AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

Joint Standing Committee on Treaties

International Labour Organization Convention No. 138: Convention concerning Minimum Age for Admission to Employment (Geneva, 26 June 1973)

ACCI SUBMISSION

MAY 2013

Small Business TOO BIG TO IGNORE

ABN 85 008 391 795

Canberra Office
COMMERCE HOUSE
Level 3, 24 Brisbane Avenue
Barton ACT 2600

PO BOX 6005 Kingston,
ACT 2604 AUSTRALIA

T: 02 6273 2311
F: 02 6273 3286
E: info@acci.asn.au

Melbourne Office
Level 3, 486 Albert Street
East Melbourne VIC 3002

PO BOX 18008
Collins Street East
Melbourne VIC 8003
AUSTRALIA

T: 03 9668 9950
F: 03 9668 9958
E: melb@acci.asn.au

W: www.acci.asn.au

TABLE OF CONTENTS

1. ABOUT ACCI

1.1 Who We Are

The Australian Chamber of Commerce and Industry (ACCI) speaks on behalf of Australian business at a national and international level.

Australia's largest and most representative business advocate, ACCI develops and advocates policies that are in the best interests of Australian business, economy and community.

We achieve this through the collaborative action of our national member network which comprises:

- All state and territory chambers of commerce
- 30 national industry associations
- Bilateral and multilateral business organisations

In this way, ACCI provides leadership for more than 300,000 businesses which:

- Operate in all industry sectors
- Includes small, medium and large businesses
- Are located throughout metropolitan and regional Australia

1.2 What We Do

ACCI takes a leading role in advocating the views of Australian business to public policy decision makers and influencers including:

- Federal Government Ministers & Shadow Ministers
- Federal Parliamentarians
- Policy Advisors
- Commonwealth Public Servants
- Regulatory Authorities
- Federal Government Agencies.

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to governments, parliaments, tribunals and policy makers both domestically and internationally;
- Business representation on a range of statutory and business boards and committees;
- Representing business in national forums including the Fair Work Commission, Safe Work Australia and many other bodies associated with economics, taxation, sustainability, small business, superannuation, employment, education and training, migration, trade, workplace relations and occupational health and safety;
- Representing business in international and global forums including the International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, Confederation of Asia-Pacific Chambers of Commerce and Industry and Confederation of Asia-Pacific Employers;
- Research and policy development on issues concerning Australian business;
- The publication of leading business surveys and other information products; and
- Providing forums for collective discussion amongst businesses on matters of law and policy.

2. INTRODUCTION

2.1 ACCI and the International Labour Organization (ILO)

The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to provide a submission to the Joint Standing Committee inquiry relating to the Australian Government's intention to ratify the International Labour Organization Convention (ILO) *No. 138: Convention concerning Minimum Age for Admission to Employment* (Geneva, 26 June 1973).

ACCI remains as not only the largest and most representative business organisation in Australia, it is also important to note that it is recognised at an international level as Australia's most representative employer organisation, together with the Australian Council of Trade Unions (ACTU) who is the most representative worker organisation (often referred in the ILO as the *"social partners"*).

ACCI has had a longstanding involvement in representing the views of Australian employers at the tri-partite International Labour Organization. ACCI's current Chief Executive, Peter Anderson, is an elected employer member on the ILO's Governing Body (GB), representing employers of the Asian region. Peter Anderson is also a current member (and global employer spokesperson) of the GB's *Committee on Freedom of Association*. This Committee also being tri-partite in structure. Other supervisory bodies within the structure of the ILO include the Conference Committee on the Application of Standards and Recommendations (CAS). The CAS is informed by the interpretations of ILO instruments by the Committee of Experts on the Application of Conventions and Recommendations (CoE), which was created in 1927 as a panel of 20 independent international jurists. It is important to note that the CoE is not tri-partite and not comprised of representatives of the social partners. The CoE reports back to the ILO tri-partite organs.

The ILO consists of the General Conference of representatives of member States (the International Labour Conference or the ILC); the GB; and the International Labour Office (the Office). One of the principal functions of the ILC is the adoption of formal instruments establishing international labour standards, with instruments taking the form of Conventions and Recommendations.[1] Recommendations are not intended to create binding obligations in international law, however, the supervisory bodies of the ILO do consider Recommendations when interpreting Conventions. Once adopted by the ILC, Conventions are open for ratification by member States.[2] There

[1] Status of ILO Conventions in Australia – 1994, Department of Industrial Relations, Canberra, December 1994, p.13.
[2] Ibid, p.14.

remains no obligation to ratify, as ratification is a sovereign act by individual member States.[3] Most Conventions become binding on a State 12 months after the date upon which that country ratified the Convention.

Australia has international obligations under the *Tripartite Consultation (International Labour Standards) Convention, 1976* (No. 144), which was ratified by Australia in 1979. The Australian government has, with the exception of the ratification of ILO Convention No. 158 (Termination of Employment) by the Keating government in 1993, consulted the States and Territories of Australia prior to ratification, given that acts of ratification bind the nation as a whole, and the Commonwealth becomes subject to supervising machinery in relation to compliance at all levels of government. Ratification of ILO instruments is an act of treaty making, and one not to be entered into lightly. ACCI and the ACTU have been generally consulted by the Commonwealth Executive of the day to ratify ILO instruments, through the statutory based National Workplace Relations Consultative Council (NWRCC) and its sub-committee, the Committee on International Labour Affairs (ILAC).[4]

Pursuant to s.5(2)(c) of the *National Workplace Relations Consultative Council Act 2002* and by convention, meetings of the NWRCC and its sub-committees are conducted on the basis of confidentiality.

