

## The State Strikes Back: Supervision and Sanctioning of Unlawful Industrial Activity by Federal Government Agencies in Australia

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### Introduction

Historically, the state was seen to have adopted 'a fairly passive role in relation to the enforcement of the collective norms'<sup>1</sup> of the federal industrial relations system. Less than 20 years on, and the state is no longer seen as a mere observer, but as an active participant in the supervision and sanctioning of unlawful industrial activity. Indeed, there are few government agencies around the world that have been as contentious as the federal labour regulators in Australia, now known as the Office of the Fair Work Ombudsman (FWO) and the Australian Building and Construction Commission (ABCC) respectively. The political heat generated by these agencies is underlined by the fact that the Coalition Government's attempt to reinstate the construction watchdog was so avidly resisted it ultimately led to the 2016 double dissolution election.<sup>2</sup> Indeed, conflict over the role of various institutions, including labour inspectorates, has been described as 'endemic to Australian labour law'.<sup>3</sup>

While there is a burgeoning body of scholarship concerned with the ways in which regulators seek to detect and recover underpayments on behalf of aggrieved workers,<sup>4</sup> there has been considerably less academic consideration of how these same agencies enforce anti-

1 Creighton 2000 at 858.

2 The Building and Construction Industry (Improving Productivity) Bill 2016 (Cth), together with the Fair Work (Registered Organisations) Amendment Bill 2016 (Cth), triggered the most recent double dissolution election.

3 Bennett 1994 at 4.

4 Hardy 2016; Berg & Farbenblum 2017; Clibborn & Wright 2018.

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