



ACCI DEFENDS AUSTRALIAN EMPLOYERS AT THE ILO

Earlier this month, the Australian media reported that the International Labour Organisation (ILO) was examining trade union complaints against Australian workplace relations laws. Many people reacted with surprise, knowing that unions had made industrial relations part of the domestic political debate but unsure why Australia's laws needed to be looked at internationally. This focus highlights one of the crucial roles that ACCI undertakes on behalf of Australian employers – defending the interests of private enterprise in international forums.

The case brought by Australian unions against *WorkChoices* in the ILO in June 2007 was not the first of its type.

For most of the past ten years Australian unions have lodged complaints with the ILO against the *Workplace Relations Act 1996*. The union complaints have argued that the Act is in breach of ILO labour standards, particularly those concerning collective bargaining and freedom of association.

In recent years, the union complaints have been expanded to include the *WorkChoices* legislation, the *Building and Construction Improvement Act 2005*, and the Australian Government's industrial relations policies concerning bargaining and funding in the higher education sector.

ABOUT THE ILO

The ILO is a United Nations-style agency. Australia is a member of the ILO, as are almost all world governments. However, unlike other UN agencies, it also involves unions and employers as equal participants. Other UN agencies usually only involve governments.

The fact that industry can participate with equal rights in this international forum is an important asset for the private sector, in a world where governments readily make decisions at domestic or international levels that affect the rights of employers.

The ILO's main purpose is the lifting of the living standards and social conditions of workers through employment and the defence of trade union rights.

This mission goes back to its formation in 1919, in the shadow of the Russian Revolution and the uprising of the proletariat. At that time most governments, including western governments, considered it essential to establish

orderly international mechanisms to recognise workers' rights in the industrialised age, as an alternative to revolution or uprising.

Although much has changed about the world since then, the ILO maintains this core mission – and in the modern age the ILO describes it as the 'decent work' goal – attempting to impose a social dimension to economic globalisation.

The ILO undertakes work in three general areas.

Firstly, it debates and determines labour standards that, if ratified by a country, become part of its legal structure. There are also standards that have been declared by the ILO on certain fundamental matters that do not depend on national ratification for their application.

Secondly, the ILO has an enforcement mechanism - a policeman role, where it calls governments to account for compliance with international labour standards in its territory.

Thirdly, the ILO provides practical programmes of labour market assistance in needy areas, such as employment generation and skills development, or technical help on legislative matters.

THE ILO AND AUSTRALIAN EMPLOYERS

The ILO, and our international employer body the International Organisation of Employers, work with industry through the most representative peak national organisation of employers in each country, which in Australia is ACCI. The ILO also requires governments to do likewise when they formally consult with business interests.

Our representation of Australian employers in the forums of the ILO, together with other international representation of industry, places a very significant responsibility on ACCI especially in the context of a global economy, where unions and others can undertake industrial or like campaigns on an almost instant basis across national borders.

The interests of employers are directly affected at almost all levels of ILO activity.

In the Australian context, being a developed industrialised nation, we do not need to draw on the resources of the ILO for labour market assistance. Our interactions with the ILO tend to be in areas of much more controversy and difficulty for employers, namely standard setting or enforcement of standards. On more than one occasion, Australian politicians or Australian courts have referenced ILO standards to argue what Australian law should be, or what it means.

This does not mean that ILO work is always a threat to business interests. When it undertakes practical programmes to assist employment in disadvantaged countries, or when it takes rogue states to task, it does good work. In arguing for trade union freedoms in rogue states or dictatorships where trade union rights are suppressed, it also argues for property rights and against state corruption, which are also crucial freedoms demanded by the private sector. It also equally respects the rights of employer organisations to represent the collective voice of business.

ILO AND LABOUR STANDARDS

Many employer bodies, including ACCI, believe that the ILO's work on labour laws is too often ideological and out of touch with modern employment and business methods. Many of the ILO standards have not been updated for years, and there are low rates of ratification because many countries do not consider that compliance can be clearly established.

Even with fundamental standards concerning freedom of association and the right to the promotion of collective bargaining, there is controversy between employers and the ILO, not because these principles are not accepted, but because they have been interpreted over the years in a way that does not reflect a proper balance of interests.

For example, this year ACCI had to intervene in a debate to put the view that some forms of work for the dole, compulsory overtime and community service orders imposed by courts were not 'forced labour'.

There are a variety of forums in which the ILO undertakes its 'policeman' role, and one of these is the ILO Committee on the Application of Standards ('the ILO Standards Committee').

Australian unions took the *WorkChoices* laws to the Standards Committee in June 2007. This committee is tripartite, and it debates compliance with ILO Conventions and Recommendations after receiving a report from the ILO Committee of Experts. The Committee of Experts is a committee of international labour law specialists, drawn mainly from jurists and academics. It is not tripartite.

ILO AND WORKCHOICES

The union complaint against *WorkChoices* was heard by the ILO Standards Committee on 7 June.

Before the Standards Committee was a report of the ILO Committee of Experts. That report was prepared late in 2006 following receipt by the ILO of a union critique of *WorkChoices*, but before the Australian Government had supplied its written response (the government was late in responding, due in part to pending High Court proceedings).

In the June 2007 debate the ACTU and union leaders from five other nations alleged that Australia's laws were in breach of ILO conventions on collective bargaining and freedom of association. In particular, they called into question the existence of AWAs, provisions which allowed AWAs to supersede collective agreements, prohibited content restrictions on bargaining, limits on the right to strike and limits on union rights of entry.

