



Australian Government
Productivity Commission

Public Infrastructure

Productivity Commission
Inquiry Report
Volume 2

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Contents

The Commission’s report is in two volumes. **This volume 2 contains chapters 9 to 16 and appendices A to J and volume 2 references.** Volume 1 contains the Overview, recommendations and findings, chapters 1 to 8 and volume 1 references. Below is the table of contents for both volumes.

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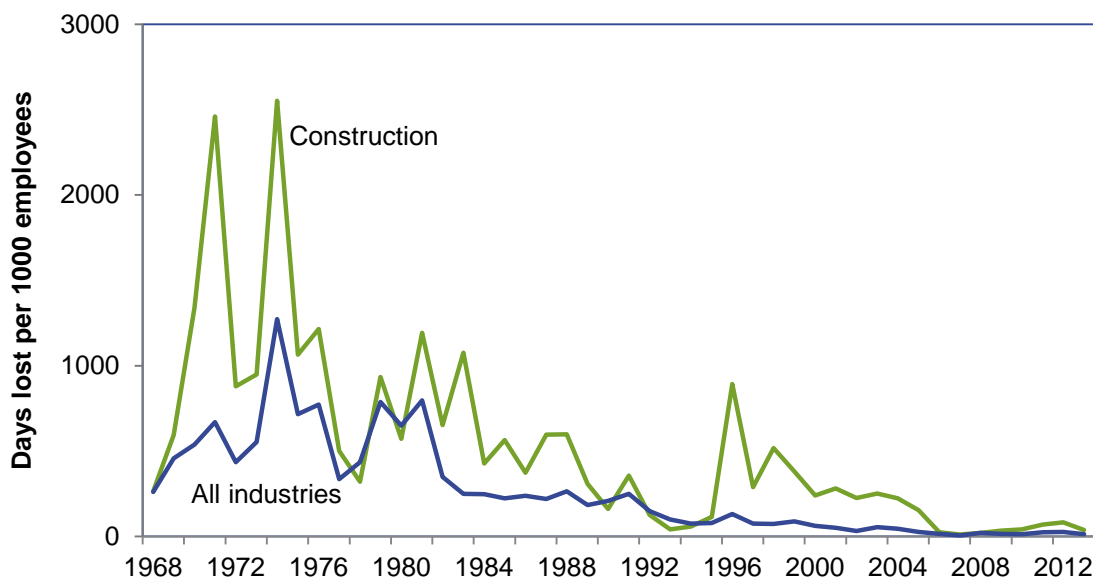
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extend throughout the economy, the economywide GDP loss would be somewhat larger, and is estimated to be around \$40 million in that year (using the modelling approach of Dixon and Wittwer 2004).⁵³ Many of the apparent losses are internalised by the workers themselves, as workers are not paid wages during industrial disputes (and it is unlawful for employers to do so). Indeed, in some instances, industrial action legitimately taken to address a WHS issue can enhance community wellbeing.

Figure 13.7 Days lost from industrial disputes

Construction and all industries, 1968 to 2013, calendar years^a



^a The data underestimate actual disputes because the ABS does not include industrial disputes in its survey collection if the work stoppages are equivalent to less than ten working days lost. Ten working days lost is equivalent to the amount of ordinary time that would have been worked, for instance, during a stoppage of work by 10 employees for one day, or, by 40 workers attending a two hour stop work meeting (assuming they worked an eight hour day).

Sources: RBA *Australian Economic Statistics 1949–1950 to 1996–1997*, Occasional Paper No. 8; ABS (*Industrial Disputes, Australia, December 2013*, Cat. No. 6321.0.55.001).

Accordingly, set against the size of the construction industry, the apparent economic impacts of industrial disputes are very low.

However, the comparative degree of industrial harmony is still problematic

The relative risk of days lost to disputes per employee in construction compared with other industries tells another story. Industrial relations have persistently been

⁵³ Industrial disputes fell considerably in the last two quarters of 2013, so that on a calendar year basis, the direct economic effects would be roughly half of those above.

