

**SENATE STANDING COMMITTEE ON
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS**

**QUESTIONS ON NOTICE
INQUIRY INTO THE FAIR WORK BILL 2008**

Senator Siewert asked in writing:

Question

Industry-wide bargaining

1. In various Individual Observations on Australia, the ILO's Committee of Experts has repeatedly said that the prohibitions on pattern bargaining, and on taking industrial action in support of pattern bargaining, contravene ILO conventions. In its observation on Convention 98 in 2007, the Committee said "The Committee once again recalls that action related to ... 'pattern bargaining' represents legitimate trade union activity for which adequate protection should be afforded by law". In its observation on Convention 87 in 2007, the Committee said that "the prohibitions ... with regard to 'pattern bargaining' ... go beyond the restrictions which are permissible under the Convention". The Bill repeats in substance the provisions of the Act with regards to pattern bargaining.

- a) What changes has the ILO requested to provisions relating to pattern bargaining since 1996 in order to ensure compliance with international conventions?
- b) Has the Bill been drafted to comply with the ILO's requests for changes?
- c) What protections are offered to workers and unions who engage in industry-wide pattern bargaining?
- d) Does the Bill contravene ILO Conventions with respect to pattern bargaining?

Answer

- a) The observations made by the International Labour Organisation (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the previous Australian Government's legislation concerning industry wide bargaining are included in the CEACR's annual reports to the International Labour Conference. The reports can be accessed on the ILO's web site at www.ilo.org. The most recent report is at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf?bcsi_scan_3943BF699F7EFDA D=0&bcsi_scan_filename=wcms_090991.pdf.

These reports contain all commentary of the ILO regarding pattern bargaining and compliance with international conventions in Australia.

- b) and d) The Australian Government gave due consideration to its international obligations in developing the Fair Work Bill. The Government considers that the approach taken in the Bill promotes fair and productive collective bargaining outcomes for all affected parties, while being consistent with the principles enunciated by ILO supervisory bodies.
- c) The Bill recognises that employees have a right to take protected industrial action to support or advance claims during collective bargaining, provided it is taken in accordance with the rules established by the Bill. Industrial action taken in support of pattern bargaining is not protected industrial action under the Bill.

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Multiple employer agreements

2. In various Individual Observations on Australia, the ILO's Committee of Experts has repeatedly said that the prohibition taking industrial action in support of multiple- enterprise agreements contravene ILO conventions. In its observation on Convention 98 in 2007, the Committee said "The Committee once again recalls that action related to the negotiation of multiple business agreements ... represents legitimate trade union activity for which adequate protection should be afforded by law". In its observation on Convention 87 in 2007, the Committee said that "the prohibitions ... with regard to multi-employer agreements ... go beyond the restrictions which are permissible under the Convention". The Bill repeats in substance the provisions of the Act with regards to industrial action in support of multiple employer agreements.

- a) What changes has the ILO requested to provisions relating to multi-employer agreements since 1996 in order to ensure compliance with international conventions?
- b) Has the Bill been drafted to comply with the ILO's requests for changes?
- c) What protections are offered to workers and unions who engage in bargaining for multi-employer agreements?
- d) Does the Bill contravene ILO Conventions with respect to taking industrial action for multi-employer agreements?

Answer

- a) The observations made by the International Labour Organisation (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the previous Australian Government's legislation concerning multi-employer agreements are included in the CEACR's annual reports to the International Labour Conference. The reports can be accessed on the ILO's web site at www.ilo.org. The most recent report is at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf?bcsi_scan_3943BF699F7EFDA D=0&bcsi_scan_filename=wcms_090991.pdf.

These reports contain all commentary of the ILO regarding multi-employer agreements and compliance with international conventions in Australia.

- b) and (d) The Australian Government gave due consideration to its international obligations in developing the Fair Work Bill. The Government considers that the approach taken in the Bill promotes fair and productive collective bargaining outcomes for all affected parties, while being consistent with the principles enunciated by ILO supervisory bodies.

- c) The Fair Work Bill 2008 allows multiple employers to voluntarily bargain together with their employees for a multi-enterprise agreement. Unlike the current *Workplace Relations Act 1996* there will be no public interest test for voluntary multi enterprise bargaining and employers will not need to seek authorisation in order to bargain together.

