INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

# INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN AUSTRALIA

## REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF AUSTRALIA

## (Geneva, 5 and 7 March 2007)


EXECUTIVE SUMMARY

**Australia has ratified seven of the eight core ILO labour Conventions. In view of restrictions on trade union rights in particular, determined 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.**

**Australia has ratified the core ILO Conventions on freedom of association and on collective bargaining. There are severe restrictions with regard to freedom of association and the right to bargain collectively, both in law and in practice. New legislation that came into effect in 2006 further eroded trade union rights and has further undermined collective bargaining.**

**Australia has ratified the core ILO Conventions on Equal Remuneration and Discrimination. However, there is a significant gender wage gap and women are less represented in senior and managerial posts. Indigenous Australians experience much higher unemployment than the general population.**

**Australia has ratified the core ILO Convention on the Worst Forms of Child Labour but not the Convention on Minimum Age. Child labour does occur to a limited extent.**

**Australia has ratified both Conventions on Forced Labour. There are reports of trafficking for forced prostitution.**


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# INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN AUSTRALIA

## Introduction

This report on compliance with internationally recognised core labour standards in Australia is one of the series the ITUC 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 Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth 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 ITUC affiliate in Australia is the Australian Council of Trade Unions (ACTU). In August 2005, 22.4% of the workforce were union members.

The main contributors to GDP in 2004 were primary production and mining (8.3%), manufacturing (11.4%), commerce (14.0%), transport and communications (8.4%), and finance and business services (19.9%).

Key export products in Australia are minerals and metals (coal, iron-ore, gold, petroleum and aluminium ores), agricultural products and manufactured products while primary imports are merchandise goods, consumption goods, capital goods and fuels. Australia's most significant export destinations are Japan, China, Korea, the US and New Zealand, with most imports coming from China, the US, Japan, Singapore and Germany.

Total merchandise exports in 2005/2006 were valued at A$152,262 billion, with imports at A$ 167,567 billion. Services exports for the same period were valued at A$ 41,959 billion and imports at A$ 40,721 billion.

Australia has free trade agreements with the US, Singapore, Thailand and New Zealand. Australia is in the process of negotiating (or planning) trade agreements with ASEAN and New Zealand, China, Chile, Japan, Korea, Malaysia and the Gulf countries (GCC). Australia is a member of APEC and the Indian Ocean Rim Association for Regional Cooperation.

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

Australia ratified Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining in 1973.

Australian workers have the right to organise and the right to collective bargaining but these rights have been increasingly restricted.

Prior to the commencement of the *Workplace Relations Amendment (Work Choices) Act 2005* ("the Work Choices legislation") on 27 March 2006, Australia's industrial relations law had repeatedly been the subject of observations by the ILO's Committee of Experts on the Application of Conventions and Recommendations about lack of compliance with the requirements of Conventions 87 and 98.

Rather than addressing concerns raised by the Committee of Experts, the Work Choices legislation has moved in the opposite direction, even further restricting workers' ability to bargain collectively and to be represented by trade unions. Australia is the only developed country where an employer can refuse to negotiate with a union even when its employees are union members and wish to be collectively represented.

The overall effect of the Work Choices legislation can be seen in the falling level of real wages despite the strongest labour market for many years.

Level of bargaining

The Work Choices legislation further restricts the ability of bargaining at a multi-employer or industry level. Pre-authorisation and subsequent approval is required from the Employment Advocate (EA) (an independent statutory officer with the responsibility of facilitating and overseeing the operation of workplace agreements) after private deliberations, where previously this occurred in an open hearing by the Industrial Relations Commission (IRC).

Industrial action in support of multi-employer agreements remains unlawful, as was previously the case, but this is broadened by a new prohibition on "pattern bargaining;" that is, the pursuit of common claims against a number of employers even with a preparedness to separately negotiate each agreement. The ban on pattern bargaining applies even to subsidiaries of the same parent company.

