

The Turnbull government has finally got its way and will now re-install the construction industry watchdog, the Australian Building and Construction Commission (ABCC). We asked a panel of experts what this means for the industry and its workers.

David Peetz, professor of employment relations, Griffith University

Amendments agreed to by the government mean that the ABCC looks like it will, in effect, have virtually no more powers than Labor's Fair Work Building Industry Inspectorate.

The main difference between the two bodies (as staff will simply transfer) is that the ABCC legislation will give effect to the government's building industry code. That requires all companies doing construction or related work for the Commonwealth to follow the code's policies on trade unionism, especially in the content of their enterprise bargaining agreements (EBAs). If firms don't comply, they won't get any Commonwealth work.

However, the code itself will be delayed. Whereas previously it was, in effect, retrospective, employers will now have until the end of November 2018 to negotiate new EBAs, so most existing EBAs will not be affected.

The prospect that there would be a rush to reopen existing EBAs has now passed. So too, therefore, has the associated fear that this would lead to higher wage increases, to compensate for provisions unions would have to give up to enable compliance with the code. There might still be wage effects in the future, but there certainly won't be the rush.

There is still the prospect that the code itself may be disallowed — the Senate has the power to do that. [Senator Nick Xenophon may still be troubled by](#) giving too much power to one body, one that would be “investigator and assessor of compliance and ... responsible for ... sanctions”. Others in the Senate would be even more concerned.

Restoring the construction watchdog ABCC: experts respond

Written by The Conversation

Even if the code survives, the new ABCC won't lead to any major productivity benefits, despite claims made along those lines for almost a decade. The research basis for those claims has [long since been found to be defective](#).

And with so much of the ABCC's time to be spent on managing new Australian content and local worker rules in construction (forced upon the government by the Senate), costs in the industry are likely to go up, not down. After all, if local workers and materials were cheaper, firms would already be using them.

Prime Minister Malcolm Turnbull invested so much political capital in the ABCC bill that he had to get it passed, no matter the cost. The headlines may be favourable for a day or two. But these developments could further undermine his credibility with the Liberal Party base, particularly if the code is disallowed.

Eugene Schofield-Georgeson, lecturer at University of Technology Sydney law school

The laws that have re-established the ABCC will not help the workers who have already lost their lives because of failed safety precautions. Five Australian construction workers [have been killed](#) on building sites over the last five weeks during the debate on the Australian Building Construction Commission (ABCC) bills. Another 25 workers have lost their lives in the construction [industry this year alone](#). In fact, by reducing the power of unions to inspect and operate on building sites and by persecuting unionists in a quasi-criminal tribunal, a revived ABCC jeopardises safety protections for construction workers and waters down workplace rights in the industry.

The political horse-trading that has led to the passage of these bills has done little to rehabilitate them into something that is worthy of an advanced and reasonable industrial democracy. Indeed, these laws place Australian workers in the construction and allied industries at a significant disadvantage to their employers as well as workers in other industries. No comparable law regulates other industries in such a manner.

In this legislation, [the union-busting](#) and potential for [civil rights infractions](#) that characterised the introduction of these laws into parliament by the Abbott government in 2013 remain mostly intact. These laws include increased penalties for unions in the construction and allied industries in respect to unlawful industrial action (similar to those under corporations law) and compulsory acquisition of information in relation to suspected contraventions of the Act or a building law (meaning no “right to silence” or privilege against self-incrimination). It also means retrospective prosecutions for infractions of ABCC legislation; a civil standard of proof for quasi-criminal prosecutions; reduced powers for unions to inspect and operate on building sites; and deregistration of non-compliant unions.

Cross-bench senators David Leyonhjelm and Derryn Hinch, who voted with the government in support of this legislation, did manage to secure a number of concessions to ensure some compliance with the rule of law. These include: no reverse onus of proof for defendants prosecuted by the ABCC (like most criminal jurisdictions); a requirement that the ABCC be subject to judicial review (in accordance with Chapter III of the Australian Constitution); and annual reporting provisions for the ABCC as an executive branch of government (like any other branch of executive government).

The United Nations condemned the former ABCC from the Howard era for breaching international labour law conventions. The revived version is similar in most respects.

Phillip Toner, senior research fellow in the department of political economy, University of Sydney

[Research shows](#) that the ABCC has no discernible effect on construction industry labour productivity. Instead, long-running trends in labour productivity are governed by a multiplicity of factors. The key point is that the factors determining the rate of productivity growth in the construction industry are outside the scope of activity of the ABCC.

Labour productivity in construction is pro-cyclical, meaning it typically increases when activity picks up in the sector and the existing stock of employed construction workers is fully utilised. Similarly, it diminishes as a building boom accelerates. This is because less efficient firms are drawn into production, and there are inevitable inefficiencies created by logistical and work scheduling problems. Construction sites become more crowded as work progresses.

The ABCC is not in a position to influence this as its remit is to monitor and enforce industrial relations through the Fair Work Act. Its role is not to evaluate the productivity performance of construction firms or tell builders how to build.

Another important factor in explaining low productivity growth is the corporate strategy of major constructors and construction clients. This is one of intensifying subcontracting and shifting risk down the contractual chain.

This results in a fragmented industry structure, or a proliferation of very small firms and self-employment. The predominance of small firms and self-employment constrains productivity as they [have a much lower propensity to invest](#) in R&D, innovation, capital equipment and training compared to larger firms.

This explains why, despite accounting for over 10% of total employment, the construction industry accounts for [less than 2% of the total national capital stock](#) (the total value of productive equipment, and buildings used for production). The construction industry capital to labour ratio is less than 20% of the economy wide ratio.

The role of the ABCC is not to examine the investment behaviour of firms in the construction industry and tell them how to invest, so it wouldn't solve this problem either.

The bad relations and competition between head contractors, contractors, and subcontractors and then self-employed workers reduces the incentive to invest in productivity improvements. Businesses further up the contractual chain use their market power to absorb the higher margins, productivity improvements and cost reductions made by subcontractors further down the contract chain.

The role of the ABCC is not to monitor contractual relations between these contractors in the construction industry. Issues to do with the abuse of market power, for example between a head contractor and a subcontractor, are governed instead by the Australian Consumer and Competition Commission.

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David Peetz receives funding from the Australian Research Council and, as a university employee, has undertaken research over many years with occasional financial support from governments from both sides of politics, in Australia and overseas, employers and unions.

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