

**ACTU Indigenous Committee**  
**Draft Charter of Indigenous Employment Rights**  
**February 2007**

**Consultation Paper**

**Introduction**

The Australian economy is booming and unemployment sits at around 4.7%<sup>1</sup>. In spite of this, Indigenous unemployment is approximately 20.3%. Research has shown that since 1996, Indigenous unemployment rates have shown no real improvement (Hunter et.al, 2003).

In 2001, the estimated cost of the inequality in employment between Indigenous and non-Indigenous Australians was approximately 0.5% of Australia's GDP (ibid). This data shows that there is a clear economic case for increasing Indigenous employment.

In relation to the social case, the Royal Commission in to Aboriginal Deaths in Custody (1990, Chapter 10) found that:

*By every measure of economic status, Aboriginal people appear to be significantly disadvantaged. It is evident that this disadvantage is the legacy of discrimination and exclusion from the labour market. Aboriginal people have been historically denied access to the education which is often a pre-requisite to employment and, despite their considerable contribution to the development of agricultural and pastoral industries in Australia, relegated into the lowest occupational statuses within those industries.*

Additionally, access to paid employment means access to social and economic development, which in turn leads to improved social and economic circumstances. For example, the Western Australian Aboriginal Child Health Survey (Volume 4, Chapter 3, p 159) found that levels of parental education and employment directly correlate to the health and well-being outcomes of Indigenous children.

There are a range of issues which impact on Indigenous peoples' access to employment. These include low levels of education and training, proximity to employment and industry and the need to create workplaces which recognise and respect the rights of Indigenous people to operate within a cultural framework.

Historically, Indigenous people have been engaged in a continuous fight for their rights from the time of colonisation/invasion. In the mid to late 1900's, the struggle for rights covered a range of areas, including land rights and employment rights. In 1936 Torres Strait Islander maritime workers walked off the job for fair wages and conditions. In 1946 Aboriginal pastoral workers in the Pilbara region in Western Australia, supported by Unions, conducted what is still the longest strike in Australian history when they walked off the job, again for fair wages and conditions. In the same year, the Gurindji people walked off Wave Hill station, again, supported by unions, in protest about unfair wages and conditions. This walk-off lead by Vincent Lingiari and other Gurindji elders and stockmen, became the birth of the modern Aboriginal land rights movement.

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<sup>1</sup> Figures from ABS, October 2006

The campaign for Indigenous employment rights – especially rights to equal pay for equal work – continues today, with the campaign for the return of Stolen Wages. In 2006 the Senate Standing Committee on Legal and Constitutional Affairs conducted an inquiry into the issue of Indigenous Stolen Wages and reported that it had:

*... received compelling evidence that governments systematically withheld and mismanaged Indigenous wages and entitlements over decades. In addition, there is evidence of Indigenous people being underpaid or not paid at all for their work. These practices were implemented from the late 19th century onwards and, in some cases, were still in place in the 1980s. Indigenous people have been seriously disadvantaged by these practices across generations (p 4).*

With recent Federal Government reforms to the Community Development and Employment Program (CDEP) scheme (in which approximately 32 000 Indigenous people were counted as employed prior to the reforms) including the abolition of CDEP sites in rural and urban centres and replacement of these with additional Structured Training and Employment Program (STEP) brokers, it is crucial that a sound framework is established to both encourage and increase the employment outcomes of Indigenous Australians. It is also crucial that all stakeholders including unions and employers are working together to ensure an increase in Indigenous employment numbers.