Individual agreements

The Work Choices legislation substantially strengthens the place of individual Australian Workplace Agreements (AWAs) in the industrial relations system. AWAs are no longer subject to collective agreements during the term of those agreements. This means that an employer is free to offer to all employees, and to require new employees to sign, inferior AWAs even where there is a collective agreement in place binding the employer in respect of all employees. This totally undermines the integrity of any collective bargaining process.

The incentives for employers to require AWAs have also been greatly increased. AWAs are now required to include only five minimum conditions (minimum wage, annual leave, sick leave, unpaid parental leave and maximum weekly working hours) rather than being measured against comprehensive industrial awards, meaning that they can substantially undercut employees' previous wages and working conditions. Once an AWA is made, awards cease to operate for that employee even after the expiry of the AWA. Further, AWAs operate from the time lodged, rather than requiring scrutiny and approval from the EA or the IRC, as was previously the case.

Around 250,000 AWAs have been lodged since the commencement of the Work Choices legislation and early trends show a move towards AWAs and away from union-negotiated collective agreements.

An EA analysis of the first AWAs lodged under the Work Choices legislation showed that every one had removed conditions such as penalties rates, overtime rates, shift loadings, public holiday pay and meal beaks. The Work Choices legislation provides for application of these conditions unless specific provision is made in the AWA to remove them. The WEA no longer collects information about "protected" conditions.

There have been a number of examples of employers using AWAs to slash the wages and conditions of their workers. A notorious example is a major retail chain which implemented AWAs replacing all loadings and penalties with a A$0.02 per hour wage increase, resulting in pay reductions of up to A$150 per week. Other national retailers have used AWAs to freeze wages or to reduce them to the new minimum rate.

For example, the Cowra abattoir in New South Wales was able to dismiss employees and offer to rehire them on the basis of AWAs cutting their wages by up to A$180 per week. This was held to be lawful as the dismissals were for "operational reasons".

A recent report by the Queensland Industrial Relations Commission on the effect of the Work Choices legislation sets out many examples of employees being seriously disadvantaged by employers using the new laws.

The economic benefit of the Work Choices legislation is open to question. A study on labour market developments in Australia by the National Institute of Labour Studies found that "the best synthesis of available data reveals that while individualized negotiations are beneficial to enterprise profitability they are neutral with respect to labour *productivity* growth. And since the latter contributes most to the rising material living standards on which the government's broader promises are founded, little weight can be placed on the assertion that there is an economic case for moving away from collective determination of general employment conditions….Neither, it seems, can much stock be placed in the 'employment-generating' case for changes to unfair dismissal".

Employer greenfields agreements (EGA)

The Work Choices legislation introduces a new type of agreement which allows an employer to unilaterally set the terms of an agreement covering the first 12 months of operation

of a new project or undertaking, which can include an extension of an existing business, or in some circumstances when a business is sold.

EGAs have been used in the fast food industry for new franchise operations to provide for low wages and removal of all award conditions. They have also been used in the construction industry primarily to prevent union involvement and the possibility of industrial action, which is prohibited during the period of operation of the EGA.

In one case, a company was able to buy a number of petrol stations and then, claiming that this was a new undertaking, implement an EGA, cutting pay by A$190 per week.

Restrictions on bargaining subject matter

The Work Choices legislation increases the number of matters which are prohibited by law from being the subject of bargaining, providing for financial penalties to apply to individuals or organisations which seek to include these matters in their agreements. "Prohibited content" includes: leave to attend trade union meetings or training; right of entry for union officials; general representative rights for unions; restrictions on contractors; encouragement of trade union membership; remedies for unfair dismissal; and restrictions on AWAs.

These prohibitions have led to a number of employers being told by the EA that the agreements they have reached with unions are not valid because they contain prohibited content. In the building industry there is even greater uncertainty as the *Building and Construction Industry Improvement Act 2005* requires agreements covering work directly or indirectly funded by the federal government to comply with a restrictive code issued by the Minister. The code was recently amended to prohibit the making of agreements concerning prohibited matters even where this is outside the statutory system.

After a year of negotiations resulting in concluded agreements, the parties to agreements in the electrical contracting industry were informed by the Department of Employment and Workplace Relations that they had not complied with amendments to the code because a side agreement had been reached covering union right of entry and a requirement that AWAs not undercut the collective agreement.

