



ISSUES PAPER

LABOUR MARKET REFORM STRATEGIES: FOLLOW-UP TO THE 7TH ASIA-PACIFIC HIGH LEVEL EMPLOYERS CONFERENCE

BACKGROUND

The Australian Chamber of Commerce and Industry (ACCI) is a member of the Confederation of Asia-Pacific Employers (CAPE).

This paper is prepared by ACCI as a follow-up to the 7th Asia-Pacific High Level Employers Conference (July 2006) sponsored by CAPE (and the ILO / IOE) held in Ulaanbaatar, Mongolia.

The Ulaanbaatar meeting developed a framework for ongoing information exchange between employer federations affiliated to CAPE. That framework was based on national learning and development through an international network of federations engaging in dialogue on specific themes, co-ordinated by one nominated federation.

There were 10 nominated themes coming out of the Ulaanbaatar meeting. One of those themes is 'Labour Market Reform Strategies'. The nominated federations which constitute the network for the purpose of this theme are:

- Australia (co-ordinating member);
- Korea;
- Lao PDR;
- Mongolia;
- Malaysia;
- Nepal;
- Philippines; and
- Thailand.

PURPOSE OF THIS PAPER

This purpose of this paper is to establish a basis on which members of the network can consider issues arising under the 'Labour Market Reform Strategies' topic, communicate their views back to the co-ordinating federation (ACCI), and through the co-ordinating federation communicate to other network members on relevant national developments and experiences.

This paper is designed to prompt thinking within the network, with the aim of feedback of interest and value to other federations. It is not intended to be an exhaustive or technical discussion of the topic.

In order to prompt thinking, the paper identifies 'thought starters' in the nature of questions arising from the analysis.

In addition, there are also some case examples (drawn from Australian experience) that serve a dual purpose – to provide insight to the Australian national experience, but to also provide an indication of the way that network members might be able to construct and communicate their own case examples.

In providing responses, members should not feel confined to the thought starters, or feel obligated to deal with all of them. Members should also feel free to question or comment on issues raised in the narrative, and are strongly encouraged to provide simple case examples that highlight their national experience.

STRATEGIC OBJECTIVES FOR THIS THEME

Federations participating in the Ulaanbaatar meeting set out three strategic objectives for this network on the topic of labour market reform. These were:

1. Strategic Objective 1: Exchange information and use successful experiences and lessons learned from other countries to persuade governments and other partners on the need for change and the methods to achieve it;
2. Strategic Objective 2: Share information on methods used to raise the resources necessary for mounting effective campaigns; and
3. Strategic Objective 3: Build their own capacity to effectively engage in debates on labour market reforms.

This paper addresses issues arising under each of these three

strategic objectives, as well as some preliminary issues.

WHAT IS LABOUR MARKET REFORM?

Firstly, it is useful at the outset to describe what might be meant by labour market reform. Unless we can secure a common understanding, at least in general terms, about what 'labour market reform' means, then we will not be able to provide relevant feedback within the network on the strategic issues that arise, and lessons from national experience.

Broadly speaking, labour market reform (from the employer federation perspective) can be described as changes to the labour relations system in a country that improve the operation of law and practice from both a private employer and national point of view. By 'labour relations' we include law and practice that govern dealings between employers, employees, trade unions and employer organisations, especially over (but not limited to) wages and conditions of employment.

Thought Starter 1:

What is the best description in your national circumstances for the concept of labour market reform? What are some of the examples of labour market reform that have been undertaken in your country? Are there any examples of labour market reform that have not been undertaken, but which are being proposed by employer organisations?

Thought Starter 2:

Do you agree that 'reform' implies change for the better and improvement. Do you consider reform to be continuous improvement without any backward steps, or are there cases where there might be two steps forward but one step back?

Case Example, Australia:

The Australian government introduced legislation to change Australia's industrial relations system in March 2006. Employers supported most parts of that reform. The reforms increased the flexibility for employers and employees in bargaining. In May 2007, one year later, the government announced that bargaining agreements would have to meet a new requirement, a 'fairness test'. The new legal requirement added extra red tape to the making and approval of agreements. In that respect it was seen by employers a backward step. However, the overall context of the changes still increased flexibility, and were still regarded by employers as worthwhile reforms.