This is particularly relevant in the context of the Federal Government's new Industrial Relations legislation, which requires people to sign off on individual contracts in the form of Australian Workplace Agreements (AWAs). Indeed the Federal Government's own research has shown that:

- Almost half (45%) of AWA individual contracts **abolish all of the award conditions** that the Federal Government spent \$55 million on TV advertising to claim would be 'protected by law'.
- A third of the AWA individual contracts registered under the new laws over a six month period provide **no pay rise** for the life of the contract - some for up to five years.
- **Award conditions were abolished from the vast majority of the AWA** individual contracts examined, including overtime pay (cut in 52% of AWAs), penalty rates (68%), shift loadings (76%), annual leave loading (59%), incentive payments and bonuses (70%), declared public holidays (22.5%), allowances for expenses, skills or disabilities (57%), rest breaks (30%).
- Staff at the Office of the Employment Advocate (OEA) believe that **more than one in four (27.8%) of the AWA individual contracts they examined may have broken the law** by undercutting one of the minimum legal employment conditions (ACTU 2007).

Already, organisations such as Aboriginal Hostels Limited (AHL), a federally funded, independent Aboriginal organisation has offered all of their staff individual contracts which have diminished their employment conditions. In addition, Aboriginal students in secondary schools in NSW were year asked to sign AWA in order to access school-based traineeships. Shalom College, an Indigenous Christian Secondary College in Queensland has imposed take it or leave it AWAs on its employees, in spite of the employees, through their union, seeking a collective agreement to govern their employment conditions for over 12 months.

Further to this, the Federal Government, through the Department of Employment and Workplace Relations (DEWR) indicated that it would encourage CDEPs and other organisations to 'embrace the Government's reforms' (in workplace relations).

With this in mind, the ACTU Indigenous committee has initiated the development of this *Charter of Indigenous Employment Rights*.

We hope that through a process of consultation the concepts identified in this document can be further expanded.

We recognise that in Australia, at least, discussions on issues such as Human Rights have been pushed to the background, with debates being further characterised by value-laden terms such as integration.

Further, we recognise that many organisations, both nationally and internationally, have undertaken processes which have kept the rights dialogue alive.

We acknowledge this work and seek to enhance it through this process.

One of the pieces of work which underpins the development of this Charter is the United Nations *Draft Declaration on the Rights of Indigenous Peoples*, others include the *ILO Conventions on Indigenous and Tribal Peoples Convention, (C169, 1989) and the Universal Declaration on Human Rights (1948)*. A reference list of companion documents can be found on the last page of this document.

We hope that, through this process, we can engage Indigenous peoples in a conversation around what their rights at work mean to them.

## **Purpose**

To engage Indigenous community organisations, unions and other civil society organisations in a dialogue about Indigenous rights to employment and Indigenous rights as employees.

## **Process**

The draft Charter for Indigenous Employment Rights will be consulted widely across Australia. It will give Indigenous employees and other interested groups an opportunity to discuss their successes and issues in relation to work.

Feedback will be collated and incorporated in to the document.

The Charter will be launched at the ACTU Indigenous Conference in Adelaide on the 6<sup>th</sup> June 2007.

## **Contact**

To provide feedback to the document, please contact Darcel Russell by email - [drussell@aeufederal.org.au](mailto:drussell@aeufederal.org.au) or phone (03) 9693 1800 or Marion Gaynor by email [mgaynor@atcu.asn.au](mailto:mgaynor@atcu.asn.au) or phone (03) 9664 7343.

**Australian Council of Trade Unions**

**Draft Charter**

**of**

**Indigenous Employment Rights**

## 1. The Right to Decent Work

*"Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."*  
(Universal Declaration of Human Rights, Paris 1948, art. 23)

### The Indigenous Australian Context

Indigenous Australians participate in the labour force at lower levels than non-Indigenous Australians and experience higher levels of unemployment. Australian Bureau of Statistics data shows that in 2005, the Indigenous unemployment rate was 16% (ABS, 2005b). Indigenous Australians, however, do want to work. Data from the 2001 census revealed that 78% of unemployed Indigenous people were looking for full time work and that Indigenous people were almost 3 times more likely to be unemployed in comparison to non-Indigenous people (ABS 2004).

There continues to be serious wage inequity between Indigenous and non-Indigenous people. Despite increases in income for both Indigenous and non-Indigenous peoples over the past 13 years, the average gross income of Indigenous people over 18 years was still 41% less than that of non-Indigenous people (\$394 per week compared to \$665 per week) (ABS 2005a).

