



FINES, LEGAL COSTS MAY EVAPORATE IF LABOR WINS

CFMEU's election windfall

The militant union stands to save millions if the ABCC is abolished

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If Bill Shorten wins the May 18 election, his allies in the nation's most notorious union, the Construction, Forestry, Maritime, Mining and Energy Union, will be millions of dollars better off.

Shorten has promised to kill off the union's bete noire, the Australian Building and Construction Commission, and go further than the Gillard government by not replacing the ABCC with a stand-alone regulator.

Higher penalties that apply

only to the CFMEU will be slashed and the national construction code forcing builders to remove union-friendly conditions from enterprise agreements if they want multimillion-dollar government work will be scrapped.

Since December 2016, the ABCC has brought 40 successful legal actions against the union, extracting penalties totalling \$7.9 million.

Last financial year, the ABCC secured \$3.1m in penalties against the union, and in the past 10 months the amount was \$3.3m.

ABCC commissioner Stephen McBurney says the regulator has 38 proceedings against the

CFMEU before the courts. The union has been found liable in 14. Judges are due to hand down penalties or conduct penalty hearings. The rest are yet to be determined.

If the ABCC is scrapped, it follows that the CFMEU will save millions of dollars each year. Not only will it no longer face signifi-

cant court-imposed penalties arising from the agency's relentless litigation, it will not have to pay for lawyers to contest the legal action.

Maximum civil penalties that can now be imposed on the CFMEU and its officials will be cut by two-thirds and brought back into line with the Fair Work Act, which applies to the rest of the workforce.

The maximum penalty per contravention under the Building and Construction Industry (Improving Productivity) Act is \$210,000 for the union and \$42,000 for an individual; under the Fair Work Act, it is \$63,000 and \$12,600 respectively.

The Coalition has banned legal settlements between the union and employers that prevent the CFMEU from being taken to court for unlawful conduct. These arrangements, criticised as sweetheart deals by employer groups, will be reinstated under a Labor government.

"There is no doubt the CFMEU



will be millions of dollars better off if Labor wins and abolishes the ABCC," says Australian Mines and Metals Association chief executive Steve Knott.

"Weekly fines for open contempt of Australia's workplace laws are a major cost of doing business for the union, even if its unprecedented financial power means such fines are akin to a drop in the ocean."

McBurney says he will keep taking court action during and after the election campaign. But if the ABCC is scrapped, there is a prospect the 24-odd cases where liability is undetermined will be dropped or will form part of a global settlement.

Opposition workplace relations spokesman Brendan O'Connor says: "If elected, Labor will take advice on appropriate action and will look at all precedents on existing proceedings and actions.

"The ABCC is unfair, undemocratic and unwarranted. Labor believes in one set of laws for all workers in this country.

"It is fundamentally unfair that builders and construction workers have fewer rights than other Australians."

CFMEU construction division national secretary Dave Noonan says the outstanding litigation will be a matter for Labor if it is elected. "Clearly, some of the cases are, in our view, without merit and have been lodged for political reasons, and the ABCC has got a history of doing that," he says.

Master Builders Australia chief executive Denita Wawn says CFMEU officials are "just counting the days to what they think will be a certain Labor victory to unleash a wave of bullying on subbies and tradies".

"A Labor win will be a huge financial windfall for the union," says Wawn, whose organisation is spending \$700,000 on election campaign advertisements sup-

porting the ABCC's retention.

"Without the ABCC to hold them to account for their thuggery, they won't have to pay millions in court fines."

Noonan says AMMA is "irrelevant to the building industry, given they are a lobby group for the minerals industry", and Master Builders are in "lockstep with the Liberal Party". He says the ABCC is a partisan regulator whose inspectors engage in "standover tactics" by going to sites and "threatening builders with being blacklisted from government work".

Brendan O'Connor is the brother of CFMEU national secretary Michael O'Connor, who has significant clout in the union movement and the Labor Party.

As workplace relations minister in a Shorten government, O'Connor will have ministerial responsibility for abolishing the ABCC and the code, two ALP policy decisions that directly benefit the CFMEU.

Senior ALP and union figures say the brothers are mindful of the appearance of a conflict of interest. When he was a minister under the previous ALP government, O'Connor recused himself from an anti-dumping matter where he would have exercised ministerial power to determine an outcome that affected the union.