The Australian Government submitted that the debate was premature given that:

- the government's written submissions had not been taken into account;
- the case should not have been listed for debate;
- the ILO had been kept informed of the government's difficulty in responding to the ILO within time frames that had been set;
- *WorkChoices* was a major change and it was too early to assess its application; and
- the government would agree to a debate on its merits at a future time, after the government reply had been examined by the ILO Committee of Experts.

ACCI and employers argued that:

- a proper consideration of *WorkChoices* could not be undertaken given the lack of a balanced process leading up to the report by the Committee of Experts;
- employers are willing to engage in a debate on the subject when the processes have been adequately completed; and
- that a debate without all of the relevant information at hand would not do justice to the ILO process or Australian interests.

During the debate, a point of order was taken by unions when the government commenced to list recent economic, jobs and wages data in Australia. It was claimed that such data was not relevant to a debate about compliance with ILO Conventions. ACCI disagrees with this point. ILO legislation is meant to be purposive – to achieve an outcome.

If jobs data is not relevant to a debate about compliance with ILO labour conventions, then it is the ILO conventions, and not Australia, that need to be in the dock.

The result of the hearing was the issuing of a statement of conclusions on 8 June. That statement was inconclusive, largely because of the procedural difficulties that arose in the lead up to the debate. The statement repeated past commentary (noting concerns about the adequacy of collective bargaining rights and anti-union discrimination rights), called for more information (from the government and the Committee of Experts), and foreshadowed a further discussion at a future time.

There was no specific criticism of *WorkChoices* or adoption of the views of the Committee of Experts.

AUSTRALIAN REACTION

The ILO hearing of the Australian case attracted publicity in Australia.

ACCI issued a media release and analysis of the report of the ILO Committee of Experts. ACCI prepared an opinion piece on the ILO debate in the standards committee for the media, which was published in *The Australian* on 11 June. The Prime Minister referred to the ACCI opinion piece in parliament on 12 June.

Like so much of the industrial relations debate in this election year, the ILO debate missed the wood for the trees.

In the same week unions tried to manufacture overseas condemnation of *WorkChoices*, the ABS reported that Australia's unemployment rate declined to 4.2 per cent, with over 90 per cent of the 358,700 new jobs being full time.

You can't have such good employment news without doing something right about our workplace laws.

Australia's jobs performance makes other nations green with envy. It is one that Australians should be proud about, but not complacent.

There are times when nations should answer to the international community for serious human rights breaches. But union complaints about Australia's IR laws are hardly that.

Our living standards are some of the best in the world, and our workplace laws are part of our robust political democracy and good economic performance.

Aside from the ILO Standards Committee making an inconclusive statement, back home many Australians smelt more than a whiff of a political stunt and didn't like the idea of unions dragging domestic politics and Australia's reputation through the mud.

Headlines such as 'world can see our IR shame' and talk of Australia being on a 'shame list' were not correct. Cases discussed include some shameful cases, usually about repressive third-world dictatorships, but ILO practice also requires a handful of industrialised nations to be debated to give the impression of 'balance' and not being one sided against developing countries.

That's how Australia's laws came to be discussed, at the unions' insistence, together with laws in the UK, USA, Japan and Italy. Italy was on the debating list to allow a discussion about steps taken by the new Prodi Government to reduce unemployment. Hardly a matter of national shame.

Most of Europe has unemployment rates double Australia's. The ILO has told the Italian Government to implement policies to create more full-time jobs. Yet, for Italy, Australia's 4.2 per cent unemployment and 94 per cent full time job creation are distant goals. For us they are a reality.

The lesson is that countries that reform their labour market, no matter how difficult, create more jobs.

Another ILO convention, one not mentioned by unions (but which Australia ratified in 1969) requires

the Australian government of the day to reduce unemployment and ensure workers “freely choose” their employment. ACCI does not believe that abolishing thousands of “freely chosen” workplace agreements (AWAs) is consistent with that convention.

CONCLUSION

The hearing of this Australian case by the ILO in June 2007 should remind employers that the ILO not only has a legislative authority (making Conventions and Recommendations) but also has supervisory and enforcement processes, which call nations to account for compliance with its labour standards.

It is likely that ILO hearings and observations on the Workplace Relations Act will be ongoing.

Australia does have treaty obligations on industrial relations. For unions, complaining to an international body established to protect union rights might be a natural response. However, putting Australia’s industrial relations laws up for ILO criticism right in the middle of a political and electoral cycle was a mistake.

None of this means that Australia’s workplace laws are perfect, or that the ILO should always agree with Australia. It does mean though that Australia can hold its head high when it talks to countries about jobs, wages and working conditions.

‘Decent work’ is the current catch-cry of the ILO, and there is plenty of that in Australia.

Employers should also note that a number of criticisms of laws about industrial action in the Workplace Relations Act could also be criticisms of ALP policy which would retain some of their provisions, especially about strikes.

The ILO and unions, just like Australia’s industrial relations system, have to move with the times and cannot afford to look backwards. As well as our workplace laws, the ILO needs to modernise, focus on outcomes, and recognise that a 1919 route to those outcomes is not necessarily the right course one hundred years later.

ACCI’s Director of Workplace Policy, Peter Anderson, represented Australian employers in the June 2007 debate about WorkChoices in the ILO Standards Committee. He is an elected member from the Asia-Pacific region on the governing body of the ILO, and also a member of the ILO’s Committee on Freedom of Association.