

**INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)**

**(FINAL REPORT)**

**INTERNATIONALLY-RECOGNISED CORE  
LABOUR STANDARDS IN AUSTRALIA  
REPORT FOR THE WTO GENERAL COUNCIL REVIEW  
OF TRADE POLICIES OF AUSTRALIA**

**(Geneva, 23 and 25 September 2002)**

**EXECUTIVE SUMMARY**

**Australia has ratified six of the core ILO labour conventions. However, in view particularly of its restrictions on freedom of association, determined new measures are needed to comply with the commitments Australia accepted at Singapore, Geneva, and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work adopted in June 1998.**

**Australia has ratified both of the core ILO conventions protecting trade union rights. There are restrictions on trade union rights, including the right to collective bargaining and protection from anti union discrimination. There is blatant anti-union discrimination, supported and encouraged by the government.**

**Australia has ratified both of the core ILO Conventions on discrimination. However, discrimination against women is a problem, especially as concerns the representation of women in senior positions.**

**Australia has ratified neither of the ILO's two core conventions on child labour. Child labour is not a major problem, although there are reports of its occurrence.**

**Australia has ratified both the core ILO conventions on forced labour, and forced labour is not a widespread occurrence. There remain problems with legislation regarding prison labour, and some women and children are victims of forced prostitution.**

# **INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS IN AUSTRALIA**

## **Introduction**

This report on the respect of internationally recognised core labour standards in Australia is one of the series the ICFTU is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which the Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth WTO Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ICFTU has one affiliate in Australia, the Australian Council of Trade Unions (ACTU), with a membership of 1,800,000. Approximately 31 per cent of the workforce is unionised.

## **I. Freedom of Association and the Right to Collective Bargaining**

Australia ratified both ILO Convention no. 87, the Freedom of Association and Protection of the Right to Organise Convention, and ILO Convention no. 98, the Right to Organise and Collective Bargaining Convention, in 1973.

Regulation of industrial relations in Australia is achieved through a system of federal and state laws, supported by executive and judicial institutions and practices. Legislation introduced in 1994 ensured relatively comprehensive application of the principles enshrined in the ILO's international labour standards, including the right to strike.. However, since 1996 a series of legislative changes at federal level and state level (through various legislative initiatives by state governments) have significantly undermined the application of international labour standards on freedom of association and collective bargaining.

In 1996 the newly elected federal Government introduced the Workplace Relations Act, which provided for, inter alia, the making of enforceable individual agreements called Australian Workplace Agreements (AWAs). The establishment of AWAs, taken in conjunction

with a range of other provisions of the Act, constitutes a clear contravention of ILO Convention No. 98.

The Act contains curbs on trade unions and restrictions on strikes. The content of AWAs are confidential, so they cannot be checked for breaches of minimum wages and employment conditions. AWAs have primacy over federal and state awards or agreements and over certified collective agreements unless the agreement is already in force. Once an AWA is in force it cannot be displaced by a certified agreement. Indeed, it is easier to make an AWA legally enforceable than a collective agreement.

The Act places union and non-union collective agreements on the same footing and gives preference to workplace- or enterprise-level bargaining over other levels. It directs the Industrial Relations Commission to encourage enterprise-level agreements over multi-business or sectoral agreements, and says that multi-business agreements can only be certified if they are in the “public interest”.

The Act narrows the scope for legal strikes and increases the penalties for breaking the law. Strikers covered by multi-business collective agreements are not protected against dismissal or other sanctions. The restrictions on strikes include heavy fines for industrial action during the life of a collective agreement and tougher secondary-boycott provisions. Strike pay cannot be a subject for negotiation and majority of the whole workforce must approve a collective agreement. The Act makes much harder for union organisers to get into workplaces.

The Act establishes a new unfair-dismissal system which further limits redress and compensation claims. The AWAs are also subject to far fewer government regulations than has been the case with collective agreements. The Act appears to allow an employer opening a new enterprise to choose which union to negotiate with before staff are employed.