The Australian Government in its NIA have indicated or summarised views expressed by ACCI and other organisations during meetings of ILAC. Whilst ACCI does not intend to breach the longstanding convention of discussions occurring on a confidential nature, it will be necessary to clarify a number of issues as a result of the NIA tabled before the Parliament.

ACCI's longstanding policy position is not to recommend to the Australian Government which ILO instruments it should consider for ratification action. Consistent with this approach, ACCI has reserved its position to respond to particular proposals which may be the subject of possible ratification action by the Australian Government the day.

ACCI is the sole Australian employer member of the International Organization of Employers (IOE). The Geneva based IOE is the only recognised body representing the

[3] Ibid. Under Art. 19(5)(b) of the ILO Constitution, each member State is required, within a period of no more than 18 months, to *"bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action"*. The reference to *"other action"* can consist of a decision to not ratify. The legislature is considered the *"competent authority"* for these purposes.

[4] Formerly named as the National Labour Consultative Council under the *National Labour Consultative Council Act 1977*.

interests of employers in international social and labour policy matters. The IOE Secretariat acts during the ILC as the Secretariat of the Employers' Group and supports and guides the Group in its participation in ILC committees and debates. As with the ILC, the IOE provides the Secretariat to the Employers' Group and contributes to the development of responses to the items on the GB agenda. The IOE further supports the individual Employer Group spokespersons on behalf of the Group in the discussions. ACCI has requested independent advice from the IOE on Australia's compliance with C138 and issues associated with ratification and subsequent international legal obligations imposed on Australia. At the time of writing, that formal advice requested has not been received. ACCI has received preliminary advice that concurs with ACCI's concerns about the proposed treaty action proposed.

3. BACKGROUND

3.1 History of C138

C138 entered into force on 19 June 1976. It has been ratified by 165 of the 185 member States of the ILO.

Notwithstanding its high rate of ratification and that it has been declared as one of eight fundamental ILO Conventions, the Committee should note that the Convention has not been ratified to date by the United States of America, Canada and New Zealand. These OECD countries do have a similar, political, legal and economic development as Australia and have a longstanding approach to allowing persons under 18 years of age to engage in some for of paid or unpaid work. They also have a high incidence of children undertaking formal education at a young age. New Zealand, in a similar way to Australia, has had a longstanding acceptance that work being done by minors in a family business and on farms is an acceptable practice.

Since 1976, both Labor and Liberal Coalition Governments have not ratified C138. The central rationale for not ratifying the Convention remains and has not changed over the last three decades. They will be further outlined in this submission below.

The ILO Constitution requires State members to report to the ILO on Conventions which are not ratified (referred to as Art. 19 Reports). These reports, when they are submitted to the ILO by member States, are not published by the ILO but form the basis of the CoE's General Survey. These government prepared reports are usually provided to the social partners by way of consultation prior to formal lodgement.

The Committee should note that one of the significant consequences of ratifying an ILO Convention is that under Art. 22 of the ILO Constitution, member States are required to report to the Office of the ILO at regular intervals on the effect given to the ratified Conventions. Primary responsibility of examining the reports is given to the CoE, which can scrutinise a member States compliance with a particular ratified Convention. If the CoE has concerns that there may be an element of non-compliance, it may decide to open dialogue with the government concerned, usually through "*direct requests*" and "*observations*". Observations are published in the annual General Report of the CoE. Reports of the CoE are used by the CAS (which is tri-partite) to examine selected cases of non-compliance with ratified Conventions. The CAS reports to the ILC in Plenary Session. This scrutiny cannot be understated. In effect it is a powerful mechanism within the UN system to shine a bright spotlight on member States for non-compliance and the Report of the CAS often containing

"hard-hitting criticism of governments for their failure to honour their international obligations".[5]

The three constitutional avenues under the ILO Constitution which could lead to complaints being made about non-compliance with an ILO instrument include an industrial association of employers or workers making a representation to the ILO Office concerning any member State which has failed to secure the effective observance of any Convention which has been ratified (under Art. 24) and complaints by member State which has ratified a Convention against another member State which also ratified a Convention (under Art. 26). There are other mechanisms for complaints to be made by international actors which should also be noted.[6]

Complaints against Australia for alleged non-compliance against a ratified ILO Convention are not a hypothetical scenario and have happened in the past. For example, an issue occurred in the last decade concerning an interpretation of one ILO Convention on forced labour which required significant resources and attention to counter in the international forum. The ILO Convention No. 29: Forced Labour Convention (1930) requires member States to supress forced labour by penal sanctions. The ILO Convention provides an exemption for *"prison labour"* under Art.2(2)(c) has follows: *"any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations".*

The ACTU made a complaint in 1998 that Australia was in breach of ILO No. 29 because it was argued that private prison industry in Victoria was not carried out under the supervision and control of a public authority and that prisoners were being placed at the disposal of private companies. Despite representations made by the Australian Government and employers to the ILO, the CoE generally disagreed with Australia. Despite successive representations and efforts to restore Australia's international reputation before the ILO, the CoE refused to accept the legitimate arguments advanced by the Australian Government and in 2001 reiterated that:[7]

> The Committee hopes that the Government will realize that the privatization of prison labour transcends the express conditions provided in Article 2(2)(c) of

[5] Status of ILO Conventions in Australia – 1994, Department of Industrial Relations, Canberra, December 1994, p.17.

[6] This includes: a special procedure to establish a specific Commission of inquiry; the GB's Committee on Freedom of Association which can deal with cases against member States of the ILO which have not ratified the relevant Freedom of Association Conventions (ie. No. 87 and 98); a reference to the International Court of Justice under Art. 37 of the ILO Constitution.