Thought Starter 3:

Over what period of time do employers assess whether change is change for the better (i.e. reform). Does this depend on the nature of the change? Or the type of employers affected?

Case Example, Australia:

The Australian government first introduced collective enterprise bargaining reforms in 1993. In the first five years of these reforms most of the bargaining opportunities were taken up by larger businesses, and in the public sector. It was not until at least five years that small and medium businesses gathered the resources and confidence to use some of the new bargaining options. This did not mean that the reforms were not successful, even in their first years of operation. It simply means that some employers needed to adapt to the changes and develop expertise and resources to apply them in their business.

WHO IS RESPONSIBLE FOR LABOUR MARKET REFORM?

Changes that may be described as labour market reform may be made by a variety of bodies. This can vary according to national circumstances. It is suggested that a common theme is that these are bodies with the authority to make the changes, and to impose those changes as national or sectoral obligations applying to employers, employees and their representative organisations.

Typically these bodies are governments, parliaments, tribunals, courts or other lawfully constituted agencies.

Thought Starter 4:

In your country, what are the type of institutions that decide on change? Are some more powerful than the other?

Case Example, Australia:

Labour relations legislation in Australia is the major method by which labour market reforms are made. Legislation has to be enacted by democratically elected parliaments. Parliaments are the most powerful decision makers. Governments in Australia can propose reforms to parliaments, but it is parliaments that have the ultimate deciding authority whether to change the law. In this respect, parliaments are more powerful than governments. However, members of the government also sit in the parliament (under the Australian system). This means that the parliament would not be able to make reforms if it was opposed by the government of the day. This means that power to make reforms is distributed between both governments and parliaments.

INVOLVEMENT OF EMPLOYER ORGANISATIONS IN REFORM EFFORTS

The manner by which decisions are made to undertake labour market reform is an important issue which can affect the outcome of change and also the views that employers develop on whether the change is worthwhile (i.e. is reform), or is undesirable (in which case it is not reform from an employer's view).

It is important to consider what structures exist in a country that precede the making of reform decisions.

Thought should be given to the structures that exist inside an employers' organisation, and also structures that exist between the employers' organisation and other parties (including governments and trade unions).

Planning labour market reform options and strategies can be an important role of employers' organisations. To do this effectively, the secretariat of employer organisations need to communicate with their members on the needs and priorities of employers.

Thought Starter 5:

What different forms can communication with employers take? What are some of the most effective? What are some of the least effective?

Case Example, Australia:

The Australian Chamber of Commerce and Industry communicates with members through meetings, in person, by telephone, by email, by written circular, by questionnaire and even through the media. However, when major decisions need to be taken about labour market reform there needs to be collective discussion and decisions. To enable this collective discussion to occur in an orderly and inclusive manner, committees are established to consider labour market reform topics, such as labour relations, occupational health and safety and employment skills. These committees meet regularly, and provide a basis for employers to interact with the secretariat, and also amongst themselves.

Once a labour market reform agenda is decided on by an employers' organisation, there needs to be consultation with other interests and the decision maker.

Employers organisations can give thought to developing links with other community organisations which might support the reform objectives, and be able to be part of an overall campaign.

External consultation structures may be formal, such as legally required consultative obligations. Some others may not be required by law, but may exist as a matter of practice or convention. Others may be purely informal, and depend on the issue, and the nature of the relationship between the decision maker and other interests, such as employer's organisations.

Consultation may occur in a variety of methods, even within these different forms. It may be by written exchanges or view (such as letters, submissions, emails), or orally (such as meetings, hearings, phone calls).

As a general principle, decision makers should be required to make decisions after taking into account the views of

stakeholders and persons affected by the likely impact of their decisions. On labour market reform, this centrally involves employers. Whether governments consult with employers and the manner in which they consult is therefore an important matter.

Thought Starter 6:

Do the institutions in the countries have structures that require direct consultation with employers before decisions are made? What form do they take? Are those structures for consultation tri-partite, or bi-partite? Is consultation with employers through employer organisations, or direct with employers, or both?