Various studies by Independent Economics (IE), previously Econtech, comprise the most detailed stream of systematic empirical research in support of the wider *economic* benefits of the changes to IR arrangements in the construction industry (Econtech 2007, 2008; Independent Economics 2012, 2013; KPMG-Econtech 2010). Its series of studies have been highly influential in debates about the effectiveness of the ABCC on construction productivity and, by inference, are relevant to various conjectures about the degree to which diminished union power affects productivity at the macro level. Many umbrella groups representing construction and other businesses have highlighted the studies and claimed that they are valid (ACCI 2013; Department of Employment 2013b; MBA, sub. 88 and sub. DR211; HIA 2013), while others have questioned their relevance (Allan, Dungan and Peetz 2010; Peetz 2014; Australian Council of Trade Unions sub. 95, pp. 14–21; Wilcox 2009). The validity and interpretation of these studies are therefore key issues.

The Commission has carefully reviewed the studies and the empirical evidence on aggregate productivity (appendix I). This assessment covers the evidence from IE and MBA (sub. DR211), and the Commission’s own synthesis of studies and data.

The Commission’s view is that given the case studies, industry surveys and other micro evidence, there is no doubt that local productivity has been adversely affected by union (and associated employer) conduct on some building sites, and that the BIT/ABCC is likely to have improved outcomes. However, when scrutinised meticulously, the quantitative results provided by IE or others do not provide credible evidence that the BIT/ABCC regime created a resurgence in *aggregate* construction productivity or that the removal of the ABCC has had material aggregate effects. Indeed, the available data suggests that the regime did not have a large aggregate impact.

This is neither surprising, nor inimical to the need for further reform. By its nature, it is hard to isolate numerically the effects of workplace arrangements, including industrial relations, from all the other factors shaping workplace productivity, especially given small and inadequate datasets and statistical noise. In an entire study devoted to this issue in the construction industry, an earlier report by the Commission observed:

Data are not available to enable sector-specific estimates of labour productivity or unit labour costs. Interactions among work arrangements make it impossible to quantify how individual work arrangements affect the partial performance indicators or performance overall. As well, other factors such as design, project planning, building regulations, tendering practices and the behaviour of clients affect workplace performance. For these reasons, the impacts of work arrangements can be assessed in terms of direction only. (PC 1999, pp. xvii–xix)

IE acknowledges the importance of compositional effects:

The additional labour productivity outperformance over the last two years is driven by a compositional shift within the building and construction industry towards engineering construction, which is less labour intensive. For example, several large LNG projects began construction during 2011 and 2012. Other measures of labour productivity that are not affected by these compositional effects, including the measures discussed in section 2.2.2 of this report, show that the productivity outperformance in the construction industry has stabilised, rather than expanded further, in recent years. (Independent Economics, 2013, p. 15)

Given the above, there are grounds for omitting 2011-12 from the trend analysis, although table I.3 does not do so. (However, the results from its omission are shown in table I.2.)

Summing up: what does trend analysis of the annual data show?

The first period of the BIT/ABCC was characterised by productivity growth rates considerably superior to the period from 1987-88 to 1993-94, but worse than the other growth cycles shown in table I.3, for example, 1993-94 to 1998-99. The second period of the ABCC showed impressive productivity growth, but this is strongly influenced by just one observation (2011-12).¹⁰⁵

An enthusiast for casual empiricism might argue that these patterns suggest that more stringent IR regimes did *not* have any productivity effects. However, association is not correlation.

The Commission still considers that the BIT/ABCC had positive effects in its heyday from 2002-03 to 2007-08 (effects that probably endured to some extent in its later years). But its impact is likely to have been masked by many other factors affecting aggregate productivity. Likewise, it cannot be maintained that the data show — even in an indicative sense — that aggregate productivity improved because of the BIT/ABCC.

A quarterly perspective

While the Commission is not convinced that the annual data reveals any significant aggregate productivity effects causally linked to the establishment of the BIT/ABCC, for completeness the Commission also examined quarterly data.

105 The Commission did not explore state-based productivity trends in any detail, but remarks parenthetically that there is evidence that MFP growth rates in construction in most states appear to have been lower after the 2000s than before (Cunningham, M. and Harb, D. 2012).

unrest and litigation before the courts than in other jurisdictions (chapter 13). It could therefore be expected that findings of reduced cost relativities would mainly relate to Victoria, and not to other states. The evidence provides some support for that contention. On the other hand, in Queensland, relative costs actually increased for the initial years of the ABCC, and then fell significantly from 2009. The Commission confirmed with Rawlinsons that there was no anomaly affecting the Queensland data. It would be misleading to assume that the Victorian evidence favours the IE conclusion, while ignoring the implications of the Queensland data (which suggest other factors have played a role).