[7] Observation of the CoE, adopted 2001, published 90th ILC session (2002).

> the Convention for exempting compulsory prison labour from the scope of the Convention ... None of these conditions appear to have been met so far in Australia ...

Australia has reported to the ILO since 1976 that it is not in a position to ratify C138. Australia's longstanding treaty-making policy is that treaty instruments cannot be ratified unless full compliance has been achieved in all jurisdictions.[8]

On 20 September 2012 DEEWR advised ILAC that the Office of International Law (OIL) asserted Australia's compliance with C138.

On 25 September 2012, ACCI provided a written response to the possible ratification of C138.

During ILAC discussions, ACCI sought from DEEWR a copy of the formal advice it received from the OIL. It has not been provided. However, it can be assumed that the OIL advice was based on the information provided to it by DEEWR and in turn, advice provided to DEEWR by the Office of the ILO.

ACCI sought from DEEWR relevant advice it received from the states and territories to better inform ILAC. ACCI was informed that reports of states and territories are mostly Cabinet-in-Confidence and thus cannot be provided to third parties.

ACCI has received a copy of correspondence received by DEEWR from the Office of the ILO, on behalf of the Director-General and signed by the Director of the International Labour Standards Department. The advice is dated 7 October 2010.

ACCI did not have any input into the advice which was provided to the Office and has not seen any information which was provided by DEEWR to the Office of the ILO.

ACCI believes that the advice which was been heavily relied upon by DEEWR and OIL, which has led the Australian Government to take treaty action does not provide any strong basis to conclude that Australia is and will be in compliance with C138 and not be subject to international scrutiny and negative criticism by the supervisory bodies of the ILO and its other organs, such as the CoE.

The advice of the Office of the ILO is heavily disclaimed in the opening paragraph of the correspondence and indicates that it *"is not for the International Labour Office to express an opinion as to whether the legislation of a State is in conformity with the provisions of an ILO Convention; the following unofficial comments should therefore not be construed as the Office's opinion on the situation with regard to the provisions of the Convention in Australia. Should the Convention be ratified, the Committee of*

[8] This was affirmed by the Australian Government in its most recent ILO Annual Review under the Declaration on Fundamental Principles and Rights at Work and Country Baseline Information.

Experts on the Application of Conventions and Recommendations, in pursuance of its terms of reference, will assess the extent to which the law and practice appear to be in conformity with its provisions".[9]

3.2 National Interest Analysis

The National Interest Analysis (NIA) which has been tabled before the Parliament outlines the proposed treaty action of the Government.

In summary and according to the NIA:

- The Australian Government intends to ratify ILO Convention No. 138 *Convention concerning Minimum Age for Admission to Employment*, adopted at Geneva on 26 June 1973 (C138).

- The Australian Government will ratify the Convention as soon as practicable. Under Article 12(3), C138 will enter into force 12 months after the date on which Australia's ratification is registered with the Director-General.

- The Australian Government will make a declaration upon ratification, in accordance with Art. 2(1), specifying the minimum age for admission to employment. No reservations will be made.

The reasons in favour of ratification contained in the NIA are summarised as follows:

- Ratification would *"greatly enhance Australia's standing in the international community and the ability to address labour rights issues authoritatively, particularly within the Asia-Pacific region where many children work"* (paragraph [6]).

- Ratification of C138 would reflect on *"Australia's recognition of the importance of young people participating in the workforce in a safe and appropriate manner without prejudicing their schooling or their capacity to receive such instruction"* (paragraph [7]).

- Ratification of C138 *"would enable Australia to play a greater and more authoritative role in promoting better implementation of the Convention and measures to eliminate child labour in the region"* (paragraph [8]).

[9] Copy of correspondence, International Labour Office, to Ms Louise McDonough, Branch Manager, International Labour and Research Branch, Workplace Relations Policy Group, Department of Tertiary Education, Skills, Jobs and Workplace Relations, dated 7 October 2010.

- C138 is a fundamental Convention (one of eight declared as such) and ratification *"at this time would strengthen Australia's credentials within the broader international community by ensuring that it has ratified all eight fundamental conventions within the ILO's goal of 2015 fur universal ratification of those conventions, as well as demonstrating its commitment to the fundamental principles and rights at work"* (paragraph [9]).

The NIA also states that:

- There are *"no costs associated with the ratification of the Convention, as existing Commonwealth, State and Territory laws and practices comply with the provisions of the Convention"* (paragraph [32]).

- A Regulation Impact Statement is not required as a result of advice from the Office of Best Practice Regulation (paragraph [33]).

- Art. 13(1) of C138 provides that a State that has ratified the Convention *"may denounce the Convention during a twelve-month interval after the expiration of ten years from the date of the entry into force of the Convention"* (paragraph [36]). The next opportunity to denounce the Convention would be in the 12 months following 19 June 2016 (paragraph [37]).

ACCI further notes that the NIA ([2013] ATNIA 1) which has been tabled before Parliament for treaty action to ratify the International Labour Organization *Convention No. 129: Convention concerning Labour Inspection in Agriculture* (Gevena, 25 June 1969) and the reasons outlined in paragraph [9] for ratification of this Convention, *inter alia*, *"[s]hould Australia also ratify [C138] ... this would mean that Australia has ratified all eight fundamental conventions (covering the fundamental principles and rights at work) as well as all four 'governance' conventions. This ratification record would clearly demonstrate Australia's commitment to core labour rights and enable it to play an authoritative and legitimate role in advocating internationally for effective recognition and implementation of these rights".*

ACCI also notes that that the NIA in respect of C129 asserts that *"[t]he ILO supervises the implementation of conventions and protocols by Members who are Parties to those instruments, most notably through the Committee of Experts on the Application of Conventions and Recommendations"* (paragraph [13]). Technically, only the ILO supervisory bodies which has a mandate to *"supervise"* compliance is the ILO and its tri-partite organs. The reports authored by the CoE are used as the basis of discussion in the CAS.

