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**South Coast Labour Council Report on The Exposure of Australian Workers to International Criminal Court Proceedings Against Combatants in Gaza Conflict and Related Issues.**

**A. Introduction**

The South Coast Labour Council is the peak trade union body covering workers and industries in 25 unions from Helensburgh, south of Sydney through to the Victorian border including the premier steel and manufacturing regions of the Illawarra and Shoalhaven.

On the 29<sup>th</sup> of May 2024 the SCLC initiated and authorised a process to assess the exposure of Illawarra industries and workers to legal, moral and reputational risks associated with the manufacture and sale of arms, materials and components to combatants in the Gaza conflict that are subject to current proceedings in the International Criminal Court (ICC) and International Court of Justice (ICJ).

The findings will be reported back to affiliates, workers and community stakeholders. The principal methods for auditing links to the Israeli defence establishment has been desktop research and information supplied by local workers and contacts, statements and documents on the public record by defence industry corporations and other sources, Ai driven interrogation of legal databases and advice from international law experts on earlier drafts.

**\*\*Important\*\*** This project is not intended to be and should not be relied upon as legal advice to individual workers and their unions in any specific case, context or workplace. This paper's sole and clear objective is to probe the nature and reasons for possible exposure of regional industries and workers to these international instruments and to promote awareness about these jurisdictions and the severity and implications of current proceedings in relation to alleged war crimes and atrocities in the Occupied Palestinian Territories and Israel.

## **B. Defence Industries in the Illawarra**

### **1. Overview: Historical Context & Industrial Development**

The region is a hub for heavy industry, particularly steel manufacturing. BlueScope Steel's Port Kembla facility is Australia's largest steel production site, supplying materials crucial for defence applications. The local industry has historically adapted to meet military needs, transitioning from civilian production to munitions and military equipment during wartime.

Today, the Illawarra and Shoalhaven regions are considered significant players in the Australian defence sector. The [Illawarra Shoalhaven Defence Network](#) for instance, fosters collaboration among government, industry, and educational institutions to enhance the region's capabilities in defence technology and services. More broadly, the [10-year Defence Industry Strategy](#) outlines strategic focus areas to expand the region's role in the national defence landscape.

### **2. Strategic Importance**

The Illawarra and Shoalhaven regions are strategically positioned between Sydney and Canberra, enhancing their appeal for defence investments. The local workforce is skilled, particularly in heavy industry, making it a prime location for future defence capabilities. Recent government strategies emphasize the importance of maintaining a robust domestic supply chain to support the Australian Defence Force, especially in light of global disruptions experienced during the COVID-19 pandemic. Overall, the Illawarra and Shoalhaven regions have evolved from historical military innovations to an expanding modern defence industrial base, contributing significantly to Australia's military infrastructure and industrial supply chain.

### **3. Key Facilities**

*HMAS Albatross:* Located in Nowra, this naval air station is vital for naval aviation, providing maintenance and support for aircraft, including the MH-60R Seahawk helicopters. It employs over 200 highly skilled workers and is integral to Australia's naval operations.

*Research and Development:* The University of Wollongong plays a central role in defence innovation, hosting the [Defence Materials Technology Centre](#), which collaborates with local industries and some of the world's largest arms manufacturers to develop advanced materials and technologies for defence applications.

*Local Companies:* Firms such as [Bisalloy Steels](#) produce specialized armoured steel used in various military vehicles and submarines, underscoring the region's significant role in the defence supply chain which begins with steel produced at *BlueScope*.

### **4. Relevant Activities, Relationships and Exposure Risks**

#### **4.1 Bisalloy Steels**

- In 2018, Israel-based Rafael Advanced Defence Systems and Australia's Bisalloy Steels signed a [\\$900,000 contract](#) for Bisalloy to supply BISALLOY® Armour steel for use in Rafael's globally-deployed add-on armour range for Armoured Fighting Vehicles (AFVs).
- In 2017, Israel was already the [largest export market](#) for BISALLOY® Armour grade steel produced by Bisalloy.
- Bisalloy Steels has provided military-grade steel for *Plasan Re'em*, an Israeli company that makes armoured cars used by the Israeli military and armed settler militias in occupied Palestine [“based on years of close collaboration”](#) between the 2 companies.