Between 1997 and the end of 2001, there were nearly 200,000 AWA's signed. The ACTU has produced clear evidence that signing of pre-determined individual contracts is now frequently made a condition of an offer of employment. Such requirements are being imposed on employees in the banking sector, in the public sector, transport and private industry. In each case, the pay and conditions of the workers concerned are inferior to those existing in comparable situations where bargaining was done on a collective basis. The Australian Bureau of Statistics from 2001 showed that workers on AWA's receive between \$100 and \$193 less than do workers doing similar work under a collective agreement.

In 1997, the ACTU lodged a submission with the ILO concerning Australia's compliance with Convention 98 for consideration by the ILO Committee of Experts on the Application of Conventions and Recommendations. The Committee of Experts concluded that the criticisms of the ACTU concerning the lack of protection of employees from dismissal due to anti-union discrimination, as required by Article 1 of

Convention 98, were justified. It drew attention, inter alia, to the lack of protection for workers of small enterprises or to low-paid workers and to the lack of protection of unionists taking part in an action in support of a sectoral or national dispute.

The Committee expressed its concern at the level of discretion afforded to the Australian Industrial Relations Commission, concluding that “conferring such broad powers on the authorities in the context of collective agreements is contrary to the principle of voluntary bargaining...the choice of bargaining level should normally be made by the parties themselves ...” The Committee further expressed concern that the Act allowed employers to pre-select the bargaining partner on behalf of the potential employees, regardless of whether or not that bargaining partner was truly representative of the workers. Additional criticisms were made by the Committee with the respect to similar provisions in state level legislation in several states, in particular in Queensland, New South Wales and Western Australia. (In Queensland and Western Australia the law has since changed, as a result of a change of government in those states)

In its findings, the ILO Committee of Experts “...requests the Government to take the necessary measures to ensure that workers are adequately protected against discrimination based on trade union activities, including negotiating a collective agreement at whatever level the parties deem appropriate”. The Committee concluded that “the provisions of the Act noted above do not promote collective bargaining.” The Committee therefore requested the Government to review the Act in order to bring it into compliance with the Convention.

The ILO Conference Committee on the Application of Standards in June 1998 drew further attention to these criticisms, and said that if necessary the Committee would resume its consideration of this case the following year.

The ILO Committee of Experts has criticised the Australian legislation every year since then, repeatedly making recommendations that the government continues to ignore. The ILO Committee on Freedom of Association also continues to be involved in trying to convince the Australian Government to abide by its international commitments.

In February 1999, the South Australia state government proposed industrial relations reform legislation. The Bill provided for individual bargaining and contracts, the stripping back of industrial awards, and the reduction of workers’ ability to access the Industrial Relations Commission. It brought in restrictions on unfair dismissal laws. The right of union officials to enter a workplace would have been restricted to cases where there was a reasonable suspicion of a breach of an award.

The campaign efforts of the South Australia United Trades and Labour Council together with other groups, ensured that the Bill would be

defeated in parliament. The authorities did not proceed with it but it remained on the notice paper.

A 1999 Queensland labour relations law states that the registration of any organisation can be rescinded if its members participate in protest action that prevents or disrupts economic or commercial activity or the provision of a public service.

In early 1999, reforms to federal legislation were announced which were aimed at further reducing union influence. They provided for longer notice periods for industrial action, removal of provisions like jury service and long service leave from awards, increased fees for lodging unfair dismissal claims, and limitation of the Industrial Relations Commissions' compulsory conciliation role.

ACTU analysis of the Workplace Relations Amendment Bill 1999 concluded that the laws would make it easier for employers to coerce workers into agreements that leave them worse off. It would allow employers to put individual contracts into effect before they had been approved, impose complicated postal ballot procedures for strikes, and stop unions from entering a workplace without a written invitation from a union member which would be valid for 28 days. Public rallies organised by the ACTU helped to defeat the bill in parliament.