4. KEY ISSUES

4.1 ACCI's Position on Ratification Action

ACCI remains of the firm view that it is not in the national interest for the Australian Government to ratify C138 at this time.

There are a range of cogent policy reasons to conclude why this is the case now as it was in 1976. There are far more risks than benefits associated with ratification action. The potential benefits as outlined in paragraphs [7] – [9] of the NIA are outweighed by the potential risks, including the significant damage to the reputation of Australia, a risk which is completely unwarranted and unnecessary.

4.2 International Reputation

The NIA refers on a number of occasions to the potential enhancement of Australia's international standing, particularly amongst our regional neighbour states. Whilst every effort should be pursued to leverage our international standing and credentials, where it is appropriate, this must be considered amongst a range of other factors.

As is evident by the significant work of Australia in our region, it cannot be said that Australia is lacking any international standing in its work with our regional neighbours. According to AusAid, *"over the next four years, Australia anticipates increasing assistance to the Pacific Region by around 43 per cent, from an estimated $1.12 billion in 2012–13 to an indicative level of $1.6 billion in 2015–16 ... Australian aid is making a difference. Our support for education and skills development enables more children to attend and complete primary school, improves learning outcomes, particularly in literacy and numeracy in the early grades, and improves the employability of young people."*[10]

Australia's international assistance programmes is complemented by the commitment to align policy priorities with the UN's Millennium Development Goals (MDG), particularly MDG number two (achieve universal primary education) amongst our pacific neighbours.

Australia recently ratified ILO Convention No. 182 (Worst Forms of Child Labour Convention, 1999). This Convention was endorsed by ACCI and the ACTU for ratification by the then Coalition Government in 2006. In 1999, the ILC unanimously

[10] http://www.ausaid.gov.au/countries/pacific/Pages/home.aspx

adopted the Convention and received an unparalleled number of ratifications in a short period of time.

According to the most recent Australian Multilateral Assessment (AMA) of the ILO conducted in March 2012:[11]

> In June 2011, Australia assumed the role of Chairperson of the ILO Governing Body for the 12 months to June 2012. Australia was recently regional coordinator of the Asia-Pacific Group of Governments for the two years 2009–11. Australia is also an active member of the Industrialised and Market Economy Countries government caucus group.
>
> In 2010–11, Australia provided $17.7 million to ILO, comprising $10.2 million of assessed contributions and $7.5 million in non-core funding. The assessed contribution represents the equivalent of 1.7 per cent of the total regular budget, and is the thirteenth highest assessed contribution by a government.
>
> ILO is currently implementing agreed activities under the Australia–ILO Partnership Agreement 2010–15. Activities funded include:
>
> > > the Better Work Program in Vietnam, Cambodia, Indonesia and Bangladesh ($7.5million)
> >
> > > the Green Jobs in Asia project ($3 million)
> >
> > > the Global Jobs Pact Framework for Labour Governance and Migration in the Pacific ($1.05 million)
> >
> > > the Youth Employment Promotion Program in Timor-Leste ($2.25 million), and
> >
> > > Pacific Growth and Employment Plan ($1.2 million).
>
> Other funding is also provided by Australia to ILO technical assistance projects, usually in the Asia-Pacific region. Such projects have included:
>
> > > the TRIANGLE Project, addressing labour migration and exploitation issues in the Greater Mekong region with funding of $10.5 million over the period 2010–14
> >
> > > promotion of Equality at Work in China with funding of $300 000 for 2010–11
> >
> > > the TIM-Works employment generating, rural road rehabilitation and maintenance project in East Timor which received funding of $3.2 million for the period 2008–12

[11] http://www.ausaid.gov.au/partner/Documents/ilo-assessment.pdf

> the Local Empowerment through Economic Development project in Sri Lanka with funding for $3.39 million for 2010–12, and

> the Decent Jobs for Egypt's Young People—Tackling the challenge of young people in agriculture project that received funding of $3 million over three years until 2013–14.

The AMA is replete with numerous examples demonstrating the strong work in international development that Australia has in the Asia-Pacific region. For example, the AMA indicates that *"Australia has, and will continue, to work with ILO to ensure its work is sustainable: the strong capacity building focus that is achieving good results in the TIM-Works project in East Timor is one example where ILO is bringing sustainable economic development and the theme of 'opportunities for all' to the fore."*[12]

A recent speech delivered by the Parliamentary Secretary for School Education and Workplace Relations, Senator Hon. Jacinta Collins, on Monday 13 June 2011 to the ILC demonstrates Australia's work in the Asia-Pacific region aptly:[13]

New Partnership with the ILO in the Asia-Pacific region

Mr Chairman, as well as historic changes in Australia's workplace relations framework and progress towards ratifying international labour standards, the current Australian government is also looking to enhance our engagement with the ILO in other ways, particularly through the signing of the historic Australia-ILO Partnership Agreement which funds a range of ILO projects in our Asia-Pacific region.

Through this agreement Australia is working cooperatively with the ILO and our Asia-Pacific neighbours on projects relating to the Better Work program, green jobs, labour governance and youth employment. I am proud that Australia is now the largest donor of the Better Work Program with funding of $7.5 million over two years. This highly successful program sees international labour standards applied at the enterprise level leading to improved working conditions, better pay and increased productivity and competitiveness.

