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Where we are at?

- At the stage of policy formulation
- Very little hard law to draw upon
- Presentation focuses on proposed policies and speculates as to legal responses

A. Traditional focus of labour law

- Unequal relationship between employer and employee
- Protection of workers' rights
- Traditional Industrial Concerns
  - Rights to collective bargaining and freedom of association, industrial action, decent work
  - Wages, hours of work, safety, workers' compensation, superannuation, redundancy, termination and dismissal rights, security of employment, annual/sick/carers' leave, parental leave, discrimination at work etc.

B. Role of Unions

- Traditional role further industrial interests of their members
- However always lobbied for wider social change including environment
  - Australia introduced the 'Green Ban' to the world 1970s – BLF
  - Now 'Just Transitions'
    - Question as to legitimate role of unions
    - BLF deregistration case
C. Just transitions - United States

**'Just transition' what is it?** In 1970s

"Proposed that workers who lost their jobs because of employer pollution abuses should have the right to bring legal action against employers...and/or other compensation"

C. Just transitions - Canada

"Fundamentally unfair to require working people to absorb cost of environmental controls that benefit society as a whole...only answer link environmental reform with environmental justice...Income protection and job retraining should be provided for failure of employers to adapt"

C. Just transitions - UK and Aust.

- United Kingdom
  - "A green and fair future for a just transition to a carbon lean economy"
  - Builds on the United States and Canadian material
- Australia
  - ACTU promoting 'just transitions'
  - Global warming policy - March 08
  - Various other unions their own policies
  - Australian Workers' Union - AWU
  - Australian Manufacturing Workers' Union - AMWU

C. Just transitions - Australia

- The objective of Just Transition programs are to meet the needs of the communities and workers affected by the moves to minimise the environmental impacts of industry.
  - ACTU principles and policy on Global warming March 08

D. Climate Action fund - ETS

- Australian Workers' Union
  - Suggest to provide compensation to workers that lose jobs because companies go off-shore to other countries that do not have an emissions trading scheme
- AWU approach - Specifically rejected by Government White Paper ETS
- Prefer to compensate workers through Climate action fund - Chp 18 White Paper
- Government committed to assisting workers and communities - (no mention of 'just transition')

E. United Nations Environment Programme – Policy proposals

1. Green Clauses in enterprise/collective agreements,
2. Occupational Health & Safety Laws used to promote environmental standards in the workplace,
3. Strengthening of Corporate Social Responsibility companies invest in green jobs.
E1. Agreement-making and collective bargaining

- Incorporation of 'green clauses'
- Rights to information regarding impact of workplace activity on carbon reduction
- Consultation mechanisms between workers and employers to ensure participation
- Rights to 'just transitions' and training of workers

E1. Agreement – making and collective bargaining

- Fair Work Bill 2008 (Cth) – at the time of writing has not received assent but will pass
- S72(1)(a) – permitted matters 'must pertain to the employment relationship'
- Law is very inconsistent - incoherent
- Parties cannot bargain freely for social/environmental matters in their workplace agreements
- Submissions criticized heavily but government still retained
- Will hinder innovation
- Parties afraid to be creative may offend rule
- Restriction on content in agreements criticized by ILO

E1. Agreement – making and collective bargaining

- Content of agreements tied to industrial action provisions
- Matter must pertain to employment relationship to permit 'protected industrial action'
- Employers favoured the retention on restriction of content
  - Fears of returning to the BLF and the 'Green Bans'
  - 3 Billion AUD (1970s) lost by developers because of the strike action

E1. Agreement - Making and Collective Bargaining

- What about training?
- In Australia no legal obligation by employer to provide any training.
- Evidence suggests low investment in training
- Up to the individual to invest
- Need the Climate Action Fund to work!

E2. Occupational Health & Safety

- Strengthening the link between OHS and environmental concerns in the workplace
- Where areas intersect such as chemicals, hazardous materials
- What about where they do not intersect?
- Need a wholesale change of the legislation.
- UNEP do not propose this
E2. Occupational Health & Safety
- Structure of OHS laws and regulation useful starting point
- Focus on prevention, information and consultation with workers
- OHS representatives in the workplace can become environmental representatives
- Audits

E2. OHS through collective agreements
- Environmentally-conscious employers can be creative here
- Spain Michelin company have negotiated clause in their collective agreement to allow expanded rights to OHS that include assessing activities that have an impact on the environment.
- Conduct environmental audits

E3. Corporate Social Responsibility
- Voluntary initiatives taken up by companies
- Will promoting 'Green Jobs' be a focus of corporate governance in the future?
- Labour interests in CSR take a back seat
- If companies move off-shore bad publicity will it affect shareholder value?
- Likely shareholders are worried about dividends and price of shares
- If ETS and Green Jobs affect profits then shares will decrease in value.

CLOSING REMARKS
- We are at an exciting phase
- Workers can be involved in the solution to climate change through their labour
- Consultation and participation is the key
- Cannot just depend on governments to legislate process is slow and will lead to micro-regulation
- Australian Industrial Relations law should be reformed to allow parties unrestricted freedom to bargain for climate change/environment