Many people, particularly in remote communities, are working for Government departments, yet are employed under the Community Development and Employment Projects (CDEP) scheme. These include health workers, teacher aides, community police officers and people working for local governments/community councils. The consequences of these types of employment arrangements are that at the very least, under the CDEP-funded component of these positions, people are not being paid their leave and superannuation entitlements.

In addition to this, payments for CDEP work in other areas are still limited to welfare entitlements<sup>2</sup> and whilst people are considered to be working, their weekly income is still equivalent to that of a welfare payment (Daly, 2001, p. 2). Whilst CDEP reform is taking place, particularly in urban areas and large regional centres, those living in remote communities still struggle to find meaningful and long term work.

Underemployment (or those who would like to work more hours) is also a serious issue in Indigenous communities. The most recent data on this issue was taken from a sample in 1994, which shows that 19.5% of Indigenous females and 25.3% of Indigenous males stating that they would like to work more hours (Hunter, 2002). .

In relation to fair wages and conditions, research clearly shows that workers on Union collective agreements are better off than those on individual contracts. A recent study by Professor David Peetz for the Victorian Government (2007), found that 'wage increases have been higher under union agreements than under non-union agreements' (p viii).

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<sup>2</sup> CDEP participants forgo their entitlement to unemployment benefits to participate in the scheme, and are paid at a rate which is slightly higher to the unemployment benefit equivalent.

As Indigenous people are more likely to be casually employed, underemployed and underpaid, it is highly likely that they will be heavily impacted upon by the Workchoices legislation, although data is not yet available to support this contention.

#### **What Governments can do**

- Provide incentives for increasing Indigenous employment, including the exploration and implementation of strategies for regional and local models.
- Facilitate community/business partnerships resulting in jobs creation.
- Implement policies that increase Indigenous employment outcomes within Government structures.
- Provide funding tied to real permanent long term employment outcomes.
- Ensure Indigenous people are actively involved in the development of policy.
- Monitor progress in closing the gap between the pay of Indigenous and non-Indigenous Australians.
- Establish Aboriginal and Torres Strait Islander Workplace Services Units in government departments.
- Assist companies to develop and implement Indigenous employment strategies.
- Collect and monitor data on Indigenous labour force participation and wage rates.

#### **What Employers can do**

- Create long term permanent positions.
- Develop plans for transitioning people from government funded positions to organisational funded positions.
- Actively engage Indigenous people in the development and creation of strategies to increase Indigenous employment.

#### **What Unions can do**

- Negotiate Indigenous employment targets in enterprise bargaining agreements.
- Recruit and mobilise Indigenous workers.
- Ensure Indigenous workers know about their rights at work.
- Monitor Indigenous employment conditions to ensure enforcement of correct conditions.

## **2. The Right to Cultural Recognition and Respect at Work**

*The social, cultural, religious and spiritual values and practices of Indigenous peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals. The integrity of the values, practices and institutions of Indigenous peoples shall be respected. Policies aimed at mitigating the difficulties experienced by Indigenous peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.* (Article 5 ILO Convention 169 Indigenous and Tribal Peoples Convention, 1989).

### **The Indigenous Australian Context**

Indigenous people like all other people, live, work and socialise within a cultural context. In addition to this, the Indigenous Australian experience is one that is characterised by diversity, rather than homogeneity. In 2001, 30% of Australia's Indigenous peoples lived in major cities, 43% in regional areas and 27% in remote areas (AIHW 2005 Chapter 2, p. 4).

Whilst the experience of some Indigenous families is that of intergenerational dislocation from the formal workforce, there are also Indigenous individuals and families whose life experience has been characterised by intergenerational engagement in the workforce.

In relation to the current political climate, recent policy debates have been characterised by a shift in policy and discussion away from the rights agenda and back to policies of assimilation, which were rolled out in the 1950's.