The Australia-ILO Partnership Agreement is being implemented at a critical time in the face of widespread unemployment in the Asia-Pacific region resulting from the global recession. The opportunity to make decent work a reality for people in the Asia-Pacific is very important to the Australian Government.

It is clear that Australia is providing much needed capacity building in our region on many labour and labour related issues. Our international standing has not been compromised in any way to date, for failure to ratify C138. A risk to our international

[12] Ibid, p.7.
[13] http://ministers.deewr.gov.au/collins/speech-international-labour-conference-geneva

standing will be created, if there is any allegation of Australia's non-compliance with C138, which can tarnish Australia's reputation. For the reasons outlined below, ACCI believes that the risk is not hypothetical and will be a risk that should be considered as part of the national interest assessment.

4.3 Legal and Technical Compliance

The NIA is significantly deficient in not addressing the potential disadvantages to Australia becoming a party to the treaty. This includes the very real prospect that a supervisory body may publicly declare that Australia is non-compliant in some aspects with a ratified treaty. This type of detail and analysis is required under the *"Principles and Procedures for Commonwealth-State Consultation on Treaties"* (Attachment C to the 14 June Communique) as agreed in 1996 by the Council of Australian Governments.

Whilst ACCI believes that Australia meets the basic underlying objectives of the Convention, ACCI does not believe that Australia can be confident that it is in technical compliance with C138, even on relying on the so-called *"flexibility"* provisions within C138.

In Australia, the regulation of child employment is primarily a matter for state and territory governments. Commonwealth laws (ie. under the *Fair Work Act 2009*) covering minimum standards when an employment relationship is formed, also covers aspects of child employment (where it is a contract for services and an employee is covered by the legislation).

The main reason why Australia may fail to comply with all technical aspects of the Convention is that there is no general minimum age for employment either at the federal level or at a state and territory level. Australia has a combination of various laws which regulate schooling (state/territory level), industrial relations (federal, state and territory levels), training (federal, state and territory levels). There is no consistency with the regulation of work, education and training for persons under 18 years of age in Australia. The regulation of child employment is achieved by state and territory governments and achieved by compulsory education legislation. Specific rules governing employment of children differ from jurisdiction to jurisdiction and has done so since the Convention was adopted in Geneva.

<u>Commonwealth Legislation</u>

Commonwealth legislation does not specify a minimum age for employment. The *Fair Work Act 2009* regulates employment relationships on a number of constitutional underpinnings. It does not apply to unincorporated employers in Western Australia. If the relationship is one of a contract for services it may govern aspects of the employment relationship of a person under 18 years of age.

There are a range of exemptions and exceptions which would continue to allow state or territory laws govern aspects the employment relationship (ie. covering occupational health and safety, training, etc).

New South Wales

There is no specific minimum age legislation in NSW.

Victoria

In Victoria, the *Child Employment Act 2003* regulates aspects of minimum age for employment of children. Under s.10, the minimum age for employment is generally 13 years of age, however, there are exceptions for children under 11 years of age and no age limit for children working in a family business or in entertainment. There are also a range of exclusions under s.4. A child is defined under the legislation as a person under 15 years of age.

> 10. Minimum age for employment
>
> (1) Subject to subsection (2), the minimum age for the employment of a child is-
>
> (a) 11 years of age for any of the following employment-
>
> (i) delivering newspapers;
>
> (ii) delivering pamphlets or other advertising material;
>
> (iii) making deliveries for a registered pharmacist; and
>
> (b) 13 years of age for any other employment.
>
> (2) There is no minimum age for the employment of a child in a family business or in entertainment.
>
> (3) A person must not employ a child who is below the minimum age for employment.
>
> Penalty: 100 penalty units in the case of a body corporate; 60 penalty units in any other case.

Queensland

In Queensland, the *Child Employment Act 2006* and *Child Employment Regulation 2006* regulates aspects of minimum age for the employment of children.[14] There are a range of limitations and conditions on workers who are under 18 years of age. Generally the minimum age for employment is 13 years. This is lowered to 11 years where the child carries out supervised delivery work that involves delivering newspapers, advertising material or similar items between the hours of 6am and 6pm. A *"school-aged child"* is a child who is under 16 years and required to be enrolled at a school. A child who is below the age of 16 years is not a school-aged child if the child has completed compulsory schooling (i.e. completion of year 10) or is for any other reason not required to be enrolled at a school. The Act makes it illegal to employ a school-aged child until an employer has obtained a parent's consent form. The form must be signed by the child's parent and include information for the employer about the hours when the child is required to be at school. A new form must be completed when those hours change. The employer must keep the signed consent form on file. A *"young child"* is a child who is not old enough to be enrolled for compulsory schooling. A young child can work up to four hours a day and 12 hours per week. The Chief Executive of the Department of Justice and Attorney-General may grant a special circumstances certificate to allow a child to work under circumstances that the child would ordinarily not be allowed to work due to restrictions imposed by the Regulation. Work in the entertainment industry has been deliberately excluded from some of the general restrictions applying to minimum age and hours. Where the entertainment industry has been exempted, separate provisions have been created. For instance no minimum age applies to children working in entertainment, however to ensure the protection of young children greater supervisory conditions are stipulated for children working in entertainment.