Finally, there are thousands of cost items in the Rawlinsons cost handbook (most of them for the more complex buildings). The comparison across several common tasks in the two segments of the industry is useful, but it is hard to conclude that equal inefficiencies would apply to the many other tasks.

Accordingly, IE's conclusions based on the Rawlinson's data are not robust.

1.6 What does this mean for analysis of IR changes?

There are three distinct hypotheses about the impact of the more stringent IR arrangements that emerged with the creation of the BIT/ABCC:

- H1: they made no difference to productivity at all
- H2: they improved productivity, but not to the degree that they could be statistically discovered with any precision in aggregate data for the entire construction industry
- H3: they markedly improved aggregate productivity in the entire industry.

While there are devotees for all three hypotheses, the Commission's position is that H2 is the most reasonable. It is supported by:

- the findings of the Cole and Wilcox reviews about the processes on worksites that affect productivity, and how these can be undermined by industrial disharmony
- the likelihood that the ABCC reduced industrial disputes and, through deterrence, affected other problematic conduct
- case studies of outcomes for particular projects suggest that problematic IR arrangements influence productivity and that the creation of the ABCC partly addressed these. The survey evidence cited in chapter 13 found that while around half the industry participants did not believe that the ABCC had made a

difference to workplace productivity, around one quarter cited a moderate improvement and 15 per cent a significant one. Again this is consistent with H2, certainly contradicts H1, but is not supportive of H3. After all, the overwhelming majority did not say it had a major impact

- economic common sense that poor workplace relations are unlikely to be conducive to productivity. MBA quotes approvingly from previous Commission comments about the importance of institutional reform and the relevance of IR (MBA sub. DR211, p. 11, p. 34). These comments are entirely compatible with H2. One does not need to conclude that there is a large aggregate effect from one IR reform for one part of an industry to support the notion that IR arrangements are crucial
- analysis that shows that buildings have been the major source of problems and the major target for action by the ABCC and FWBC. The Commission has shown that even large impacts of IR reform on non-residential buildings will be hard to find in the aggregate data (chapter 13). IE's finding of a large impact of IR on engineering construction is an artefact of the technique by which it creates a shock for its computable general equilibrium model. It is not evidence in its own right
- the fact that not all the evidence points in one direction. The Commission has found evidence that Australian constructors are — for at least some tasks — amongst the global best performers (chapters 9 and 10). Moreover, according to some analysis, Australia was not a bad performer in the late 1990s either (Access Economics and World Competitive Practices Pty Ltd 1999).

MBA argued that commentators should consider the totality of the evidence on the effects of the BIT/ABCC on construction sector productivity (sub. DR211, p. 26). The Commission agrees, but considers that the totality of evidence favours H2, but not H3.

H3 requires something beyond H2. It cannot rely alone on individual case studies or on the (reasonable) proposition that the ABCC reduced industrial disputes. It must be supported by the reliable identification of robust and large parameters that causally link aggregate productivity gains to the creation of the BIT/ABCC. Neither MBA or IE have met this requirement.

MBA notes that:

The Productivity Commission failed to make its own assessment as to whether a large institutional economic reform that changed the building and construction industry led to productivity improvements, and if yes, by how much? (sub. DR211, p. 29)

The Commission did in fact seek to do both. Its judgment is that there was an improvement, but that it could not be found in the aggregate data. That is neither surprising nor contrary to the need for further reform.

Judge turns on ABCC for wasting time over 'cup of tea' CFMEU incident

David Marin-Guzman *Workplace correspondent*



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A federal court judge has blasted the Australian Building and Construction Commission for wasting time and taxpayers' money on taking two Construction, Forestry, Mining and Energy Union officials to court for "having a cup of tea with a mate".

In scathing and extraordinary criticism of the construction industry watchdog, Justice Tony North told parties on Friday it was "astounding" that commissioner Nigel Hadgkiss had briefed silk and conducted days of hearing with dozens of participants, including Australian Federal Police, over "such a miniscule, insignificant affair".