In both contexts, there is an urgent need to "promote the inherent rights of Indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories, philosophies, especially their rights to lands, resources and territories" (United Nations, 2006).

Indigenous cultural values can and should be protected at work. Ensuring that the workplace is a culturally safe environment, which establishes procedures for mentoring and support of staff working in a cross-cultural environment will foster and grow cross-cultural communication and understanding.

### **What Governments can do**

- Ensure policies reflect culturally appropriate outcomes.
- Promote cultural recognition
- Develop education programs for employers and employees about Indigenous rights to cultural recognition at work.

### **What Employers can do**

- Develop and implement strategies, such as cross-cultural awareness training in order to create culturally safe work environments.
- Create mechanisms which recognise and value Indigenous peoples in the workplace.
- Develop processes based on procedural fairness in order to deal with inter and cross-cultural disputes.

### **What Unions can do**

- Establish benchmarks for cultural leave.
- Develop and implement strategies for engaging Indigenous members in EBA processes, particularly in the development of Logs of Claims.
- negotiate for inclusion of cultural leave provisions in enterprise agreements
- Develop and implement cross cultural dispute mechanisms

### **3. The Right to Freedom from Discrimination at Work**

*Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity. **United Nations Draft Declaration on the Rights of Indigenous Peoples***

#### **The Indigenous Australian Context**

Indigenous peoples experience from high levels of systemic or institutional discrimination. This is evidenced by a range of data which shows how discrimination impact upon social and economic outcomes for Indigenous peoples. Areas where Indigenous people are likely to face discrimination include: education, health, housing, criminal (including higher levels of incarceration) and legal.

There is a direct correlation between these issues and employment outcomes, for example, those with lower levels of education impact on employment outcomes, including ability to move to higher levels of employment; poor health outcomes have an impact on people's ability to work, and higher morbidity rates impact on people's ability to generate high levels of superannuation.

Because the life expectancy rate of Indigenous peoples is lower than the age that people are able to access their superannuation contributions, Indigenous people in the workforce are statistically more likely to die than they are to retire. Whilst there is no official retirement age for Australians, men qualify for the aged pension when they are 65 and women, qualify depending on their date of birth (women born after the 1<sup>st</sup> Jan 1949 qualify at age 65). However, in the Northern Territory, Western Australia, Queensland and South Australia 75% of Indigenous males and 65% of Indigenous females die before they are 65. In contrast to this, 26% of non-Indigenous males and 16% of females died before the age of 65 (AIHW 2005, p. 149).

Housing availability and access to decent housing has a significant impact on people's employment prospects. Issues such as overcrowding have practical impacts such as being able to access a shower in order to get ready for work.

In addition to this, Indigenous people are also subject to personal discrimination in the workplace.

#### **What Governments can do**

- Develop and implement strategies to prevent any discrimination between workers.
- Develop and implement strategies to better facilitate entry to employment, including skilled employment, as well as measures for promotion and advancement.
- Conduct research on and implement strategies to ensure equal pay for work of equal value.
- Provide medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing.
- Facilitate and enable through legislation the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations (Article 20 Convention 169 ILO, 1989).

**What Employers can do**

- Develop, implement and enforce policies which deal with issues of discrimination.
- Where appropriate, provide access to housing for Indigenous employees.
- Facilitate the right to freedom of association in relation to trade union organising and activities.
- Ensure that Indigenous employees have the same right to access and participate in training and professional development, leading to promotional opportunities.

**What Unions can do**

- Develop specific recruitment, retention and organising strategy for Indigenous workers.
- Employ Indigenous people to organise Indigenous workers.
- Engage with Indigenous communities and workplaces on anti-discrimination issues.
- Develop strategies to address discrimination issues in relation to union responses.

