



PRIME MINISTER

FOR MEDIA

13 APRIL 1981

The following telex has been sent to the Queensland Premier by the Prime Minister this morning.

The Hon. Sir Joh Bjelke-Petersen, KCMG
Premier of Queensland
Executive Building
100 George Street
BRISBANE QLD 4000

My dear Premier

I am writing to inform you of the acute concern of my Government at your Government's handling of the industrial dispute in the electricity industry in your State.

Although I appreciate the great importance of ensuring a reliable supply of electricity, I do not believe it is necessary to adopt the approach taken by your Government in order to achieve that end. I also note that your Government's response has extended beyond the circumstances of that dispute to impose a number of new legislative restrictions on union activity.

Indeed, I am concerned that, far from resolving the electricity industry dispute, and putting industrial relations in your State on a sounder basis, your Government's actions have raised the distinct possibility of nation-wide disputation and stoppages, and may therefore prove to be quite counterproductive. Such developments would put at risk the very substantial gains we have made as a nation in the last two years in terms of economic recovery, national unity and enhanced international recognition.

Although I respect the right of a State Government to conduct its own affairs, the Commonwealth cannot ignore actions which are likely to have severe effects, not only on Queensland's economy, but also on that of our nation. Your Government's actions, which now threaten

to plunge Queensland into industrial chaos, are also likely to seriously undermine our international standing with overseas investors and trading partners, after a period in which there have been substantial reductions in the level of industrial disputation in Australia.

Your Government's approach to this matter also puts at risk both the achievement of and the gains resulting from the greater sense of national cohesion and unity that we have realised in Australia over the past two years. Resort to confrontationalist policies by Governments in this country is not without precedent, but there is little evidence that such policies have succeeded in reducing the level of industrial disputation. On the contrary, it has been the adoption of consultative procedures leading to agreed policies, such as are encompassed in the Prices and Incomes Accord, which have been successful in reducing industrial disputation.

I strongly recommend, therefore, that for the above reasons, you reconsider your approach.

I therefore propose that discussions be held between our two Governments and the ACTU, with a view to reaching a basis of settlement of the re-employment issue. In that regard, it is my understanding that the unions could be prepared to enter into a dispute settlement procedure for the electricity industry, and that they would be prepared to consider other procedures which would improve industrial relations in this industry.

I strongly urge you to agree to such discussions. They provide a constructive means by which the possibility of severe damage to the nation, and your State in particular, could be avoided.

At the same time you should be in no doubt as to the depth of my Government's concern at the passage of legislation by your Government which does not take account of rights and processes which have long been accepted in Australia, and which are in clear breach of a number of international treaties.

In my Government's view, the use of legislation to override conditions of employment established by an independent tribunal, the limitations on the jurisdiction and powers of industrial tribunals, the lack of review on the merits of decisions by the Electricity Authorities Industrial Causes Tribunal or of sanctions imposed for strike activity, the automatic termination of employment in certain circumstances, the provisions purporting to prohibit "obstruction" which can unreasonably restrict and penalise peaceful

protesting, and the changes to evidentiary standards in legal proceedings, are just some examples of a legislative approach by your government which is unacceptable by Australian democratic standards.

As regards the contravention of international treaties, this occurs through breaches of ILO Conventions 29, 87, 98 and 105, the International Covenant of Civil and Political Rights, and the International Covenant of Economic, Social and Cultural Rights. All of these Conventions and Covenants have been ratified by this country. Details of these breaches are contained in the attachments to this letter. These breaches occurred in the Electricity (Continuity of Supply) Act 1985, the Electricity Authorities (Industrial Causes) Act 1985 and the Industrial Conciliation and Arbitration Amendment Act 1985.

As you know, ratification of ILO Conventions is only undertaken when the law and practice of all States and the Commonwealth are in conformity with them and we have clear obligations to ensure that such law and practice continue to conform with the requirements of these treaties. It is also our national responsibility to proceed towards full compliance with the International Covenants mentioned above.

I look forward to your co-operation and to your early agreement to participate in the proposed discussions.

I look forward to your reply.