Western Australia

Under s.190 of the *Children and Community Services Act 2004* (WA), a *"person must not employ a child under 15 years of age in a business, trade or occupation carried on for profit."* Under s.191 there are a range of exemptions from s.190, including: child is employed in a family business; child is employed in a dramatic or musical performance or other form of entertainment or in the making of an advertisement; child who has reached 10 years of age but is under 13 years of age (subject to conditions); child who has reached 13 years of age if the child is employed to carry out — (a) delivery work; or (b) work in a shop, other retail outlet or restaurant; or

[14]The information outlined in this submission is derived from the Department of Justice and Attorney-General (Qld) Child Employment Guide (2012), accessible here: http://www.justice.qld.gov.au/__data/assets/pdf_file/0005/8978/ir-child_employment_guide.pdf

(c) any other work of a kind prescribed for the purposes of this subsection, between 6 a.m. and 10 p.m. with the written permission of a parent of the child.

Australian Capital Territory

The *Children and Young People Act 2008* (ACT) and the *Children and Young People Regulation 2009* (ACT) regulates the employment of children and young persons under the age of 18 years. Under s.795, a person commits an offence if they employ a child or young person under 15 years of age. However, there are exceptions for *"light work"* (with conditions on the restriction of hours worked) and for work done in a *"family business"* which is *"light work"*. Light work is declared under the Regulations (Regulation 4) and contemplates work of a child under 3 (see supervision requirements) and a child between 3 and under 12. The Regulations refer to the following examples as a *"non-exhaustive list"* of work: going on errands, casual work in and around a private home, work related to sporting activities, clerical work, work as a cashier, gardening, taking care of children in a private home, providing entertainment, eg singing, dancing, musical instrument playing, performing on radio, television or film, modelling, and a photographic subject.

South Australia

Does not have any legislation covering minimum age of employment.

Tasmania

Tasmania does not have legislation specifically addressing the employment of children and young people. Under section 4 of the *Education Act 1994* (Tas), a parent of a child must ensure their child of compulsory school age is enrolled at a school or is provided with home education until the child completes the school year during which he or she attains the age of 16 years, and under section 6 must ensure that the child attends school or receives home education. In addition, under section 82 of the Act a person must not employ or permit to be employed a school-aged child during the hours when the child is required to attend a school. Work outside of school hours is not regulated by these Acts. Under section 94 of the *Children, Young Persons and Their Families Act 1997* (Tas), children aged under 11 years may not perform work where it involves offering anything for sale in a public place. Between the ages of 11 and 14 years, children are prohibited from offering anything for sale in a public place (either in that place or elsewhere) between 9pm of any day and 5am of the following day.

Annexure 1 is a document titled, *"Review of Tasmanian Child Labour Laws"*, (Workplace Standards Tasmania Department of Justice, July 2012). **Appendix B** of the documents provides a useful summary of state/territory legislation dealing with aspects of child employment.

Law and Practice

The Convention is expressed as requiring State members to be compliance in both law and practice. If there is a deficiency in the legal framework, there is a possibility of a finding of non-compliance.

ACCI has undertaken an audit of federal, state and territory laws for the purposes of testing the Australian Government's position that Australia currently complies with the Convention and will not need to amend any laws in Australia (federal, state or territory laws).

In our view, there would need to be a number of changes to our domestic law framework in order to comply with every technical requirement required by C138. This is based on the reading of the Convention and observations made by the CoE.

Paragraph [26] of the NIA indicates that *"Australia intends to rely on this combination of law and practice to implement its obligations under Article 2 of the Convention"*. The Convention repeatedly refers to a member State's *"national laws or regulations"* rather than practice. It is not sufficient to assert that because of a combination of our laws and practice, that Australia will be in full compliance with C138.

There is an acknowledgement in paragraph [26] that the *"exact manner in which the Convention will be implemented differs between State and Territory jurisdictions".* The implementation of the Convention should be known to all stakeholders, including state and territory governments, before ratification action.

ARTICLE 1

Art.1 provides that *"[e]ach Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons."*

It is significant that the NIA does not refer to this important first Article of the Convention. The NIA does not (a) indicate how it intends to purse a *"national policy"* b) how a national policy will *"ensure the effective abolition of child labour"* and c) how it will *"raise progressively the minimum age for admission to employment or work".*

ARTICLE 2

Age of Completion of Compulsory Schooling (Art. 2(3)).

Art. 2(1) specifies that each member State which ratifies this Convention shall specify a general minimum age for admission to employment or work at the time of ratification.

The Convention applies to all forms of work (ie. whether or not it is a contract for service or a contract of service, whether it is voluntary or whether it is part-time, casual or full-time). The CoE in their General Report (2013) *"reminded the Government [of the Bahamas] that the Convention applies to all branches of economic activity and covers all types of employment or work, whether or not there is a contractual employment relationship and whether or not the work is remunerated"* (p.293).

Art.2(3) of the Convention requires the minimum wage to be no less than 15 years of age for a developed member State.

The CoE in their General Survey (2012) indicate that notwithstanding the exceptions provided for under the Convention, *"no child shall be admitted to work under the minimum age specified and emphasizes that Article 2(2) foresees the raising of the minimum age but does not allow the lowering of the minimum age once declared"* (General Survey 2012, p.163). The CoE in their General Survey (2012) refer to paragraph 7(1) of the Minimum Age Recommendation 1973 (No. 146) which in turn recommends that raising progressively the general minimum age to 16 years should be taken as an objective (General Survey 2012, p.162).

Australian states and territories have different laws and regulations governing the age of completion of compulsory schooling.