The available evidence suggests that Bisalloy Steel has had a significant trade relationship with Israeli defence companies such as Rafael and Plasan Re'em, supplying them with specialized armour steel for military vehicles. There is no indication from the company that this trade has ceased despite warnings from the ICJ, UN and warrants sought by the ICC prosecutor for the Israeli Prime Minister and Defence Minister regarding alleged war crimes and crimes against humanity. It is not the purpose of this paper or the role of the Council to determine whether Bisalloy Steels is

aiding and abetting alleged war criminals. It is, however, safe to conclude that their trade with Israel is exposing them, their directors, and potentially their employees and their supply chains to possible action in these jurisdictions. The basis of this conclusion is contained in the discussion in the following section of this report.

#### 4.2 University of Wollongong (UOW) & Defence Materials Technology Centre (DMTC)

##### **Thales**

- UOW has ongoing [collaborations with Thales](#), which is one of the world's largest arms companies and arms manufacturers, producing military drones, armoured vehicles, missile systems and other defence systems, many of which are used by the IDF.
- The partnership has facilitated significant research projects, particularly in materials engineering and defence technologies.

##### **Elbit Systems**

- Elbit Systems is the company which produces the Hermes 450 drone.
- The Thales-Elbit partnership involves a subsidiary company UAV Tactical Systems (U-TacS), which makes 'killer drones'. They develop drones for the global market and have reportedly used them in operations in the Occupied Palestinian Territories.

##### **BAE**

- BAE Systems makes components for the F-35 fighter jet. F-35s have been described as the "most lethal...fighter aircraft ever built" and are being deployed in strikes on Gaza.
- BAE Systems supplies munitions, missile launching kits, and armoured vehicles and BAE technologies are also integrated into Israel's main weapon systems, including drones and warships.

##### **BlueScope, Bisalloy, BAE and the Defence Science and Technology Group**

- BlueScope has collaborated with the UOW and Defence Science and Technology Group (DSTG) to produce an Australian made steel with "enhanced blast resistance" and partners with Bisalloy, to whom they supply steel.
- [BlueScope also partners with BAE](#). According to *Business Leaders*:  
*"BlueScope has established itself as a one stop shop for BAE Systems, providing extensive project management capability to ensure they can source all of the steel and aluminium required for their defence projects. This includes manufacturing, supply chain solutions and product storage." And...*  
*"The culmination of a strong history of collaboration between BlueScope, local industry, primes and the UoW has ultimately led to BlueScope Steel's Advanced Steel Manufacturing Precinct around the Port Kembla steelworks."*

Overall, the Illawarra and Shoalhaven Defence Industries '[ecosystem](#)' is a complicated web of collaboration and cooperation between some of the world's leading arms dealers, developers and regionally based manufacturers, research centres and other industrialists. Whilst links to the Israeli defence establishment are apparent, the levels of engagement with and importance of the items that are potentially responsible for alleged war crimes in the Occupied Palestinian territories vary amongst this group. What is also apparent is that information related to these activities is being withheld with websites suddenly becoming inaccessible and in the case of Bisalloy Steels, refusing to confirm or clarify the current status of its relationships with the Israeli military industrial complex even though it had made earlier public statements identifying Israel as its "biggest customer". It is difficult to see how the lack of transparency from the defence establishment and ambiguity in the Federal Government's declaration that "weapons" have not been traded with Israel for the last 5 years, helps Australia uphold international humanitarian law.

## **C. The ICC and Potential Exposure of Australian Industry and Workers - Questions and Answers**

### **1. What is the International Criminal Court and what is Australia's relationship with this body?**

[The International Criminal Court](#) (ICC) is the first permanent international tribunal established to prosecute individuals for serious crimes of international concern, including genocide, war crimes, and crimes against humanity. It was created by the [Rome Statute](#), which entered into force on July 1, 2002, and Australia became a state party to this treaty on September 1, 2002. The ICC is based in The Hague, Netherlands, and operates as a court of last resort, meaning it only intervenes when national courts are unwilling or unable to prosecute these serious crimes effectively.

#### **Australia's Relationship with the ICC**

Australia has been a strong supporter of the ICC since its inception. The country played a significant role in the development of the Rome Statute and was among the early signatories. As a state party, Australia is obligated to cooperate with the ICC, which includes assisting with investigations and prosecutions. This cooperation is facilitated through the [International Criminal Court Act 2002](#), which establishes mechanisms for compliance with the Rome Statute, including provisions for the arrest and surrender of suspects. Australia actively participates in the Assembly of States Parties, the ICC's management body, which meets annually to set policies and elect key officials like judges and the prosecutor. The Australian government also provides financial support to the ICC, contributing to its annual budget and various initiatives aimed at enhancing the court's effectiveness.