The right to strike

The Work Choices legislation imposes significant and new restrictions on the right to strike:

- Lawful action cannot be taken in support of common claims or of "prohibited content";
- The IRC's discretion to make orders stopping industrial action has been weakened, so that such orders are close to mandatory - for example, in cases of sympathy action or where the action could damage the Australian economy or an important part of it;
- Third parties have been given an expanded right to seek orders against workers taking industrial action;

- All industrial action must be authorised through a cumbersome and legalistic secret ballots procedure;
- Penalties for taking unlawful industrial action have been sharply increased.

The Work Choices legislation has been used a number of times against workers taking industrial action. In Western Australia, 107 construction workers are facing A$28,000 individual fines for participating in industrial action protesting the dismissal of a union delegate.

Unfair dismissal

The Work Choices legislation removed unfair dismissal protection for employees of employer with fewer than 100 employees, meaning that around two thirds of private sector workers lose their right to challenge an unfair dismissal. Even in workplaces with 101 or more employees, a dismissal which is even partly for operational reasons cannot be challenged for unfairness.

### *Conclusions*

*Workers' ability to join and form unions, to bargain collectively and to strike are severely restricted in law and in practice. The rights of workers have been steadily eroded since 1996 and, despite multiple requests from the ILO to amend legislation to conform with the Conventions, the recent changes have brought the Australian system even further away from recognised core standards.*

## II. Discrimination and Equal Remuneration

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

Australia has legislation to implement these Conventions although, in practice, women face discrimination in employment in relation to equal remuneration for work of equal value and in access to senior positions.

In August 2006, average total earnings for full-time female (including managerial) employees were 80% of that for men, or 84% when ordinary time earnings are used. The wage gaps for full-time non-managerial employees for 2004 are illustrated in Annexes I and II, shown respectively by industry and by occupation.

The National Institute of Labour Studies comments that "Further concern has been expressed about the effects of *WorkChoices* on gender equity, with female-to-male wage differentials persisting both at aggregate and sectional levels. Few commentators believe that the changes will help to correct existing pay inequalities or assist women in combining unpaid household work with time in the paid labour market".

A recent study of AWAs made prior to the commencement of the Work Choices legislation found that female non-managerial employees earned 79.6% of the earnings of comparable men in 2004, compared to 87.5% of male earnings under federal collective agreements.

It is expected that this gap will continue to widen as AWA coverage increases at the expense of collective instruments. It is notable that in the six months to August 2006 nominal private sector ordinary time wages for women rose 0.5% for women (meaning that real wages fell 2%) compared to 1.3% for men. This reflects, in part, the concentration of women in relatively low-paid service sector and clerical occupations and their under-representation at senior levels in employment.

The Indigenous population, approximately 2% of the total, faces substantial disadvantage and discrimination. The 2001 Census found Indigenous unemployment at 20%, three times that of the general labour force.

***Conclusions***

*In spite of legislative protection, women earn less than men, a situation which is likely to be exacerbated by the Work Choices legislation. Indigenous people face substantial disadvantage and discrimination at the workplace.*

## III. Child Labour

Australia has not ratified Convention No. 138, the Minimum Age Convention. Australia ratified Convention No. 182, the Worst Forms of Child Labour Convention in 2006.

There is no federal legislation in Australia that sets a minimum age for employment, as this is a state responsibility, with standards differing between the states. State legislation also covers compulsory education, the age for unemployment benefits and the entrance to certain occupations. In addition, federal and state industrial instruments regulate aspects of the employment of children and young people.

The first Australian Bureau for Statistics (ABS) survey of child employment in 2006 found that 7% of children aged 5 to 14 worked in the previous year. Of these, a third worked for their parents and just over half for employers. 2.4% of children aged 10 to 14 worked more than five hours a week during school terms and most worked fewer than 13 weeks in the year. Fewer than 2% of children aged 5 to 9 were employed, mostly in family farms and businesses. Common jobs other than assisting in family businesses were delivering newspapers and leaflets, gardening, babysitting and retail. There has also been evidence that children work assisting parents who are outworkers in the garment industry.