The Bill establishes a new stream of multi-employer bargaining to assist low-paid employees and their employers who, historically, have not had much experience or success with enterprise-level collective bargaining. Employees and employers who are authorised to bargain in the low-paid stream will benefit from having access to Fair Work Australia to help negotiate and make an agreement. The types of assistance that Fair Work Australia can provide to facilitate the bargaining process in the low-paid stream include:

- compulsory conferences to bring the bargaining representatives together, as well as directing any third parties to attend, if they have such a degree of control over the terms and conditions of the employees that it is necessary for them to be involved for an agreement to be made;
- conciliation and mediation;
- making good faith bargaining orders; and
- making recommendations to the parties.

The Bill also introduces a concept of 'single interest employers'. If multiple employers have a close connection with each other, for example if they are employers (such as schools and hospitals) that operate within a common regulatory framework that are specified in a Ministerial declaration, or franchisees of the same franchisor then they may be included in a single-interest employer authorisation. Such an authorisation is made by Fair Work Australia and allows the multiple employers to bargain together for a single-enterprise agreement and allows for protected industrial action to be taken by employees in pursuit of such an agreement.

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Right of Entry

3. In Individual Requests and Observations in 2007 and 2008, the ILO Committee of Experts described the system of permits required for obtaining right of entry as 'restrictive conditions set for granting a permit' and the limitation of the workers with whom unions may meet as 'artificially restricted'. However, the relevant provisions of the Act are substantially replicated in the Bill.

- a) What changes has the ILO requested to right of entry provisions since 1996 in order to ensure compliance with international conventions?
- b) Has the Bill been drafted to comply with the ILO's requests for changes?
- c) What protections are offered to workers and unions who exercise the rights of entry envisaged by ILO conventions but not permitted by the legislation?
- d) Does the Bill contravene ILO Conventions with respect to right of entry?

Answer

- a) The observations made by the International Labour Organisation (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the previous Australian Government's legislation concerning right of entry are included in the CEACR's annual reports to the International Labour Conference. The reports can be accessed on the ILO's web site at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf?bcsi_scan_3943BF699F7EFDA D=0&bcsi_scan_filename=wcms_090991.pdf.

These reports contain all commentary of the ILO regarding right of entry and compliance with international conventions in Australia.

- b) c) and d) The Australian Government gave due consideration to its international obligations in developing the Fair Work Bill. The Government considers that the approach taken in the Bill promotes fair and productive collective bargaining outcomes for all affected parties, while being consistent with the principles enunciated by ILO supervisory bodies. In particular, unlike the Work Choices laws, the Fair Work Bill allows a union to meet with its members and persons eligible to be members regardless of the type of workplace agreement in place.

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Secret Ballots

4. In 2001, the ILO's Committee of Experts described Australia's secret ballot process as 'a complex and lengthy mandatory pre-strike ballot procedure which makes it difficult, if not impossible, to declare a legal strike or to declare a strike in a timely manner.' However, many of the objectionable provisions of the Act are now replicated in the Bill.

- a) What changes has the ILO requested to secret ballot provisions in order to ensure compliance with international conventions?
- b) Has the Bill been drafted to comply with the ILO's requests for changes?
- c) Does the Bill contravene ILO Conventions with respect to secret ballots?

Answer

- a) The observations made by the International Labour Organisation (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the previous Australian Government's legislation concerning secret ballots are included in the CEACR's annual reports to the International Labour Conference. The reports can be accessed on the ILO's web site at www.ilo.org. The most recent report is at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf?bcsi_scan_3943BF699F7EFDA D=0&bcsi_scan_filename=wcms_090991.pdf.

These reports contain all commentary of the ILO regarding secret ballot provisions and compliance with international conventions in Australia.

- b) and c) The Australian Government gave due consideration to its international obligations in developing the Fair Work Bill. The Government considers that the approach taken in the Bill provides a streamlined system for establishing employee approval for protected industrial action and promotes fair and productive collective bargaining outcomes for all affected parties, while being consistent with the principles enunciated by ILO supervisory bodies.

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Content of Agreements

5. As early as 1998, the ILO Committee of Experts in its individual observation concerning Convention 98 in Australia raised concerns over strike pay not being a matter over which parties can bargain. From 2006 onwards, the Committee also expressed its concern about the effect of the *Electrolux* decision and the exclusion of bargaining fees from the range of permissible matters. In its 2007 observation concerning Convention 98, the Committee again referred to the 'free and voluntary nature of collective bargaining'.

