

Mr Juan Somavia  
Director-General  
International Labour Organisation  
4 route des Morillons  
CH-1211 Genève 22  
Switzerland

20 February 2009

By email: somavia@ilo.org

Dear Sir

## **URGENT COMPLAINT TO COMMITTEE ON FREEDOM OF ASSOCIATION**

Following our letter (via email) dated 13 February 2009, on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU**), which has over 100,000 members and is the primary national organisation of workers in the electrical, plumbing, communication and postal industries in Australia, we make an urgent complaint regarding continuing and impending breaches of our rights to freedom of association.

We note that, as per your email request dated 13 February 2009 from Karen Curtis, Deputy Director, International Labour Standards Department, Responsible for freedom of association, this complaint is lodged from a national level workers' organization, specifically the CEPU, and is duly signed by two competent officers at the national level.

This letter and the attached documentation set out the grounds of the complaint together with a request for urgent action by the ILO.

### **Background**

Since 1996, the ILO's Committee on Freedom of Association (**CFA**) and its Committee of Experts on the Application of Conventions and Recommendations (**CEACR**) have made numerous observations about the infringement of union rights effected by industrial legislation in Australia.

At the November 2007 general election there was a change of Government. At the end of November 2008, the Government introduced the *Fair Work Bill 2008* into the Australian Parliament. As explained further below, this Bill replicates and expands upon many of the breaches of union rights and of rights to freedom of association previously identified by the ILO. As the CFA has noted:



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6. *The Committee, when examining allegations concerning the infringement of trade union rights by one government, indicated that there existed a link of continuity between successive governments of the same State and, while a government cannot be held responsible for events which took place under a former government, it is clearly responsible for any continuing consequences which these events may have had since its accession to power.*

7. *Where a change of regime has taken place in a country, the new government should take all necessary steps to remedy any continuing effects which the events on which the complaint is based may have had since its accession to power, even though those events took place under its predecessor.<sup>1</sup>*

Unfortunately, the new Government is not seeking to remedy the infringements of freedom of association and the breaches of ILO conventions, but rather perpetuate and exacerbate them.

**Nature of breaches of freedom of association rights**

The *Fair Work Bill 2008* will ensure union rights and freedom of association principles will be contravened by enacting legislation in the following areas:

- provisions which give primacy to enterprise level agreements and which restrict the level at which bargaining can occur;
- provisions which limit the contents of agreements;
- provisions which give insufficient protection to unionised workers who take industrial action in support of their rights under the conventions;
- provisions imposing unfair limits on unions' right to organise;
- provisions which restrict the right to strike beyond the limits permitted by basic principles of freedom of association and by ILO conventions, including:
  - provisions which lift the protection of industrial action in support of:
    - multiple business agreements;
    - so-called 'pattern bargaining';
    - sympathy strikes;
    - matters that are not 'permitted';

<sup>1</sup> ILO, 'Compendium of rules applicable to the Governing Body of the International Labour Office', Geneva, February 2006, p40-41.

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- strike pay.
- provisions which prohibit industrial action in case of danger to the economy, including through the introduction of compulsory arbitration at the initiative of the Minister;
- significant penalties imposed for engaging in 'unprotected' industrial action; and
- provisions requiring secret ballots.

Further, at least two potential new breaches are introduced by the Bill, namely:

- the Bill's structure of requiring employers to by-pass unions and make and reach agreements directly with employees, even where a union exists at the workplace; and
- grave new restrictions on industrial action in situations of 'economic harm'.

The CEPU is one of Australia's biggest unions. The CEPU and its members regularly bargain for collective agreements and often seek to take lawful industrial action. The Bill will directly affect the rights to freedom of association of the CEPU and its members.

We have set out in the Attachment 1 further particulars of the complaint. Attachment 2 is the Bill as currently before Parliament.

## Urgency

There is currently a Senate inquiry into the legislation, due to report by 27 February 2009. The Government has indicated that it wishes to pass the legislation soon so that it has an operative date of 1 July 2009. We seek that the CFA investigate the proposed Bill as a matter of urgency so that any findings can be communicated to the Government prior to passage of the legislation and/or the dispute resolved before the Bill is enacted.

Accordingly, we request that the ILO communicate this complaint to the Australian Government as a matter of urgency. (We have ourselves sent a copy of this complaint to the Australian Government so that they are on notice and able to respond to the ILO in a timely manner.) We also seek that the ILO establish a process that will allow for the proper resolution of this complaint before the Bill becomes law. We note in this regard that the CFA is scheduled to meet in March and again in June of this year. At the least, we hope

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this complaint is noted and programmed for resolution at your next meeting.

## Conclusion

Since 1996, the ILO has made repeated observations about the infringement of union rights in Australia. Unions such as ours have endured many years of breaches of the fundamental principles of freedom of association.

The ILO has on many occasions put the new Government on notice as to how to protect freedom of association in Australia. The ILO has also offered to examine draft legislation to ensure it complies with international obligations. Instead of adopting this course of action, the new Government is intending to enact legislation that - in a matter of a few months - will continue to breach fundamental principles of freedom of association.

On behalf of the CEPU and other organizations of workers that may join in this complaint, we respectfully request that the ILO take urgent steps to help ensure that impending legislation does not further restrict trade union rights.

Whilst a referral to the CEACR may be an appropriate course at a later stage, we are conscious that the CEACR does not meet again until the end of 2009, by which time the proposed provisions are likely to be law. As the CFA has previously noted:

*30. When the Committee has had to deal with precise and detailed allegations regarding draft legislation, it has taken the view that the fact that such allegations relate to a text that does not have the force of law should not in itself prevent the Committee from expressing its opinion on the merits of the allegations made. The Committee has considered it desirable that, in such cases, the government and the complainant should be made aware of the Committee's point of view with regard to the proposed bill before it is enacted, since it is open to the government, on whose initiative such a matter depends, to make any amendments thereto.<sup>2</sup>*

Further, we note that it appears that the Australian Government has not sought the ILO's advice in drafting the *Fair Work Bill 2008* nor acceded to numerous requests for amendment made by the ILO, and our rights should not be infringed in circumstances where the Government appears to be intentionally turning a blind eye to the ILO. Adjournment of this complaint would not, in our respectful submission, be an appropriate course in a situation where fundamental freedoms are being infringed.

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<sup>2</sup> Ibid, pp 44-45.

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Previous CFA observations about proposed Australian legislation have proved extremely useful.<sup>3</sup> We are hopeful that timely observations by the ILO will ensure freedom of association is protected in Australia.

We look forward to your urgent response.

Yours faithfully

**ED HUSIC**  
National President  
CEPU

**DEAN MIGHELL**  
National Vice-President  
Electrical Division  
CEPU

cc. Mr. Kari Tapiola, Executive Director, Standards and Fundamental Principles and Rights at Work, ILO:  
[tapiola@ilo.org](mailto:tapiola@ilo.org)

Ms. Cleopatra Doumbia-Henry, Director International Labour Standards, ILO: [doumbia@ilo.org](mailto:doumbia@ilo.org)

Ms Karen Curtis, Deputy Director of the International Labour Standards Department, ILO: [curtis@ilo.org](mailto:curtis@ilo.org)

The Hon Julia Gillard, Deputy Prime Minister and Minister for Employment and Workplace Relations, Australia

Mr Jeff Lawrence, Secretary, Australian Council of Trade Unions

<sup>3</sup> See e.g. Complaint against the Government of Australia presented by the Australian Council of Trade Unions (ACTU) and supported by the Trade Unions International of Workers of the Building, Wood and Building Materials Industries (UITBB) Report No. 338, CFA Case No. 2326

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