There is no federal legislation that prohibits forced or bonded child labour, although the Criminal Code charges high penalties in case of conditions amounting to slavery and for forcing

children under 18 to provide sexual services. The Migration Act punishes trafficking of people and the Proceeds of Crime Act punishes sexual servitude offences.

***Conclusions***

*Child labour does occur in Australia although, most commonly, it is for a few hours per week and does not interfere with school attendance.*

## IV. Forced Labour

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

The law does not explicitly prohibit forced labour.

Prison labour does occur in Australia. Private prisons exist in several states, although these prisons remain under the control of a public authority and are subject to government established guidelines.

Work or service from a prisoner is only compatible with the Convention if the work or service is carried out under the supervision and control of a public authority and if the person is not hired to or placed at the disposal of private individuals, companies or associations. Work by prisoners for private companies can be compatible with the Convention only when such work is performed in conditions approximating a free employment relationship. This necessarily requires the formal consent of the persons concerned, as well as further guarantees and safeguards covering the essential elements of a free labour relationship, such as wages, social security etc.

Trafficking of persons is prohibited, but people trafficking into Australia occurs. Although the number of people trafficked into Australia is unknown, a parliamentary inquiry into sexual servitude in Australia estimated the number of trafficked women as ranging from 300 to 1,000 each year. Most of the women trafficked into Australia are recruited from South East Asia and China for the sex industry. Some have to repay debts of up to $40 000.

***Conclusions***

*Although forced labour is not a widespread phenomenon in Australia, some prison labour may not comply with the Convention and there are instances of trafficking for the purpose of forced prostitution, mainly from Asian countries.*

***Final Conclusions and Recommendations***

1. The government should amend its legislation to ensure that workers have an enforceable right to bargain collectively if that is what they prefer. Parties should be free to negotiate collectively at whatever level they prefer and they should be free to include whatever matters they choose in agreements, subject to minimum standards.
2. The government should implement the recommendations of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) with regard to Conventions 87 and 98, to bring legislation in line with these core standards.
3. There is substantial occupational segregation that needs to be addressed. In particular the government must implement policies to give effective meaning to the principle of equal pay for work of equal value.
4. More efforts have to be made to address the unequal situation of the Indigenous population, given the high unemployment and low education levels.
5. Measures should be taken to ensure the elimination of child labour and to strengthen child labour legislation, particularly in certain states, at the same time as the government ratifies Convention 138 on the Minimum Age for Admission to Employment.
6. The government should take the necessary measures to bring prison labour in line with the Convention.
7. In line with the commitments accepted by Australia at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the Government of Australia should provide regular reports to the WTO and the ILO on its legislative changes and implementation of 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 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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## ANNEX I: FULL-TIME ADULT NON-MANAGERIAL EMPLOYEES - MAY 2004

