Lambropoulos, Victoria 2009, Climate change and labour law, in Climate change @ work: creating the sustainable workplace, University of Sydney, Sydney, N.S.W.
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

- 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 (1970) lost by developers because of the strike action

E1. Agreement – making and collective bargaining

- Fair Work Bill 2008 (Cth) – at the time of writing has not received consent but will pass
- S72(i)(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

- 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