The government is currently trying to pass three new pieces of controversial legislation, the Genuine Bargaining Bill, Remedies for Unprotected Action Bill and Secret Ballots Bill. The ACTU is involved in co-ordinating efforts to oppose this legislation.

The Australian Federal Government was centrally involved in a remarkable clandestine scheme in 1997 and 1998 to remove union representation in the country's sea-ports through the wholesale dismissal of union members employed by Patrick's Stevedores.

Workers on duty at Patrick's facilities around Australia were forcibly expelled in a co-ordinated action involving specially recruited security personnel with attack dogs. There is clear evidence that the Patrick companies had been planning this action for many months, including the clandestine training, in Dubai, of replacement workers, some of whom were serving and former members of the Australian Defence Force, with the encouragement and assistance of Commonwealth of Australia Ministers and officers. After national and international trade union protests, particularly by the International Transport Workers' Federation (ITF), the United Arab Emirates cancelled the visas for the people concerned. The contract with the Dubai port authority was severed.

There had been ongoing support by the Australian Government for the company's action and indications of involvement of the Government in the development and execution of the company's strategy. Indeed, the government spent over one million dollars on consultancy reports which

examined ways to end representation by the Maritime Union of Australia (MUA) in Australian ports.

In early 1999, there were signs that the authorities were preparing to target the construction industry after their failed assault on the MUA maritime union in 1997-98. Letters were leaked showing that the government would support contractors in disputes with the Construction, Forestry, Mining and Energy Union (CFMEU). Correspondence from the Defence Minister said that employers who took on the union would get more time to complete government projects.

Concerning restriction on the right to strike and the lack of protection for striking workers, some employers have proven themselves willing to use violent means to repress their action. In one dispute over safety at work, a trade unionist was injured in the middle of the night when four bread trucks forced their way through a picket line outside a baking plant owned by Buttercup Bakeries in Fyshwick. Any truck driver who had refused to cross the picket line risked prosecution.

The federal government published a manual setting out a code of conduct for senior civil servants on "how to lie, confuse, discredit and disseminate misleading information as a bargaining tactic". The press revealed that training of this kind had been developed by the Ministry of Workplace Relations. The manual contained advice on how to discredit trade union negotiators by portraying them as "not very commendable" people and how to win a battle through misinformation. The aim of this manual was to help the various government departments prepare their own negotiations on wages and working conditions.

The employee relations manager of a major communications company, Telstra, caused the company to be fined \$75,000 for an email sent to 275 managers asking them to support the company's policy of giving preference to individual employment contracts. The contents of the email had clearly been to the liking of the Federal Government however, as in December 2000 the manager was appointed as senior deputy president of the Australian Industrial Relations Commission.

A number of major employers in the mining, meat and finance industries have followed the lead set by the various state and federal governments to adopt a highly anti-trade union stand. Several large multinationals refused to enter into further collective bargaining and expressed their desire to replace collective agreements with individual work contracts.

Joy Mining Machinery, a member of the Harnischfeger group, had refused for months to enter into a new round of collective bargaining with its trade union. Managers wished to impose four separate agreements on staff based on job categories. Union members came under intense pressure to sign these new agreements and the company threatened to close. The workers set up a peaceful picket line at the factory gates only for the company to bring in scabs from other regions. After a dispute lasting

seven months, the Australian Industrial Relations Commission finally found in favour of the workers. They were able to return to work having won a series of benefits: a wage increase, union consultation in the event of outsourcing, etc.

The Australian multinational BHP (Broken Hill Proprietary), which has since become BHP-Billiton, active in the steel, iron ore, coal, oil and gas sectors also sought to use the new legislation to force its employees at an iron ore plant in Western Australia to abandon collective agreements in favour of individual contracts. Because a majority of employees were keen to retain the collective agreements, the union staged a series of sit-down strikes in BHP's Australian plants.