- a) What requests has the ILO made of Australia regarding the content of collective agreements since 1996?
- b) Has the Bill been drafted to comply with the ILO's requests for changes?

Answer

- a) The observations made by the International Labour Organisation (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the previous Australian Government's legislation concerning content of agreements are included in the CEACR's annual reports to the International Labour Conference. The reports can be accessed on the ILO's web site at www.ilo.org. The most recent report is at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf?bcsi_scan_3943BF699F7EFDA D=0&bcsi_scan_filename=wcms_090991.pdf.

These reports contain all commentary of the ILO regarding content of agreements and compliance with international conventions in Australia.

- b) The Australian Government gave due consideration to its international obligations in developing the Fair Work Bill. The Government considers that the approach taken in the Bill promotes fair and productive collective bargaining outcomes for all affected parties, while being consistent with the principles enunciated by ILO supervisory bodies.

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Termination or Suspension of Bargaining Periods by the Minister, third parties and on 'economy' grounds

6. On various occasions, including its Individual Observation on Australia on Convention 87 in 2003, and observations in 2007 and 2008, the ILO Committee of Experts have requested amendments to those parts of the Act that permit the removal of protection for taking industrial action (a) on the grounds of 'danger to the economy', (b) through compulsory arbitration by the Minister and (c) by third parties. However, these provisions are substantially replicated in the Bill: the current 430(3)(c)(ii) Act cf 424 (1)(d) Bill; s498 cf s431; s433 cf s426.

Further, a new section (s423) is introduced, which appears to go well beyond the limits of the convention.

In respect of each of these areas:

- a) What changes has the ILO requested to provisions relating to suspending and terminating bargaining periods since 1996 in order to ensure compliance with international conventions?
- b) Has the Bill been drafted to comply with the ILO's requests for changes?
- c) What protections are offered to workers and unions who exercise the rights of industrial action by ILO conventions but not permitted by the legislation?
- d) Does the Bill contravene ILO Conventions with respect to the matters raised above?

Answer

- a) The observations made by the International Labour Organisation (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the previous Australian Government's legislation concerning termination or suspension of bargaining periods are included in the CEACR's annual reports to the International Labour Conference. The reports can be accessed on the ILO's web site at www.ilo.org. The most recent report is at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf?bcsi_scan_3943BF699F7EFDA_D=0&bcsi_scan_filename=wcms_090991.pdf. These reports contain all commentary of the ILO regarding termination or suspension of bargaining periods and compliance with international conventions in Australia.
- b) c) and d) The Australian Government gave due consideration to its international obligations in developing the Fair Work Bill. The Government considers that the approach taken in the Bill promotes fair and productive collective bargaining outcomes for all affected parties, while being consistent with the principles enunciated by ILO supervisory bodies.

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Other matters

7. The ILO has requested amendments of Australia or expressed concern about the operation of the WR Act with respect to a number of additional areas, namely:

- i) The reaching of non-union agreements in workplaces where a union exists (in 2005 and 2007 observations);
- ii) The restriction of legitimate industrial action to bargaining periods (see the 2006 Digest of Decisions on Freedom of Association @ 416, 484; 2007 observation)
- iii) Restriction of discretion of the AIRC's ability to remove the right to industrial action (2007);
- iv) Removal of unfair dismissal rights for sections of the population (2008 observation and request for report from Government);
- v) The prohibition on secondary boycotts and sympathy strikes (2003, 2004, 2006, 2007 and 2008)

With respect to each of the above matters:

- a) What changes has the ILO requested since 1996 in order to ensure compliance with international conventions?
- b) Has the Bill been drafted to comply with the ILO's requests for changes?
- c) Does the Bill contravene ILO Conventions with respect to the matters raised above?

Answer

- a) The observations made by the International Labour Organisation (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the previous Australian Government's legislation are included in the CEACR's annual reports to the International Labour Conference. The reports can be accessed on the ILO's web site at www.ilo.org. The most recent report is at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf?bcsi_scan_3943BF699F7EFDA D=0&bcsi_scan_filename=wcms_090991.pdf.

These reports contain all commentary of the ILO regarding compliance with international conventions in Australia.

- b) and c) The Australian Government gave due consideration to its international obligations in developing the Fair Work Bill. The Government considers that the approach taken in the Bill promotes fair and productive collective bargaining outcomes for all affected parties, while being consistent with the principles enunciated by ILO supervisory bodies.