In contrast, scrapping the ABCC involves him implementing policy determined by the party. Employers say they do not have concerns about any potential conflict of interest.

"Master Builders trusts Brendan O'Connor's professionalism and ethics in managing any conflicts," Wawn says.

Knott says the AMMA "doesn't see the family link as problematic". "The union movement's influence over ALP policy is already pervasive," Knott says.

"We would, however, expect Brendan O'Connor to identify and disclose any potential conflicts of interest in his ministerial duties, and abstain or delegate to colleagues any decisions that could be seen as influenced by it."

Jobs and Industrial Relations Minister Kelly O'Dwyer says the

issue "is clearly a question for Bill Shorten and how he will manage conflicts of interest".

"But the biggest conflict is Bill Shorten continuing to take money and orders from the militant CFMEU," O'Dwyer says.

"He's putting a lawbreaking union ahead of honest Australian small businesses, subbies and workers."

Asked how O'Connor in government would approach ministerial and cabinet decisions about the CFMEU, his spokeswoman says: "Mr O'Connor will deal with any apparent conflicts of interest if and when they arise, as he did when last a minister."

Abolishing the ABCC was a commitment given to the CFMEU by Shorten and Anthony Albanese when they were contesting the Labor leadership. It was after the 2013 election and before O'Connor was given responsibility for workplace relations.

University of Adelaide law professor Andrew Stewart says he doesn't believe the proposed abolition of the ABCC represents a conflict of interest for O'Connor.

"I don't think there is any doubt that any policy Labor has around the ABCC is not a Brendan O'Connor policy, it's a Labor policy," Stewart says. "I don't think this is something where it can be plausibly argued that Brendan is off on a frolic on his own doing a favour for his brother.

"It's not a decision he would be specifically taking as minister.

"He would be implementing a decision taken by parliament. But, yes, you could expect that there would be times when issues would

have to be addressed where he would probably need to step aside.

"For example, if we had a repeat of the situation where there is litigation relating to the CFMEU merging, and there is a question of whether there should be government intervention in that litigation to put a position, then that's a matter you could probably say is so specifically related to that one union that arguably, yes, he does



have to step aside because of a conflict.

“There will be issues where he will run into that but in terms of the broad policy, in my view, no.”

Stewart says the ABCC has promoted a greater level of compliance but it was more difficult to say it has improved industry productivity. If the ABCC goes, he says the conduct of the CFMEU justifies a separate compliance division being established within the Fair Work Ombudsman.

“I’m really more making a prediction not what I think Labor will promise, but what I think would happen, particularly given it would really be a matter primarily for the ombudsman,” he says.

Noonan accepts the union will be better off financially without the ABCC.

“I presume if there is less litigation we pay less legal fees and fines,” he says.

“The ABCC have brought almost no matters against employers in relation to sham contracting, wage theft, breaches of agreement.

“They simply don’t prosecute. They are a regulator which ignores flagrant illegal activity by employers.

“The government promised to the crossbench when they passed this legislation the regulator would be balanced, and they are completely unbalanced.”

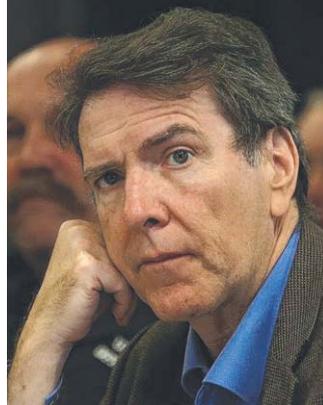
Wawn says the ABCC should be retained because the CFMEU is “dominated by an entrenched culture of bullying”.

“When it comes to freedom of association, right of entry and coercion, they put other unions in the shade,” he said.

“It’s not accepted anywhere else in the community, so why should it be allowed on construction sites?”

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BRENDAN O’CONNOR
OPPOSITION WORKPLACE RELATIONS SPOKESMAN







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KYM SMITH, AAP

Clockwise from far left, Bill Shorten rolls up his sleeves; CFMEU on the march in Brisbane; Labor's Brendan O'Connor; CFMEU's Michael O'Connor; and ABCC's Stephen McBurney