Yours sincerely

R.J.L. Hawke

PREACHES BY QUEENSLAND INDUSTRIAL LEGISLATION OF INTERNATIONAL
TREATIES TO WHICH AUSTRALIA IS A PARTY

Forced Labour Convention, 1930 (ILO Convention No. 29)

Abolition of Forced Labour Convention, 1957 (ILO Convention No. 105)

International Covenant on Civil and Political Rights

- . Under section 3 of the Electricity (Continuity of Supply) Act 1985, the Electricity Commissioner is given an extremely wide power to direct any person whom he considers capable of carrying out the necessary work, to perform work to provide, maintain or restore a supply of electricity.
- . Under section 4 of the Act, employees of the Queensland Electricity Commission or of an Electricity Board are liable to a penalty for non-compliance with such a direction. While it appears that no penalty attaches to non-compliance by other persons, they may understandably feel under the menace of a penalty, at least until there is a judicial determination on the matter.
- . These provisions are too wide to be permissible under ILO Convention No. 29 which requires the suppression of the use of forced or compulsory labour. Although some exceptions are permitted under the Convention, the legislation is not confined to the circumstances covered by the permissible exceptions.
- . The power to direct may be exercised, even when no real emergency exists, to require non-employees to perform work, or to require employees to perform work outside the normal scope of their employment.

- . To the extent that the legislation does enable the power to be exercised in these ways, it authorises 'forced or compulsory labour' contrary to ILO Convention No. 29 and the existence of the legislation constitutes a breach of that Convention.
- . Moreover, the power is wide enough to authorise forced or compulsory labour of kinds specified in ILO Convention No. 105. Among other things, the Convention prohibits the use of forced or compulsory labour as a means of labour discipline or as a punishment for having participated in strikes. To that extent, the existence of the legislation is in breach of that Convention.
- . Article 8.3 of the International Covenant on Civil and Political Rights also proscribes forced or compulsory labour. Although provision is made in Article 8.3 for certain exceptions, the power of direction mentioned above is not limited to circumstances falling within those exceptions. To the extent that the legislation exceeds the scope permissible under Article 8.3, its existence constitutes a breach of that provision.

Freedom of Association and Protection of the Right to Organise
Convention, 1948 (ILO Convention No. 87)

International Covenant on Economic, Social and Cultural Rights

- . Under section 7 of the Electricity (Continuity of Supply) Act 1985, there is effectively a prohibition on strike activity in the electricity industry. In addition, the Electricity Authorities Industrial Causes Act 1985 makes participation in a relevant strike an 'illegal' act and imposes a duty to refrain from participating in certain strikes. Employees participating in a 'strike' (as defined) in the electricity industry are subject to an automatic loss of pay, and, at the employer's option, to dismissal or suspension without pay.

- . ILO Convention No. 87 guarantees the right of workers to further and defend their occupational interests. The Freedom of Association Committee of the Governing Body of the ILO ('the Committee') has said on a number of occasions that the right to strike is a legitimate means of exercising this right.

- . The Committee has also recognised that the right to strike may be restricted or prohibited in the civil service or in essential services because a strike there could cause serious hardship to the community. However, the Committee has stated that where there is such a restriction it should be accompanied by adequate, impartial and speedy conciliation and arbitration procedures in which the parties can participate at every stage and in which awards are binding in all cases on both parties. These awards, once made, should be fully and promptly implemented.

- . It may be that the Electricity Authorities Industrial Causes Tribunal established by the Electricity Authorities Industrial Causes Act 1985 is able to employ such conciliation and arbitration procedures in relation to the matters coming within its jurisdiction. However, that tribunal has no jurisdiction to relieve employees of the sanctions referred to above. Moreover, there is no court or other body independent of the employer, the Minister or the Electricity Commissioner, as the case may be, who can determine whether an employee on whom sanctions have been imposed has, in fact, participated in a relevant strike [see ss. 28(4) and 29(4) of the Electricity Authorities Industrial Causes Act 1985 which oust the jurisdiction of the courts].

- . These elements of the State legislation do not comply with the rights protected under the provisions of ILO Convention No. 87. Furthermore, the lack of provision for resort to a court or other independent body in relation to the imposition

of sanctions conflicts with Article 7 of the International Covenant on Economic, Social and Cultural Rights which requires the provision of 'just and favourable conditions of work'.

Another breach of ILO Convention No. 87 occurs by virtue of the new provisions enacted in the Industrial Conciliation and Arbitration Act Amendment Act 1985 relating to the cancellation and suspension of the registration of a union. There is insufficient scope for consideration by an independent tribunal of the substance of a case against a union in relation to the grounds for cancellation or suspension.

Right to Organise and Collective Bargaining Convention, 1949
(ILO Convention No. 98)

The existence of ss. 3 and 4 of the Electricity (Continuity of Supply) Act 1985, which respectively confer powers that extend to the giving of directions to union members as such, and impose penalties for non-compliance, constitutes a breach of this ILO Convention.

Other Comments: The list given above does not purport to be exhaustive. Further Commonwealth examination may disclose other breaches. Moreover, even where the existence of legislation itself is not a breach, the exercise of powers or the taking of other action under the legislation would need to be examined to consider whether it constituted a breach of the international obligations mentioned above or of any other international obligations.