Significantly this court acts only when a state is unable or unwilling to prosecute, a situation that has not applied in Australia up to this point. Overall, Australia's engagement with the ICC reflects its commitment to international justice and accountability for serious crimes, while also navigating its domestic legal processes such as the allegations against its own military personnel. The current and likely further proceedings in relation to the Occupied Palestinian Territories and Israel, however, may test that relationship.

### **2. What is the International Court of Justice (ICJ)?**

The [International Court of Justice](#) (ICJ) is the principal judicial organ of the United Nations, established in 1945. Its main functions are:

- To settle disputes between states
- To give advisory opinions on legal questions referred to it by authorized international organs and agencies
- The ICJ is composed of 15 judges who are elected to 9-year terms by the UN General Assembly and Security Council. It is located in The Hague, Netherlands.

### **3. How does the ICJ differ from the International Criminal Court (ICC)?**

The key differences between the ICJ and ICC are:

#### *Jurisdiction*

- The ICJ settles disputes between states, while the ICC prosecutes individuals for international crimes.
- The ICJ can only hear cases when requested by one or more states, while the ICC can launch investigations and prosecute individuals on its own initiative in certain circumstances.

### *Membership*

- All 193 UN member states are automatically parties to the ICJ Statute, while the ICC has 123 state parties to its Rome Statute.
- Non-ICC member states can accept the court's jurisdiction on an ad hoc basis, but this is not possible for the ICJ.

### *Applicable law*

- The ICJ applies international treaties and conventions in force, international custom, general principles of law, and judicial decisions.
- The ICC applies its founding treaty, the *Rome Statute*, which defines the crimes within its jurisdiction.

### *Enforcement*

- ICJ judgments are binding, but it has no means to enforce them directly. Compliance depends on the good faith of states.
- The ICC has no police force of its own. It relies on states to enforce its arrest warrants and transfer suspects to the court.

In summary, the ICJ is a civil court that settles disputes between states, while the ICC is a criminal court that prosecutes individuals for international crimes like genocide, war crimes and crimes against humanity. Both play important but distinct roles in the international justice system.

## **4. How does the ICC and the [International Court Act 2002](#) impact on defence industry corporations and their workers and what are the potential consequences if they ignore direct warnings from the ICC and UN to stop trading with suspected war criminals and those allegedly committing crimes against humanity?**

Australia's ratification of the Rome Statute and implementation of the International Criminal Court Act 2002 has [significant implications](#) for directors, industrialists, and their workers who ignore UN warnings about trading with suspected war criminals or those committing crimes against humanity:

*Potential criminal liability:* The International Criminal Court Act 2002 establishes mechanisms in Australian law to prosecute individuals for aiding, abetting, or facilitating serious international crimes such as genocide, crimes against humanity, and war crimes. This means that Australian citizens, including business leaders and workers, could potentially face criminal charges if they knowingly assist or facilitate these serious international crimes.

*Expanded jurisdiction:* The Act allows Australia to bring to justice any person who has committed such crimes, even if the crimes occurred outside of Australia. This expanded jurisdiction increases the risk for those engaging in business with suspected war criminals or human rights violators.

*Complementarity principle:* While the International Criminal Court (ICC) operates as a court of last resort, Australia has an obligation to investigate and prosecute allegations that its nationals have committed crimes within the ICC's jurisdiction. This means that Australian authorities would likely investigate and potentially prosecute cases before they reach the ICC.

*Corporate responsibility:* Directors and industrialists have a heightened responsibility to ensure their companies are not complicit in international crimes. Ignoring direct UN warnings could be seen as wilful negligence or even intentional facilitation of crimes.

*Due diligence requirements:* The implementation of the ICC Act likely increases the due diligence requirements for Australian businesses operating internationally, especially in conflict zones or with partners suspected of human rights violations.

*Potential for prosecution:* If Australian authorities fail to prosecute individuals who ignore UN warnings and continue to trade with suspected war criminals, there is a possibility that the ICC could step in if it determines Australia is unwilling or unable to carry out the investigation or prosecution.

*Reputational risks:* Even if not prosecuted, companies and individuals ignoring UN warnings could face significant reputational damage and potential civil liabilities.