The multinational chose to respond through violence. At the Newman site, pickets were attacked during the night by baton-wielding police, with a number of arrests. Meanwhile, at BHP's Port Hedland factory, 80 policemen were used to disperse pickets. Among those arrested was Gary Wood, Western Australia branch secretary of the CFMEU (Construction, Forestry, Mining and Energy Union). He was later released on bail on the condition that he did not return to the picket lines. In another picket-related incident, a unionist from the AMWU (Australian Manufacturing Workers' Union), John Mossington, was run over by a BHP car and had to be hospitalized.

By seeking to force its 1,000 mining and iron ore workers in Western Australia to agree to individual contracts, BHP was hoping to put a stop to union action once and for all. In early 2000, the Federal Court ordered BHP to stop offering individual contracts to its workers in the Pilbara region of Western Australia. It found that the multinational had violated the law on several occasions, especially by urging workers to leave their union: company bosses offered better wages and working conditions to workers who agreed to sign an individual contract and refused collective deal-making.

In early 2001, a Federal Court judge upheld BHP Billiton's right to offer individual non-union contracts to workers at its iron ore operations in the Pilbara region of Western Australia. The company had begun its strategy of negotiating with individual workers in 1999, and the majority of BHP Billiton workers who signed such contracts had received generous pay rises, while those who remained faithful to their union had received nothing. The case was brought under the terms of the Workplace Relations Act and set a worrying precedent for other employers seeking to marginalise unions.

However, in a further reversal, the Western Australian Industrial Relations Commission awarded a pay rise in November 2001 to union members at BHP Billiton Pilbara who had refused to sign individual contracts. Under the decision almost half of the BHP Iron Ore's workforce who refused to sign individual contracts were granted a 20% pay rise, in line with individual contract workers. The decision required BHP to recognise and respect the union rights of workers and give all new starters

a genuine choice between signing an individual contract or enjoying the new higher rates of pay under the award.

Mining giant Rio Tinto had asked its employees to sign individual contracts rather than seek the cover of a collective agreement. The workforce proposed two motions at the company AGM, one on good management practice and the other on compliance with the ILO's core conventions. The company's board opposed these motions, but they nevertheless polled 20.3% and 17.3% at the May shareholders' vote respectively. Rio Tinto management took note of this warning and its chairman, Robert Wilson, has since spoken of "reconciliation" with the unionized workers and admitted that Rio Tinto had made mistakes in the past in its relations with its employees. Rio Tinto has since undertaken to respect its employees' collective bargaining rights. In July 2000 it made an offer to resolve a long-running dispute at its Mt. Thorley mine, this gesture coming on the eve of a week-long international trade union protest against Rio Tinto. The company has also since concluded new collective agreements in Australian coal mines.

A bitter dispute between the LHMU (Liquor, Hospitality and Miscellaneous Workers' Union) and the Mirotone paint company led to a lock-out in early 2001. The company was seeking to impose individual AWA contracts and end the 35-hour week, and the extended lock-out was seen as means of starving the workers into submission. After two weeks, the company gave workers the choice between a contract or redundancy, and sent individual contracts to their homes by courier. The contracts contained a \$2000 inducement to leave the union.

LHMU union members at the Taubmans paint company in Sydney went on strike in mid-August in their frustration over the employers' intransigence over the negotiation of a new enterprise agreement. The company, owned by South African multinational Barloworlds, refused to sit down and negotiate properly. After the workers went on strike, strike-breakers were brought in on three occasions to secrete paint out of the warehouse. The company then sought to have the legal bargaining period terminated, thereby making the strike illegal. Injunctions were granted against the union and its members.

