

5. ORGANISATIONS

5.1 INDUSTRIAL ORGANISATIONS

ACCI POLICY PRINCIPLES:

“The tribunal, when dealing with disputes about representatives of employees, or determining representational issues, should be required to take into account:

- the wishes of employees and employers
- the effective operation and viability of the enterprise or enterprises affected
- the desirability of reducing the number of unions or agents involved.”⁶²

POLICY AUDIT & ANALYSIS:

- Registration and conduct of organisations (both trade unions and employer associations) is governed by the *Workplace Relations Act 1996*.
- The *Workplace Relations Act 1996* (including amendments made in October 2002) has produced an improved legislative framework for the regulation of industrial organisations and encapsulates many elements of ACCI policy, including protection of freedom of association (and non-association) and access to registration.
- The central focus of the workplace relations system, as it is developing, is on the rights and responsibilities of employers and employees in the workplace. However, industrial organisations – both of employers and employees – play an important role in Australia’s workplace relations system. As the labour market, the workplace and the regulatory system continue to evolve, organisations will need to adapt to these developments. Those that adapt their role and services to workplace change will be stronger and more relevant to their members, particularly in the services they provide and in leadership and advocacy on issues of concern to employers and employees.
- The regulatory framework should continue to recognise the positive contribution of industrial organisations, both registered and unregistered, to the labour relations environment, by:
 - Supporting the modern and efficient operation of organisations pursuing the interests of their members in a changing workplace relations environment.
 - Ensuring any regulation is not unduly complex, and does not detract from efficient representation of members.
- The shift to enterprise-based bargaining challenges the traditional organising model of trade unionism. It challenges unions to improve what they deliver to their members, and the extent to which their representations and advice are appropriately targeted to the increasingly diverse needs of employees.
- These challenges are not met through direct or indirect breaches of the principles of freedom of association. In particular the imposition of compulsory fees payable to a union by non union employees for the provision of non solicited bargaining services is fundamentally objectionable, and a breach of the objects of freedom of association laws.

If, as a consequence of the practice of unions or of judicial interpretation of the current law, it is apparent that scope exists for these compulsory levies to be recognised by the formal system (contrary to its intent) then remedial legislation is necessary. There is a clear distinction between coercive fees designed to compel union membership, and genuine fee for service provision to individual employees seeking to contract those services in advance of their delivery.

- A harmonised workplace relations system may also raise new opportunities to simplify historical problems in the registered status of federal and state branches of industrial

organisations. Under such a system the existing rights of registered organisations (federal or state) should be maintained.

- Disputes between trade unions over coverage rights still take place and can have damaging effects on businesses. Any changes with respect to the regulatory framework for industrial organisations must not result in increased demarcation disputes. Measures aimed at further minimising the damaging effects of such disputes should be examined.

NOTES

⁶² ACCI Labour Relations Policy

RECOMMENDATIONS:

Objective 1: Without interfering with the principles of freedom of association, the system should support organisations in adapting to the changing needs of members in the workplace. Industrial organisations that offer services relevant to employees and employers in the workplace should prosper and maintain an important role recognised by the system.

Objective 2: Indirect denial of freedom of association, such as through compulsory non-consensual fees payable to industrial organisations by a non-member should be rendered unlawful.

Objective 3: Measures which could further minimise demarcation disputes between industrial organisations should be considered.

5.2 NON-INDUSTRIAL ORGANISATIONS

ACCI POLICY PRINCIPLES:

ACCI has observed the increasing role played by NGOs, government agencies and other non-industrial organisations in workplace relations issues. The ACCI Employment and Labour Relations Committee has expressed concern at the intervention of non-industrial organisations in industrial issues, particularly without consultation with industry.

Concerns have also been expressed at the inappropriately narrow focus of some government agencies in the workplace relations area.

POLICY AUDIT & ANALYSIS:

- On occasion government agencies make contributions to policy formation at odds with the broad objectives of government labour relations policy. Greater co-ordination between various arms of government is desirable.
- There has been only limited co-operation or co-ordination of labour relations policies between state and federal governments. This must be improved. Areas of co-operation have yielded important improvements and contributed towards greater harmonisation of labour relations systems, eg through dual appointments to state and federal industrial tribunals.
- The role of non-industrial organisations in industrial matters should be reviewed to ensure that a proper balance of industrial interests is reflected in the submissions of non-industrial bodies.
- The contributions made by non-industrial organisations should be capable of sustaining the same evidentiary burden as those of industrial organisations.
- The contributions of non-industrial organisations should be evaluated against the full range of social and economic objectives embodied in the *Workplace Relations Act 1996*.
- Government agencies should act within their charter, and where they are statutorily or administratively independent from government their views should nonetheless be formed by having regard to a proper balance of policy interests, including the role, function and interests of commerce and industry.
- It is generally not appropriate that non-government organisations funded by government should be able to use this funding to develop and promote agendas at variance with the policies of the government of the day, without prior reference to government.

RECOMMENDATIONS:

Objective 1: The contributions and submissions of non-industrial organisations should be given the same level of detailed scrutiny that industrial organisations face.

Objective 2: Government agencies should express views consistent with their statutory and policy functions, and which have regard to a proper balance of policy interests, including the role, function and interests of commerce and industry.

Objective 3: In order to gain a balanced understanding of workplace relations matters, government agencies should consult with representatives of industry prior to becoming actively involved in workplace policy.