## 4. The Right to Development

*Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions (Article 23 United Nations Draft Declaration on the Rights of Indigenous Peoples).*

### The Indigenous Australian Context

In the Charles Perkins Memorial Lecture, 2002, respected Aboriginal academic and leader, Marcia Langton, explored the concept of underdevelopment (originally introduced by German economic historian and sociologist Andre Gunder Frank) and the role played by institutions, both Government and non-Government, in entrenching Indigenous disadvantage. In doing so, she called for a “New Deal” for Indigenous Australians, which would require a substantial investment “at least several times the annual budget in Aboriginal affairs, targeted towards industry research and development, genuine labour market strategies, employment, education and training initiatives, and infrastructure investment would substantially transform the poverty trap of Aboriginal dependence on government transfers, CDEP and social security” (Langton, 2002).

Langton suggests a new collaboration between the government, industry, union and Indigenous sectors to develop a strategy to underpin levels of investment, and that such a strategy would, necessarily, be grounded in an understanding of the rights of Indigenous peoples to their cultures and their homelands (Langton, 2002). In putting forward this proposition, Langton stated that:

*Economic justice is the new frontier in Aboriginal and settler relations. It is more than what the present government means by ‘practical reconciliation’. It involves imagining Aboriginal people participating in Australian economic life and, for their efforts, living as well as other Australians do for the same effort (Langton, 2002).*

There are a range of topical issues being debated today in relation to the development in Indigenous communities, including issues such as private home ownership and the impact of such schemes on various land rights legislation. Indigenous people, particularly those who will be impacted upon directly by the implementation of policies need to be engaged in determining and implementing their development priorities.

**(Need more info in here on social, community and personal development).**

### What Governments can do

- Actively engage Indigenous people in determining and implementing their development priorities.
- Provide proper resources to support Indigenous development priorities.

### What Employers can do

- Develop constructive partnerships with Indigenous communities, driven by Indigenous community priority.

- Provide resources for community as well as economic development priorities.

**What Unions can do**

- Work in partnership with stakeholders to facilitate the development and implementation of priorities.
- Provide training to Indigenous workers to facilitate their understanding of democratic, human and trade union rights.
- Facilitate and support the development of international networks which relate to Indigenous development.

## **5. The Right to Appropriate Education and Training including Vocational Education and Training**

*Education programmes and services for Indigenous peoples shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations. The competent authority shall ensure the training of Indigenous peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate. In addition, governments shall recognise the right of Indigenous peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with Indigenous peoples. Appropriate resources shall be provided for this. (Article 27 ILO Convention 169 Indigenous and Tribal Peoples Convention, 1989).*

### **The Indigenous Australian Context**

Research shows (find ref) that if education and training systems fail Indigenous people, this correlates to a subsequent rise in unemployment rates and thus leads to the further entrenchment of poverty.

Whilst Indigenous people participate in VET at levels commensurate to the general population, they commence at lower levels of the qualification scale.

Further to this, Indigenous participation in the University sector has suffered a decline since 1996, with (XXX stats).

In many instances, Indigenous people have a range of work, life and study skills, which for a variety of reasons have not necessarily translated in to the attainment of formal educational qualifications.

Aside from issues with outcomes and participation, the development and implementation of education and training programs and curricula which recognise Indigenous knowledges and cultural contexts are imperative. This also requires the development and implementation of strategies for increasing the numbers of Indigenous people working as teachers and educators across all sectors of education.

### **What Governments can do**

- Provide access to appropriate education and training infrastructure.
- Facilitate the development and uptake of a Recognition of Prior Learning strategy for Indigenous workers.
- Develop and implement strategies to increase the numbers of Indigenous teachers and education workers across all sectors of education.

### **What Employers can do**

- Develop and implement strategies to promote and support and provide workplace education and training opportunities.

- Facilitate the introduction of Recognition of Prior Learning processes for Indigenous workers.

**What Unions can do**

- Negotiate access for Indigenous workers to workplace training provisions in to employment/industrial agreements.
- Work in partnership with other stakeholders to develop plans to increase the number of Indigenous people employed as teachers and education workers and monitor the implementation of such plans.

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## **Companion Documents**

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International Labour Organisation (ILO) *Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries* Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its seventy-sixth session