One particularly damaging piece of Australia's restrictive body of labour law is the section that justifies prohibiting industrial action by virtue of potential harmful effects on trade. International jurisprudence on the issue of the right to strike is very clear on the right of governments to prohibit strikes in essential services, carefully defined as those the interruption of which threatens the life or safety of part of the population. The Australian government has extended this prohibition to any action that disrupts the national economic or commercial activity. The ILO has very clearly recommended that the government rescind this link between trade and the violation of workers' right.

*Although Australia has ratified ILO Conventions 87 and 98 on freedom of association and collective bargaining, numerous pieces of legislation at both federal and state levels significantly undermine the application of international labour standards on freedom of association and collective bargaining. These laws put workers at the mercy of companies that are determined to exploit their workers and their lack of legal protection. These have given rise to sustained criticism from the ILO for Australia's violation of the core labour standards concerned, including for using the maintenance of trade and commercial activity as a justification for violating workers' basic rights.*

## **II. Discrimination and Equal Remuneration**

Australia ratified ILO Convention No. 100, Equal Remuneration Convention, in 1974, and ratified ILO Convention No. 111, Discrimination (Employment and Occupation) Convention, in 1973.

Notwithstanding the existence of legislative provisions which cover these internationally recognised core labour standards, women are often in practice discriminated against with respect to pay and conditions. Indigenous people and many migrants also suffer from discrimination with respect to employment opportunities. According to the ACTU, unemployment amongst indigenous peoples is around six times the national average, and their earnings are only half those of other Australians on average. Employment opportunities for indigenous people are primarily in low skilled jobs or in the indigenous service sector or government. Educational attainment is also lower on average than for non-indigenous Australians.

These inequities are in general more prevalent in the private sector and have long existed in the Australian labour market, despite the fact that the principle of equal pay for work of equal value has been enshrined in law for nearly 30 years. Amongst the main victims of discrimination are women from non English-speaking backgrounds. Also, thirty per cent of racial discrimination cases were filed on the grounds of discrimination in employment.

Two recent studies produced varying estimates of the gender pay gap; one found women's average earnings to be 85 per cent those of men, and the other found that women earn only 66 per cent of the average male salary.

Gender segmentation in the labour market remains a substantial problem in Australia. According to the ACTU, Australia has one of the worst records of any OECD country in this respect, with large concentrations of female workers in jobs which have a narrow skills base in casual work. There is also a growing concentration of women in home-

work, where regulation of wages and conditions of employment is at best poor. The ACTU also points to lack of access to formal training for women and undervaluing or non-recognition of skills acquired informally by women in higher-skilled occupations.

The role of the main institutions mandated to give effect to core labour standards on discrimination (the Australian Industrial Relations Commission - AIRC and the Human Rights and Equal Opportunities Commission - HREOC) has been substantially reduced over the past two years. The 1996 Workplace Relations Act substantially curtailed the scope of the AIRC, limiting the range of matters which the Commission may consider. This development is expected to have particularly negative consequences for women workers. In 1997, the Federal Government also began to reduce funding to the HREOC, scheduling further cuts in its budget by at least 25% over the coming two years.

Although the 1996 Workplace Relations Act explicitly provides for equal remuneration for men and women for work of equal value, it is also targeted directly at the principle of pay equity in general, and the effect of its bias in favour of individual over collective-level bargaining has been to worsen the situation for women. At the end of the 1990's, unionised female workers earned on average 22.4% less than female union members, as compared to a differential of 8.1 per cent in the case of men. As collective bargaining involving trade unions continues to decline in favour of the use of AWAs (the vast majority of which are made without any union), women are being disproportionately affected as a result.

*With respect to discrimination in relation to remuneration and access to employment, significant inequalities continue to exist related in particular to gender and ethnic origin, although Australia has ratified both the internationally-recognised core labour standards in this area. Indeed, there are indications that the position of women, indigenous people and migrant workers is worsening.*

### **III. Child Labour**

Australia has ratified neither ILO Convention No. 138, The Minimum Age Convention, nor ILO Convention No. 182, The Worst Forms of Child Labour Convention.