According to the Australian Curriculum, Assessment and Reporting Authority's *"National Report on Schooling in Australia 2010 Report"* and the table reproduced below:

- the age at which schooling becomes compulsory is six years in all States and Territories except Tasmania, where it is five years. In practice, most children start the preliminary year of primary school at between four-and-a-half and five-and-a-half;

- Prior to 2010, the minimum school leaving age in most jurisdictions was 15 or 16. However, in January 2010, the National Youth Participation Requirement, agreed by the Council of Australian Governments (COAG) in 2009, came into effect across all States and Territories. This includes a mandatory

requirement for all young people to participate in schooling until they complete Year 10 and to participate full time in education, training or employment, or a combination of these activities, until the age of 17.

Table 3.1 Primary and secondary school structures – minimum age of commencement for Year 1 and minimum school leaving age by State and Territory, 2010

State/Territory	Preparatory year (first year of school)	Month of and age at commencement for Year 1	Primary schooling	Secondary schooling	Minimum school leaving age
New South Wales	Kindergarten	January, 5 turning 6 by 31 July	Kindergarten Years 1–6	Years 7–12	17 years[a]
Victoria	Preparatory	January, 5 turning 6 by 30 April	Preparatory Years 1–6	Years 7–12	17 years[b]
Queensland	Preparatory	January, 5 turning 6 by 30 June	Preparatory Years 1–7	Years 8–12	17 years[c]
South Australia	Reception	January, 5 years 6 months by 1 January	Reception Years 1–7	Years 8–12	17 years[d]
Western Australia	Pre-primary	January, 5 turning 6 by 30 June	Pre-primary Years 1–7	Years 8–12	17 years[e]
Tasmania	Preparatory	January, turning 6 by 1 January	Preparatory Years 1–6	Years 7–12	17 years[f]
Northern Territory	Transition	January, 5 turning 6 by 30 June	Transition Years 1–6	Years 7–12[g]	17 years[h]
Australian Capital Territory	Kindergarten	January, 5 turning 6 by 30 April	Kindergarten Years 1–6	Years 7–12	17 years[i]

(a) From 2010 all NSW students must complete Year 10. After Year 10, students must be in school, in approved education or training, in full-time employment or in a combination of training and employment until they turn 17.

(b) From 2010 all Victorian students are required to complete Year 10 and remain in some form of education, training or employment until the age of 17.

(c) From 2006 Queensland students have been required to participate in 'learning or earning' for two years after completing compulsory schooling, or until they turn 17 or until they attain a Senior Secondary Certificate or a Certificate III (or higher) vocational qualification.

(d) From 2007 South Australian students who have turned 16 are required to remain at school or undertake an approved learning program until they turn 17 or gain a Senior Secondary Certificate or equivalent or a Certificate II (or higher) vocational qualification.

(e) From 2008 Western Australian students are required to remain at school or undertake an approved combination of training and employment until the end of the year in which they turn 17.

(f) From 2008 Tasmanian students are required to continue participating in education, training or full-time employment until they turn 17.

(g) The Northern Territory moved to include Year 7 students exclusively in secondary education in 2008.

(h) From January 2010, it is compulsory for all Northern Territory students to complete Year 10 and then participate in education, training or employment until they turn 17.

(i) From 2010 ACT students are required to complete Year 10 and then participate full time in education, training or employment until completing Year 12 or equivalent, or reaching age 17.

Sources: Australian Government, *Country Education Profile;* States and Territories

Source: Australian Curriculum, Assessment and Reporting Authority's "National Report on Schooling in Australia 2010 Report".

The CoE *"considers that it is important for the compulsory school-leaving age to coincide with the minimum age for admission to employment or work so as to limit the access of young persons to employment or work"* (CoE Individual Direct Request Concerning Convention No 138, Spain, 2004).

It would be potentially problematic to declare 15 as a minimum age on this basis and it may lead to criticism to be alleged that Australia will not be in compliance in declaring 15 years of age.

ARTICLE 4 AND 7

Art.4 allows member States to exclude limited categories of work where there are *"special and substantial problems of application".* These categories must be listed in its first Art.22 Report and member States *"shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories".* Therefore, the exclusions under Art.4 are not to be relied upon *ad infinitum* and member States are expected, if they ratify the treaty, to progressively work towards not relying upon the exemptions and exceptions.

<u>Under 13 years of age</u>

Paragraph [29] of the NIA states that the Australian Government will rely on Art 4 *"to exclude from the application of the Convention those limited categories of light work where children under 13 may work either pursuant to legislation or where they commonly work in practice. The exact categories of employment to be excluded can differ between jurisdictions but all include the following ...".* The exact categories to be declared for each jurisdiction are not contained in the NIA.

The Convention takes the approach that work by children under the age of 13 in developed countries should generally not take place. Art.4 of the Convention could be used to make exceptions to this general rule if the member State specifies the particular exceptions it wishes to make, and if the country can justify those exceptions.

It is doubtful that Art. 4 could be relied upon in this expansive manner given there is a specific Art 7(1) on *"light work"* for children aged 13 - 15 years of age. Moreover, Art.7(4) only allows a member State who has specified a minimum age of 14 years (which could not be Australia) to substitute a minimum age of 12 – 14 years to the usual 13 – 15 years of age.

The CoE has indicated in its General Survey (2012) that those member States who do not provide for a lower minimum age for light work, *"must take measures to ensure that the national legislation establishes a minimum age for admission to light work, in conformity with the Convention"* (p.172). Art.7(3) requires the competent authority to determine the activities in which employment or work may be permitted for children 13 – 15 years of age. Art.7(3) also requires the member State to prescribe the number of hours during which and the conditions in which light work activities may be undertaken. The CoE in its General Survey (2012) have referred to paragraph 13(1) of Recommendation No. 146, and indicated that *"special attention should be given to several indicators, including the strict limitation of the hours spent at work in a day and in a week, the prohibition of overtime, the graining of a minimum consecutive period of 12 hours' night rest, and the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision"* (p.174).