| | Average hourly ordinary-time earnings | | Female/ male earnings ratio | Increase in average hourly ordinary-time earnings since May 1994 | | Proportion who are female | Proportion with awards only method of pay setting |
|---|---|---|---|---|---|---|---|
| | Males | Females | | Males | Females | | |
| **Industry (ANZSIC)** | $ | $ | ratio | % | % | % | % |
| Mining | 34.30 | 27.10 | 0.79 | 43.2 | 52.3 | 13.3 | *1.7 |
| Manufacturing | 22.40 | 19.40 | 0.87 | 56.1 | 52.7 | 23.2 | 12.2 |
| Electricity, gas and water supply | 28.80 | 24.50 | 0.85 | 64.2 | 58.2 | 21.1 | *1.4 |
| Construction | 23.40 | 19.60 | 0.84 | 52.4 | 46.0 | 9.9 | 14.3 |
| Wholesale trade | 21.60 | 19.80 | 0.92 | 54.2 | 51.5 | 28.4 | 13.2 |
| Retail trade | 18.10 | 17.00 | 0.94 | 48.7 | 47.6 | 38.0 | 23.7 |
| Accommodation, cafes and restaurants | 17.60 | 17.10 | 0.97 | 43.1 | 47.1 | 47.6 | 46.9 |
| Transport and storage | 22.60 | 20.60 | 0.91 | 45.1 | 42.0 | 29.8 | 12.2 |
| Communication services | 26.70 | 22.40 | 0.84 | 54.6 | 40.4 | 34.9 | **0.5 |
| Finance and insurance | 30.30 | 23.30 | 0.77 | 85.0 | 65.7 | 54.3 | 3.3 |
| Property and business services | 24.70 | 21.70 | 0.88 | 55.9 | 46.6 | 45.2 | 16.7 |
| Government administration and defence | 24.70 | 24.10 | 0.98 | 56.1 | 54.3 | 43.6 | *0.4 |
| Education | 27.90 | 25.50 | 0.91 | 33.0 | 40.2 | 65.1 | 6.4 |
| Health and community services | 25.00 | 21.40 | 0.86 | 50.2 | 40.7 | 71.1 | 17.2 |
| Cultural and recreational services | 23.70 | 22.10 | 0.93 | 37.5 | 39.3 | 45.0 | 11.3 |
| Personal and other services | 25.40 | 20.00 | 0.79 | 45.5 | 39.9 | 44.5 | 16.2 |
| **All industries** | **23.60** | **21.60** | **0.92** | **50.9** | **47.6** | **40.3** | **13.3** |

Source: Employee Earnings and Hours, Australia, May 2004 (ABS cat. no. 6306.0); Distribution and Composition of Employee Earnings and Hours, Australia, May 1994 (ABS cat. no. 6306.0); ABS 2004 Survey of Employee Earnings and Hours (EEH).

## ANNEX II: SELECTED OCCUPATIONS OF FULL-TIME ADULT NON-MANAGERIAL EMPLOYEES - May 2004

| | Average hourly ordinary-time earnings | | Female/ male earnings ratio | Proportion who are female | Proportion with award only method of pay setting |
|---|---|---|---|---|---|
| | Males | Females | | | |
| **Selected Minor groups (ASCO 2nd edition)** | $ | $ | ratio | % | % |
| Skill level 1 | 32.10 | 27.30 | 0.85 | 51.2 | 5.3 |
| Medical practitioners | 47.40 | 38.80 | 0.82 | 38.2 | **3.5 |
| Social welfare professionals | 22.70 | 24.10 | 1.06 | 66.4 | 16.6 |
| Skill level 2 | 27.50 | 22.70 | 0.83 | 41.7 | 7.8 |
| Police officers | 29.80 | 26.20 | 0.88 | 23.4 | - |
| Enrolled nurses | 20.10 | 19.30 | 0.96 | 90.4 | **7.9 |
| Skill level 3 | 21.70 | 20.50 | 0.94 | 22.3 | 16.2 |
| Mechanical engineering tradespersons | 23.90 | 21.00 | 0.88 | *1.4 | *7.4 |
| Hairdressers | 14.00 | 14.60 | 1.04 | 91.1 | 60.6 |
| Skill level 4 | 21.00 | 18.50 | 0.88 | 44.7 | 14.2 |
| Intermediate mining and construction workers(a) | 31.80 | 27.40 | 0.86 | *2.5 | **1.0 |
| Hospitality workers | 17.00 | 16.50 | 0.97 | 58.3 | 44.4 |
| Skill level 5 | 18.30 | 16.40 | 0.90 | 34.1 | 24.9 |
| Mining, construction and related labourers | 21.40 | 21.60 | 1.01 | *1.5 | *9.4 |
| Cleaners | 15.30 | 15.20 | 0.99 | 34.2 | 40.9 |

(a) Comprises miners, blasting workers, scaffolders, steel fixers, structural steel erectors, construction riggers, building insulation installers, and home improvements installers.

Source: Employee Earnings and Hours, Australia, May 2004 (ABS cat. no. 6306.0) data cube Table 1; ABS 2004 Survey of Employee Earnings and Hours (EEH).