There is no nationally set minimum age of employment, but laws concerning compulsory schooling largely satisfy the minimum employment age benchmarks set in Convention No. 138. There is no information to indicate substantial use of child labour in Australia, although there is known to be some degree of child employment, particularly in agriculture and in family enterprises.

The discovery of children working in several sweatshops in early 1999 has led to strengthen provisions fighting child labour on the part of several state governments, although not the federal government.

*Child labour is mainly prohibited effectively by compulsory education laws and occupation-specific minimum age rules. Child labour does not generally occur, although children have been discovered working in sweatshops, and children are known to work in agriculture.*

#### **IV. Forced Labour**

Australia ratified ILO Convention No. 29, The Forced Labour Convention, in 1932, and ratified ILO Convention No. 105, Abolition of Forced Labour Convention in 1960.

While there are no laws specifically prohibiting forced labour, forced labour does not generally occur in Australia. There have however been reports of bonded labour in the textile clothing and footwear industries, sometimes linked with trafficking in persons (see below).

The private operation of prisons and the private management of prison industries have vastly increased in recent years, and the ILO has investigated the situation with respect to forced labour by prisoners. In 2002, the ILO Committee of Experts advised Australia that compulsory prison labour contravenes ILO Convention No. 29 when done by prisoners in a private prison facility. Furthermore, there are serious doubts regarding the quality of public supervision of prison workplaces being operated by private companies, and cases in which these companies are profiting from the labour of the inmates.

Trafficking in persons is also a problem, including trafficking of women for the purposes of forced prostitution. There have been some reports of trafficking of persons for forced labour in textile and garment sweatshops. The Government is taking steps to combat trafficking, and has recently introduced much more severe penalties of those convicted of trafficking and enslavement offences.

*Forced labour does not generally occur in Australia, although there are problems with forced prison labour, with trafficking in persons, and with instances of forced labour in sweatshops.*

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## **Conclusions**

1. Australia should ratify and fully implement ILO Conventions No. 138 and No. 182.
2. The relevant sections of various pieces of state and federal legislation that have come under continued criticism by the ILO, including the 1996 Workplace Relations Act, should be amended to conform with ILO Conventions No. 87 and No. 98. Of particular importance are the provisions to encourage individual AWA's in preference to collective agreements, and the lack of protection offered to workers trying to defend their rights and interests.
3. The government must stop pressing employers to behave in an exploitative manner taking advantage of provisions in federal legislation which contravene core ILO Conventions, and instead take steps to promote trade union rights and the improvement of working conditions and workers' standards of living.
4. The use by the government of the maintenance of trade and economic activity as a justification and pretext for the repression of workers and their trade unions, constitutes unfair competition against its trading partners. Australia is blatantly using trade as a threat in order to violate human rights, and must immediately follow the recommendation of the ILO to sever this link between trade and repression of workers' rights.
5. Effective steps should be taken to ensure equal access to employment and equality of remuneration and employment conditions for women, indigenous people, migrants and other subject to discrimination. The promotion of individual contracts that are confidential and cannot be checked for pay equity purposes is undermining this effort.
6. Legislation governing private prisons and prison labour in both privately and publicly run prisons should be revised in order to comply with ILO Convention No. 29. This would require, among other things, ensuring labour done in a private prison is not done under any duress, and ensuring effective public supervision of all prison labour.
7. In line with the commitments accepted by Australia at the Singapore WTO Ministerial Conference and its obligations as a member of the ILO, the Government of Australia should therefore provide regular reports to the WTO and the ILO on its legislative changes and implementation programmes with regard to all the core labour standards.
8. The WTO should draw to the attention of the authorities of Australia the commitments they undertook to observe core labour standards at the Singapore and Doha WTO Ministerial Conferences. The WTO should request the ILO to intensify its work with the Government of

Australia in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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