, which has been so eroded in recent years by poor public policy, blinkered partisanship and the cloaking of donations. It would appear that **for the Federal Government, the importance of alleged corruption depends on whether your political friends might be the alleged perpetrator.**

Mandate

The Federal Government called a double dissolution election on their desire to re-establish the ABCC. To claim a mandate for it now defies the evidence of the result. With 42 per cent of the primary vote, the Coalition received a major swing of -3.5% against it, nearly losing the election. Parties opposed to the re-introduction of the ABCC, such as The Greens and ALP, experienced swings to them and with approximately 10 and 35% of the primary votes, outpolled the Coalition when counted together¹⁴. If the Federal Election was a referendum on the re-introduction of the ABCC, then it failed, with the majority of jurisdictions voting against it. We are not so bold as to suppose that any of this was in any way due to the re-introduction of the ABCC or otherwise, as this was barely a topic of discussion during the election campaign. **The government has no mandate for the re-introduction of the ABCC.**

Coercive powers

Recent years have seen a range of challenges to human rights. Terrorism presents a unique set of challenges which has seen governments adopt legislative approaches which impinge on the human right of its citizens, such as the right to privacy and freedom from torture. As a society, we need to respect human rights and limit the encroachment on them. The coercive powers proposed to be granted the ABCC infringe on the human rights of a section of society – they are inherently discriminatory and would be in breach of international covenants to which we are not only signatories, but champions of. **The ABCC would reduce construction workers and their union to the status of terrorists, with their rights diluted in a discriminatory environment.**

Conclusion

The PTEU reiterates its opposition to the reestablishment of the ABCC. There is no reasonable justification for specialised laws for the construction industry that infringe upon the fundamental rights of employees. Further, there is no significant evidence to suggest that the creation of the ABCC substantially improved efficiency in the industry, or that's its dissolution has led to any deterioration of industry productivity.

¹³ ABC News, "Liberal Party used 'charitable' foundation to disguise donations", <http://www.abc.net.au/news/2016-03-24/nsw-liberal-party-disguised-political-donations-free-enterprise/7272446>

¹⁴ AEC, "The Tally Room", <http://results.aec.gov.au/20499/Website/HouseStateFirstPrefsByParty-20499-NAT.htm>

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Our members across Australia are committed to a fair and productive construction sector, free from discrimination and corruption. However, the reintroduction of the ABCC will not achieve this. Instead, it will fundamentally damage the fairness of industrial relations in Australia, placing politics ahead of the safety and rights of thousands of workers in the construction industry.

Yours sincerely

Earl Setches
Secretary, PTEU