"This is all external forces that are beating up what's just a really ordinary situation that amounts to virtually nothing," he said.



ABCC chief Nigel Hadgkiss "has not sought an indemnity and the government will not be providing one", Senator Michaelia Cash has said. **Alex Ellinghausen**

"For goodness sake, I don't know what this inspectorate is doing."

He said when the ABCC "use[s] public resources to bring the bar down to this level, it really calls into question the exercise of the discretion to proceed".

The accused CFMEU officials had dropped by a McConnell Dowell building site at Melbourne Airport in 2014 to visit a friend who was a safety representative.

The men said they talked about holidays and four-wheel drives over a cup of tea for half an hour before a project manager asked them to leave or he would call the police.

The officials had failed to give the required 24-hours notice to enter the site, which put the company's ability to tender for government work at risk because of strict conditions under the then-Liberal state government's building code.

One official responded he wanted to talk to his friend for another five minutes before leaving and that if the manager called police "you are starting a war".

The manager then notified the Australian Federal Police, which sent four officers to the site, and the ABCC later accused the CFMEU of breaching the Fair Work Act by not giving notice, meeting employees during work hours, threatening retaliation and remaining on site by waiting for the police to arrive.

Justice North said the CFMEU's "war" threat, in the context of the manager not explaining his reasons and their history of friendly relations, was "a human reaction".

"This is not a threat in the sense that I'm going to start a third world war. This is a Trump-like threat."

In an earlier hearing in December, the judge observed that if the manager "had been left to his own devices without a protocol, he would have said, 'Have your cup of tea and then f--k off,' and no one would have heard another word about it".

"I'm looking at the central reality of this case. It was an hour on site. There was no aggravation, no stoppage of work, between people who got on well. I mean, really and truly, if this is what the Inspectorate thinks is worthy of its attention I would be amazed."

The judge urged the ABCC to reconsider pursuing the case, which had spanned almost two years of submissions and hearings.

"I mean, we have enough CFMEU cases without every mate visiting another for a cup of tea coming to our court."

However, the ABCC returned to court last Friday for closing submissions, this time engaging the services of a barrister.

Justice North said he was "surprised the matter has come back, frankly". "I must say it's a terrible waste of everybody's time."

It is not known how much the ABCC has spent on the case, although it is estimated to be as much as \$100,000.

The judge has reserved his decision but he warned the ABCC "you can be quite sure I will so express my views".

David Marin-Guzman writes about industrial relations, workplace, policy and leadership from Sydney. *Connect with David on [Twitter](#). Email David at david.marin-guzman@afrc.com*

Nigel Hagkiss admits failure to stamp out unlawful conduct

Ewin Hannan *Workplace Editor*

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first published at 10.39am

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Building watchdog Nigel Hadgkiss has admitted his agency has failed to changed the culture of unlawful conduct pervading the construction industry.

The Fair Work Building and Construction director said on Monday that the agency's success in pursuing court action against the Construction, Forestry, Mining and Energy Union was not acting as a deterrent.

"Clearly the agency is efficient in getting matters to court and winning its court battles but when you consider the comments from the judiciary and the clear trend of increasing numbers of court matters, you have to come to the only conclusion that we have not been effective in changing the culture of the building and construction industry," he told an Australian Industry Group conference in Canberra.



Nigel Hadgkiss says his agency has failed to change the construction industry's unlawful culture. **Simon Schluter**

"Our success in the courts is having little, if any, deterrent effect on this type of behaviour with unlawful conduct not improving since the time of the Cole Royal Commission."

He said the union's dismissive attitude toward the law and "lack of respect for our industrial relations system is something that FWBC grapples with on a daily basis".

"We will continue to operate to the full extent that we can to see the rule of law prevail in the construction industry yet I regret to say that it is our agency's experience that unlawful conduct continues to be rife and I cannot see the situation improving in the current environment."

His comments can be seen as supporting the case for the return of the Australian Building and Construction Commission given passage of the ABCC bill would give his agency stronger powers to take on the CFMEU.

Mr Hadgkiss spent much of his speech seeking to rebut union criticism of his agency's actions, including the use of coercive

powers to pursue legal action against the CFMEU.

