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▶▶ Unions distancing themselves from industrial action under Work Choices

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Unions have responded to Work Choices' sanctions against industrial action with a three-pronged strategy: making themselves a small target, protecting their assets, and outsourcing industrial action to their members and supporters, according to Melbourne industrial barrister [Stuart Wood](#).

In a paper presented to a private AMMA briefing last week, he says that as a result of Work Choices, its penalty regime and the moves by regulators (the OWS, ABCC and ACCC) to enforce the law, unions have shifted their focus to one set by the ACTU: "Namely to try to achieve change through political means, via the media, parliaments and to a lesser extent the courts."

"Unlawful behaviour has remained, but it is not as frequent, and it is clear that the unions are trying to distance themselves from egregious breaches of the law", he said.

He says union pickets are no longer the "weapons of choice" and that when they are held, unions try to divorce themselves and their members from them.

Wood says unions are using three strategies:

1. **The small target strategy** - under which the industrial agenda is subsumed by the political one, and the ACTU is spending heavily on advertising and marginal seats campaigns. "The political campaign is so ubiquitous, that barely a day goes by without some story, critical of the reforms, appearing in the media", he says. The need to maintain a positive image of unions is paramount: "Clearly unlawful industrial action behaviour is not to mess up a campaign about 'extreme' industrial laws", he said.
2. **The asset protection strategy** - which is aimed at ensuring no union goes the same way as the AFAP after the 1989 pilots' dispute. The spectre of big damages claims "now looms large" after the removal of the former s166A of the old Workplace Relations Act, while large penalties are available under Work Choices and the BCII Act, with its "enthusiastic enforcers", the ACCC and the ABCC. Wood says the asset protection strategy will in the longer term limit the industrial viability of unions, but it appears to be designed to get them through to the next election.
3. **The outsourcing strategy** - under which unions outsource industrial action to friendly third parties and "divorce" their actions from those of their members.

Wood says unions are using members as "human shields" to help protect union assets, while this also assists the small target strategy. But he says that if regulators such as the ABCC (with its "Perth 107" case) and the ACCC are prepared to call unions' bluff and prosecute, unions will have to move away from "exposing their members as human shields", and they will then start outsourcing industrial action to "community pickets". Outsourcing has advantages including protecting union assets and union leadership from risk, says Wood.

Community pickets are not new - they have been used for at least 20 years, according to Wood. Contemporary examples of using them include the 1998 waterfront dispute and the 2002 Orbst gas plant dispute, he said.

But they have since become ubiquitous, especially since the advent of Work Choices.

Wood says the best example of the community picket strategy can be seen on the [Union Solidarity](#) website. He says Union Solidarity has claimed victory in industrial disputes at Finlay

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Wood - who directly or indirectly advised the employer in each of those disputes - says he is aware of only one - involving Australia Post - in which the Union Solidarity approach has failed.

He says in each dispute, Union Solidarity has organised an unlawful picket to stop people and material getting in and out of the site and relied on "well known police reluctance to enforce the law" and the difficulties and delays involved in legal responses to unidentified picketers who constantly turn over. Wood says Union Solidarity claims that as a result of the picketing, the employers have accepted the unions' demands in all cases.

Wood says the overall concept used by the picketers "makes a great deal of strategic sense", as long as no links can be established to unions.

"It has some similarities to a guerilla campaign. Provided the guerilla base and the assets of the group are hidden, an effective response to such guerilla attack is difficult".

Wood expects the Union Solidarity approach to spread from its heartland in Victoria (and to a lesser extent Western Australia) to other states. He warns employers thinking of making major workplace change that they need to plan carefully to counter the strategy. Those who have faced the solidarity campaigns since Work Choices didn't see them coming, he said.

[Outsourcing industrial action, by Stuart Wood, Latham Chambers, March 2007](#)

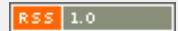
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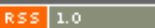
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