Case Example, Australia:

In Australia, consultation with decision makers takes a variety of forms. If decisions are to be taken by parliaments, then the parliament usually establishes committees to consider important legislation. ACCI and employer organisations make written submissions to those committees and also appear and give evidence about the views and circumstances of industry. It is also possible to speak directly to members of parliament, especially those with an interest in or responsibility for the topic, or who may exercise crucial votes. If decisions are made by governments, then the form of consultation is often based on the way governments express their desire to consult. In Australia, there is a tri-partite body, the National Workplace Relations Consultative Council, which includes the government and peak employer and worker organisations such as ACCI and the ACTU. However, governments do not always use these formal structures on every issue, especially if time does not permit. ACCI needs to adapt its consultation strategy with government to the circumstances at the time.

Thought Starter 7:

Where consultations occur, are they meaningful, or simply a process the decision maker is going through? What are the indications that suggest to the employer body that it is one or the other?

Case Example, Australia:

In Australia, national occupational health and safety law and practice is discussed by a tri-partite body that advises governments, the Australian Safety and Compensation Commission. In 2002 officers from the tri-partite stakeholders (governments, ACCI and the ACTU) agreed on a National OHS Strategy which included targets over a five and then ten year period for the reduction of workplace injury and death. Following adoption of that Strategy, all governments and the peak organisations agreed at a political level to adopt the Strategy. The consultation that occurred was meaningful, resulting in strategies being applied and resources allocated. As a result there has been a reduction in injury and fatality rates in some key industries, with some targets being met but others still to be achieved. If consultation had not been meaningful then there would have been no national co-ordination on OHS priorities.

Strategic Objective 1 – Need for Change and Methods of Change

Strategic objective 1 is to ‘exchange information and use successful experiences and lessons learned from other countries to persuade governments and other partners on the need for change and the methods to achieve it’.

This draws the attention of network members to two very important issues; firstly, the need for change, and secondly the methods for achieving it.

The need for change concerns an examination of local, sectoral, national or international factors that justify the changes sought or proposed. These factors could be of a social, industrial or economic character.

They vary depending on the reform issue, and national circumstances.

Thought Starter 8:

What are some of the objects or outcomes that employers advocate when they propose labour market reform to governments?

Case Example, Australia:

In Australia in 1992 the economy was coming out of a recession. At the height of the recession, unemployment had increased to over 10%. ACCI and employers pointed to the high unemployment rate and the reality of globalisation as key reasons why the former highly regulated labour relations system needed to be changed. ACCI and employers argued that a lack of flexibility in regulation had contributed to bad economic outcomes and social disadvantage in the form of unemployment. In 1993, and then again in 1996 and 2006 the Australian government undertook labour market reforms. Over that period the economy has grown strongly, and by 2007 unemployment had been reduced to 4.6%, the lowest for a generation.

The method of achieving change (reform) to labour markets is a separate question. Even if there is a need for change established, there may be alternative ways in which it can be implemented. Some of the different ways it may be implemented could affect whether it is likely that the decision maker will decide to make the change or not. This is because some methods of change are more difficult to achieve than others.

Thought Starter 9:

What are some of the different methods by which labour market reform can be advanced? Are there different ways to achieve similar objectives if one option is too difficult?

Case Example, Australia:

In Australia, legislative changes to labour relations laws are made by parliaments. Parliaments are comprised of political interests, and tend

to be adversarial and highly public forums and debates. Changing laws through parliaments can be a difficult task, especially where employers often to seek to advance a logical longer term case for economic reforms, while unions often seek to appeal to emotion and allege adverse short term individual impacts. This was the experience in Australia in relation to the changes proposed and then made to the Workplace Relations Act in 2006.

Strategic Objective 2 – Raising Resources

Strategic Objective 2 is to ‘share information on methods used to raise the resources necessary for mounting effective campaigns’.

This strategic objective draws attention to the fact that mounting effective campaigns for reform involves resources. Those resources can take a variety of forms. They could be financial resources, intellectual and knowledge resources, and human resources. There may be others.

For some employers organisations this is a very difficult task.

Financial resources are usually hard dollars and cents, and the infrastructure purchased with dollars and cents. Campaigns cost money. Financial resources are needed to do a variety of campaigning tasks. Engaging people to work on behalf of the employer organisation takes money. Preparing pamphlets, letters and advertising your views takes money. Travelling to meet decision makers takes money. Buying equipment to work with, such as computers, is costly.