He said he took exception to the claim that the agency "targets workers, hauling them in off the street and forcing them to answer questions".

"Firstly, no-one is hauled in off the street. People who are served with notices to attend a compulsory examination are notified in writing and have 14 days to comply," he said.

"Secondly, the vast majority of people who we call as witnesses in compulsory examinations are employers or management.

"In our experience, compulsory examinations are a necessary investigative tool due to the state of the industry. People are often afraid of reprisal if they were to provide information to FWBC on a voluntary basis.

"In these instances, our compulsory powers are vital in obtaining evidence that is crucial to progressing an investigation. I should also point out that there have been numerous instances when investigations have been discontinued as a result of evidence obtained through compulsory examinations."

Ewin Hannan is a columnist. *Connect with Ewin on Twitter.*



Australian Government

Transition to Fair Work Australia for the Building and Construction Industry

Report

March 2009

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(e) Econtech's response to the criticisms

- 5.46 It seemed to me these criticisms of its 2007 report, if justified, reflected poorly on Econtech's professional competence; it would be unfair to reach any conclusions about them without first giving Econtech an opportunity to respond. Consequently, at my request, a letter was sent to Econtech, drawing attention to the criticisms and inviting any response Econtech wished to make.
- 5.47 Mr Chris Murphy, Executive Director of Econtech, responded to this invitation on 15 March 2009. He did not attempt to defend the 2007 report or to rebut the criticisms made of it by Queensland and Professor Peetz. Rather, he criticised Professor Peetz for having devoted "25 pages to an analysis of results that were reviewed and updated in our 2008 report, without going beyond this nitpicking of superseded results to provide a new analysis to inform the debate."¹¹⁵
- 5.48 Of course, Professor Peetz was not attempting his own analysis. He was concerned at the possibility that an economic analysis, obtained at public expense and widely publicised, had grossly exaggerated the contribution to productivity made by the BCII Act and ABCC. As Mr Murphy implicitly concedes, Professor Peetz' concern was justified. The 2007 Econtech report is deeply flawed. It ought to be totally disregarded.
- 5.49 As mentioned in the Discussion Paper, the 2008 Econtech report indicated a much less dramatic narrowing of the difference between commercial and residential building costs. There was a drop of only 6.75 per cent over the two years from January 2006, three months after the commencement of the BCII Act and the ABCC's activities, to January 2008. What that drop says about improvement in labour productivity may depend upon one's opinion about the soundness or otherwise of the assumption underlying the Econtech methodology.

(f) The John Holland assessment

- 5.50 The only party who responded to my plea for industry-wide "hard evidence" was JHG. In a supplementary submission, JHG referred to an assessment it had completed in June 2007 which "concluded that the post Cole Royal Commission reforms had delivered a productivity dividend of 10% to the entire industry - an improvement equating to 1% of GDP."¹¹⁶
- 5.51 The author of the JHG assessment started with the assumption that all, or virtually all, the reduction in building industry lost time since the Cole Commission had stemmed from the BCII Act and the activities of the ABCC. Given what was happening in other industries over that same period, this assumption is highly questionable. The author sought to quantify that reduction by comparing the average of 150,000 man days per year reported for the ten years ending in 2006 with the 15,000 reported for 2006. The "improvement in lost time following the improved regularity framework", 135,000 man days, was then valued at \$60 million.¹¹⁷
- 5.52 Noting that ABS counts only those industrial actions that result in "ten or more working days lost", the author then assumed that "up to 10% of programme time could be lost due to unlawful industrial action that would not be reported via ABS".¹¹⁸ The author valued the improvement in unreported lost time at \$6,233 million. This is curious. Having assumed that up to ten per cent of lost time might be left unreported, the author took a value for that ten per cent that was over one hundred times the value of the reported 90 per cent.

115 Letter from Mr Chris Murphy, Executive Director, Econtech Pty Ltd, to the Hon Murray Wilcox, dated 15 March 2009, Submission 48.

116 John Holland Group Pty Ltd, *Preliminary Assessment of the Economic Benefits of Industrial Relations Reform in the Construction Industry*, Submission 43, June 2007, page 2.

117 *ibid* page 6.

118 *ibid* page 7.