In conclusion, directors, industrialists, and their workers in Australia face serious legal, financial, and reputational risks if they ignore UN warnings and continue to trade with suspected war criminals or those committing crimes against humanity. The implementation of the ICC Act in Australia creates a [framework](#) for domestic prosecution of international crimes, making it crucial for businesses to adhere to international law and human rights standards in their operations and partnerships. It's important to note that Australia's implementation of the ICC Act demonstrates a serious commitment to enforcing international criminal justice domestically. This means that directors and industrialists must exercise extreme caution and due diligence in their international business dealings, as do their employees especially when UN warnings are involved, to avoid potentially severe legal consequences.

## **5. What recent warnings have the ICC and UN issued to member countries regarding trade in military goods and services with Israel?**

The International Criminal Court (ICC) and the United Nations (UN) have issued significant [warnings](#) to member countries regarding the trade of military items with Israel, particularly in the context of ongoing conflicts and humanitarian crises in Gaza.

### **ICC and UN Warnings**

1. *International Obligations:* The ICC emphasizes that states providing military support to Israel may be complicit in international crimes if they are aware that such support could facilitate violations of international law. This includes potential war crimes and crimes against humanity, as outlined in Article 25(3)(c) of the Rome Statute. The ICC's stance is that states must refrain from arms transfers if there is a clear risk that these arms will be used to commit such violations.
2. *UN Human Rights Council:* In a 2021 session, the UN Human Rights Council urged all states to halt arms transfers to Israel when there is a clear risk that the arms could be used to violate international humanitarian law. This call has gained urgency in light of recent escalations in violence, with UN experts specifically warning that any arms exports to Israel that might be used in Gaza are likely to violate international humanitarian law and must cease immediately.
3. *Legal Consequences:* The UN experts have highlighted that states involved in arms exports could face individual criminal liability for aiding and abetting war crimes or acts of genocide. They have called for immediate cessation of military transfers and emphasized the need for an arms embargo on Israel, particularly following the International Court of Justice's (ICJ) findings regarding the risk of genocide in Gaza.
4. *Recent Developments:* Several countries, including Belgium, Italy, and the Netherlands, have suspended arms exports to Israel following these warnings. The Dutch courts have ruled against the export of military parts to Israel, citing a clear risk of their use in violations



of international law. This reflects a growing trend among nations to reassess their military trade relationships with Israel in light of international legal obligations.

### *Conclusion*

The ICC and UN have made clear that the transfer of military items to Israel poses significant legal risks for member states, particularly in the context of ongoing violations of international humanitarian law in Gaza. They have urged immediate action to halt such transfers to prevent complicity in potential war crimes and to uphold international legal standards.

## **6. Can an Australian employee refuse to perform work that they suspect may contribute to war crimes?**

In certain circumstances, an Australian employee may have grounds to refuse to perform work that they believe could contribute to war crimes in another country:

### *Legal basis*

- Corporations and individuals in Australia can face [criminal liability](#) for aiding or abetting war crimes, even if their actions are indirect. Providing goods, services or support that facilitates war crimes could be construed as complicity under Australian law.
- Employees have protections under the [Fair Work Act](#) to refuse unlawful directives or work that poses serious health and safety risks. If the work contravenes international humanitarian law, this could provide legal justification for refusal.

### *Ethical considerations*

- There are strong moral arguments against complicity in atrocities. Employees may feel ethically compelled to refuse work they know will contribute to war crimes, genocide or other grave violations.
- Recent cases show a growing public awareness and opposition to Australian companies and workers being involved in international conflicts where war crimes are alleged, such as in Afghanistan and the Occupied Palestinian Territories.

### *Limitations*

- Ultimately, whether an employee can lawfully refuse a directive depends on the specific circumstances and the strength of their belief that the work will facilitate war crimes. Vague suspicions may not be sufficient.
- Advice from unions and consulting legal counsel is advisable to understand their rights and obligations.

In summary, while Australian employees generally must follow lawful directives, in cases where there is a clear link between the work and potential war crimes, and the employee has a reasonable and well-founded belief this is the case, they may have grounds to refuse the work on both legal and ethical grounds.

However, the threshold for such refusal is high and should be carefully considered. On the other hand, where an employee has strong grounds to believe and formal advice from competent ICC and UN officials to support their suspicion that a direction from their employer is likely to materially, facilitate or otherwise aid and abet war crimes, then the question may not be one of a 'right' to refuse but rather an [obligation](#) to do so.