Finding financial resources is a constant challenge for employer’s organisations. It is not the purpose of this paper to discuss that topic at length. However, a few methods of finding financial resources should be mentioned – subscription payments by employers to employer organisations, purchase by employers of products developed by employer organisations, donations from employers for a particular campaign, returns on investments held by employer organisations and consultancy fees charged by employer organisations for special services.

Thought Starter 10:

What options exist for securing financial resources to conduct campaigns? Are there advantages in putting monies aside for future campaigning work? Would employers be likely to make a direct contribution above their membership subscription to a specific campaign effort of relevance to their enterprise?

Case Example, Australia:

In 2003 Australian unions sought the arbitration of claims for new employment standards across the economy relating to redundancy

pay. ACCI and employers opposed most aspects of the union claim, arguing that one model of regulation could not fit all different industry or enterprise circumstances. To strengthen the employer case, it was decided that independent research needed to be commissioned from experts on the issue of redundancy and business insolvency. ACCI commissioned that research, and expert witnesses gave evidence in the arbitration. The commissioned research was helpful to advance the employer case and cross examine union witnesses. As a result, some of the union claims were dismissed, but others were granted. Commissioning this research meant using funds that had been set aside a number of years earlier for these purposes.

Intellectual and knowledge resources are usually derived from research and information exchanges (such as this CAPE network initiative) with like minded interests.

Finding intellectual and knowledge resources usually requires thought, and the development of relationships. Often we may find that many similar experiences, tasks or challenges have already been had by others, and knowing where to go to access the knowledge borne out of experience is an important first step. Building networks amongst employer organisations, with employers and with other like minded organisations in the community (or those with similar objectives for the purpose of a campaign) can be helpful. Many resources are now also available through the purchase and use of technology, such as research from the internet.

Thought Starter 11:

What type of networks or relationships can employer organisations develop to access information that can help frame a campaign? Do the relationships tend to be with economic organisations, or social organisations, or both?

Case Example, Australia:

In Australia, ACCI commenced a campaign in 2002 to propose changes to Australian labour relations laws. The campaign was developed by ACCI members and the ACCI secretariat. A reform Blueprint was issued publicly. To advance the proposals set out in the ACCI reform Blueprint, relationships were developed with like minded people who could either support the reasons why employers said there was a need to change, or who could also be beneficiaries from the reform outcomes.

Human resources are people. This means people with relevant skills to mount effective campaigns for labour market reform.

Finding the right people to mount campaigns is not an easy task. Sometimes these people can be employed directly by employer organisations, but other times they may be specialists that need to be engaged as consultants for the purpose of the campaign only. In both cases selecting the right person is a crucial task. And of course, the costs must

be weighed against the potential benefits.

It is also possible that an employer may be able to make an in-kind contribution to the employer organisation, such as by providing a staff member to be seconded to the employer organisations for the period of a campaign. This can have multiple advantages – it can minimise ongoing costs, it can develop a better relationship with the employer, and it can provide a ready-made skilled person equipped to do the job.

Thought Starter 12:

What steps would an employers organisation need to take to secure a skilled staff member who can assist in a labour market campaign? What type of skills might be needed?

Strategic Objective 3 – Building Capacity

Strategic objective 3 is to ‘build their own capacity to effectively engage in debates on labour market reforms’.

This objective draws attention to capacity building amongst employer organisations when deciding on how to mount a campaign for labour market reform.

Building capacity requires resources – financial, knowledge and human. This is discussed above.

However, using that capacity in an effective manner is a separate task.

Undertaking campaigns involves risk because there is rarely any certainty about what a decision maker will decide. In these cases a cost benefit analysis should be done as part of the planning of a campaign. It is also helpful as part of that cost/benefit to separate your thoughts into a SWOT test – strengths, weaknesses, opportunities and threats.

Deciding if a campaign is effective requires some form of measurement – but campaigns about policy changes are not easy to measure.

One measure of an effective campaign may be whether the decision maker has done what the employer organisation wanted. This is relatively easy to assess. However in many cases the decision maker may do only some of the things sought, but not all of them. In that case an assessment needs to be made whether the gains made are significant enough for the campaign to have been worthwhile.

A more difficult scenario is where the decision maker has not done anything that the employers’ organisations has sought. Does this mean that the campaign was not effective? At first glance, employers may be disappointed, and think that the employer organisation has failed in its task. However

this may be a simplistic and wrong view. A campaign could have been effective, but simply the decision maker could have been intransigent, or just got their decision wrong. In other cases, the campaign may have laid the ground work for future relationships and success on issues can develop over time. The investment of time and money may not have been a waste simply because the initial answer was negative.

Measuring success or failure is not an easy task. The employer organisation may have a measure, and employers may have a measure. Given that an employers organisation rarely has a controlling influence over decision makers, managing expectations of employers is crucial. Employers who are briefed before and during campaigns on objectives are more likely to understand the risks and less likely to interpret the hard work of employer bodies as failure. They are also more likely to appreciate small steps as successes, and large steps as a real and tangible value for their association with the employer's organisations.

Providing feedback to employers after a campaign can also be helpful. There is no point securing reforms and not informing employers of the fact that the employers' organisation has been instrumental in delivering that result. Conversely, feedback to employers in the event of an unsuccessful campaign can be helpful to avoid unfair criticism or resignations from membership.

Thought Starter 13:

What are the ways that an employer organisation can inform employers of the status and outcome of a campaign? What are some of the different type of measures that could be used to assess whether a campaign is or is not successful?

Case Example, Australia:

In Australia in 2002, ACCI and employers proposed an easing of job protection (unfair dismissal) regulation. ACCI developed a campaign based on cases where the laws had been impacting unfairly on employers, especially small businesses. This included cases where a small business had been unfairly required to pay extra termination money to an employee even though the employee had not been unfairly treated. ACCI developed a dossier of case examples, and encouraged small employers to speak to politicians and in the media on the topic. The ACCI dossier meant that employers were using human interest case studies, not just economic arguments. Initially the campaign was not successful in delivering an outcome, but it was successful in creating an awareness of the problem, and forcing governments and politicians to think of solutions. In 2006 the Australian parliament legislated an exemption for small and medium businesses from many aspects of the unfair dismissal laws.

CONCLUSION

Four major themes emerge from this paper, and the case examples based on the Australian experience. They are:

1. Planning: employer organisations need to plan campaign priorities and strategies, and resource needs;
2. Communication: employer organisations need to communicate the case for reform in a way that is most likely to persuade decision makers to deliver outcomes sought by employers;
3. Assessment: employer organisations need to assess the campaign as it proceeds, be flexible and make modifications as it proceeds, and to review and measure the campaign success once it (or a phase of it) concludes;
4. Perseverance: employer organisations have an ongoing role and should persevere in advancing the interests of employers even where national circumstances do not result in satisfactory outcomes.

Thought starter 14: do you agree with these four points? Do they reflect your national experience? Are there other major themes or conclusions not mentioned in these four points?

NEXT STEPS

CAPE and the co-ordinating network employer organisation for the Labour Relations Reform topic (ACCI) would welcome feedback from network members on the topic, and on this Issues Paper.

The capacity of employer organisations to respond to these issues and participate in the network will vary according to national circumstances and resources.

Members are encouraged to respond to the thought starters, and provide some case examples of their own, but not all members may be able to do so. Some members may only be able to respond to a few points. If this is the case, that feedback remains very valuable. Members are also encouraged to raise issues relevant to the topic that may not be included in this Issues Paper.

Members are requested to provide their feedback on this topic in writing (post or email). Feedback should be provided by 31st August 2007.

Feedback should be marked 'CAPE Labour Market Reform Network' and sent to:

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Once feedback is received, ACCI will circulate the feedback amongst the network, and update the Issues Paper. When you provide feedback please include the name and contact details of the officer in your federation who should receive correspondence for the purposes of this network.

The CAPE web site will be one of the interactive methods for communication within the network. This Issues Paper and any update will be placed on the CAPE web site. Feedback from members may also be placed on the CAPE web site unless members indicate in their responses that they do not wish this to occur.

Peter Anderson
Australian Chamber of Commerce and Industry
CAPE Vice President
Co-ordinator, CAPE 'Labour Market Reform Network'