## **7. What measures can Australian workers and their unions take to ensure their employers comply with international law specifically International Criminal Court and suspected aiding abetting of war crimes and crimes against humanity?**

### **Advocacy and Awareness**

*Education and Training:* Unions can conduct training sessions for their members about international humanitarian law and the implications of the ICC's jurisdiction. This includes understanding what constitutes war crimes and crimes against humanity, as well as the legal responsibilities of employers under the Rome Statute.

*Public Campaigns:* Unions can launch awareness campaigns to inform the public and stakeholders about the importance of compliance with international law, focusing on the potential consequences for businesses that fail to adhere to these standards.

### **Legal Action and Compliance**

*Monitoring and Reporting:* Unions can establish mechanisms to monitor employer practices and report any suspected violations of international law. This could involve collecting evidence of complicity in war crimes or crimes against humanity and reporting these findings to relevant authorities, including the ICC.

*Engagement with Authorities:*

Unions should engage with governmental bodies to advocate for stronger enforcement of laws that align with international obligations, such as the International Criminal Court Act 2002. This act facilitates Australia's compliance with the Rome Statute and includes provisions for investigating and prosecuting breaches of international law.

*Legal Challenges:*

Unions can support legal challenges against employers suspected of complicity in international crimes. This could involve litigation under Australian law, particularly the [Criminal Code Act 1995](#), which provides a framework for addressing core international crimes committed by Australians abroad.

### **Collaboration and Partnerships**

*Coalition Building:* Collaborating with other unions, human rights organizations, and international bodies can amplify efforts to hold employers accountable. This includes sharing resources and strategies for effective advocacy.

*Corporate Responsibility Initiatives:* Unions can work with businesses to develop and implement corporate social responsibility (CSR) programs that align with international human rights standards, ensuring that companies actively prevent complicity in human rights abuses.

### **International Engagement**

*Participation in International Forums and Campaigns:* Unions can participate in international forums and discussions regarding the ICC and international law, advocating for policies that strengthen accountability mechanisms for businesses operating in conflict zones.

By implementing these measures, Australian workers and their unions can play an important role in ensuring that employers comply with international law and do not engage in or support actions that could be classified as war crimes or crimes against humanity.



**Concluding Remarks:**

The events currently taking place in the Middle East have shocked the world and represent some of the gravest acts of inhumanity since the second world war. The world does not just have a moral responsibility to prevent genocide and these atrocities from occurring but a legal obligation as well. For parties to the Rome Statute, such as Australia, that responsibility is not limited to our political leaders but extends to directors of corporations and individual workers as well who are all exposed to the risks of action in these jurisdictions if they are complicit to and materially enable war crimes. The most effective remedy to these legal and moral hazards is for the Federal Government to remove them, and that is why the Australian union movement calls on our Government to immediately suspend all defence and military related trade and export licences with combatants such as Israel.

When it comes to questions of war and peace, our movement has learnt a valuable lesson from our history. Whilst workers' blood is the first to be spilt in war rarely do workers get an invitation to determine their participation in the war machines or the tables where foreign policy is formulated. The places where decisions about war and peace are made. This initiative draws on this rich history of principle and struggle by declaring to Governments and industrialists that if workers are not protected from these hazards and are not offered a seat at this table - we will take it ourselves.



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## **Attachment 1. South Coast Labour Council Resolution 29th May 2024**

### ***Gaza Conflict, the ICC and ICJ and the Potential Exposure of Illawarra Industries and Workers***

*The South Coast Labour Council expresses our deepest condolences to the victims, families and communities affected by the ongoing war in Gaza and restates our call for an immediate ceasefire, a return of hostages and departure of occupying forces in the Palestinian territories as per international law. Council notes:*

*1. Recent rulings and determinations of the International Criminal Court (ICC) and the International Court of justice (ICJ) regarding the Gaza conflict.*

*2. Australia's status as a signatory to both the ICC and ICJ and the responsibilities of signatory states to these bodies.*

*3. The presence of defence industries in the region and their relationship to the manufacturing, transport and University Sectors and their possible links to combatants implicated in ICC and ICJ rulings.*

*In noting the above, the South Coast Labour Council believes that the labour movement has a responsibility to provide accurate advice to workers as to their exposure to all risks at work and potential moral hazards. Accordingly, Council resolves to seek advice from international law and other relevant experts and audit to the best of our ability the legal, moral and reputational exposure of our workers and our region's industries with regard to trade and other relationships with combatants who may be subject to ICC and ICJ rulings and report back to affiliates and community stakeholders.*