Parental consent (or approval by any other person or authority under law) for children under 13 to work cannot override or derogate from the Convention.

Work covered by Art.3 (ie. work likely to jeopardise the health, safety, or morals of children under 18 years of age), may not be excluded by Art.4.

ARTICLE 3

Hazardous Work

Paragraph [25] of the NIA refers to *"[l]egislation is in place to protect young persons under 18 years from performing hazardous work".* Notwithstanding that there is generally Work, Health and Safety legislation in place across all jurisdictions, there are no specific provisions governing under hazardous work for person under 18 years of age across all jurisdictions.

The CoE in their General Survey (2012) indicate that by *"virtue of Article 3(2), these types of employment or work must be determined by national laws or regulations or by the competent authority after consultation with the organization of employers and workers concerned"* (p.166). The CoE in their General Report (2013) *"reminded the Government [of Burkina Faso] that under Article 3(2) of the Convention, hazardous types of work should be determined after consultation with the organizations of employers and workers concerned, where such exists"* (p.295).

Whilst hazardous work is not defined in the Convention *per se*, the CoE in their General Survey (2012) has noted the following types of activities which have been adopted (ie. prohibited) by member States (pp. 231 – 233):

> The prohibited types of hazardous work that have been adopted by member

States include, but are not limited to, the following:

– work in construction and welding, mines and quarries, or the asphalt industry;

– work underground, underwater, at dangerous heights or in confined spaces;

– demolition work, the digging of underground galleries, terracing in narrow and deep excavations and work in sewers;

– work in petroleum and the extraction of natural resources, or work in ships;

– work involving the use of compressed air, including pressure chambers and diving;

– hazardous work in domestic or household service;

– work in the agricultural sector which exposes children to dangerous conditions, to pesticides or insecticides, work in cash crops;

– work in zoos or parks containing wild or poisonous animals, work involving incineration or butchery, work in abattoirs or tanneries;

– work associated with animal husbandry, such as milking cows, feeding cattle and cleaning stables/stalls/pens, or work in a silo or storage for storing crops;

– forest firefighting and forest fire prevention occupations, timber tract occupations, forestry service occupations, logging occupations, and occupations in the operation of any sawmill, lathe mill, shingle mill, or cooperage stock mill;

– work involving the use of tractors or other moving vehicles, such as industrial trucks, lifts and forklift trucks, forestry machinery, hand-operated motorized tools, rotary cultivators, mowers, fine-slicing machinery or snow blowers;

– work with and maintenance of dangerous machinery, equipment and tools, such as machinery with rapidly moving blades, machinery making stamping movements, machinery with open cylinders or screw blades, mixing, milling, breaking, chopping machinery, skinning machinery, grating machinery and centrifuges, motorized chainsaws and hedge cutters, nail and bolt pistols, machines for cleaning, painting, anti-corrosion or similar treatments;

– work on steam boilers, kilns, ovens or other equipment involving exposure to high temperatures;

– work involving the use of dangerous chemicals, physical or electromagnetic agents, or substances and mixtures of substances which are classified as toxic, very toxic, corrosive or explosive; or exposure to lead or lead compounds, ionizing radiations, asbestos and other materials containing

asbestos;

– work that involves the manual handling or transport of heavy loads;

– deep-sea and offshore fishing, charcoal burning, firefighting;

– work as embalmers, work at prisons or mental hospitals, treatment of psychiatric patients and supervision of psychologically or socially disturbed persons, and other similar work;

– work with experimental types of cancer research or work taking place on the same premises as such research work;

– work performed in extreme cold or heat, or including exposure to a high level of noise or vibration, or to high voltage electricity;

– work in bars, hotels or places of entertainment, night work, or overtime work;

– camel or horse jockeying; and

– work which exceeds the physical and mental capacities of children, or work such as commercial sexual exploitation which exposes them to physical, psychological or sexual abuse.

Art. 3(3) of the Convention allows certain types of hazardous work from the age of 16. However, the NIA does not state what is the proposed list of hazardous work to be declared under Art. 3. In any event, as this would relate to state and territory Work, Health and Safety laws, it is not currently within the legislative purview of the Commonwealth. Laws and regulations would need to be implemented to give effect to implement a proscribed list of hazardous work.

Moreover, there are three conditions which must be satisfied under Art.3(3) to meet the exclusion, namely:

a) The organization of employers and workers concerned must have been consulted beforehand;
b) The health, safety and morals of the young persons concerned must be fully protected;
c) They must have received adequate specific instruction or vocational training in the relevant branch of activity.

The CoE in their General Survey (2012) have indicated that the Committee stresses that the exception contained in Art.3(3) must meet all three conditions and that governments who do not meet those conditions *"take measures to adopt legislation providing for all the appropriate provisions ensuring the protection of the young person, as required by article 3(3) of the Convention"*. (p.168).

There are no general prohibitions in all jurisdictions which would satisfy Art.3(3). It is highly unlikely that Australia currently complies with this article.

ARTICLE 6

Apprentices and Training

Art.6 provides for an limited exemption for children of at least 14 years of age as follows:

> This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of--
>
> (a) a course of education or training for which a school or training institution is primarily responsible;
>
> (b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or
>
> (c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

States and Territories generally regulate formal training where it involves a registered contract of training. There is no regulation of unregistered training. There is no minimum age for an apprenticeship in all jurisdictions in Australia. The CoE in their General Report (2013) *"urges the Government [of Guatemala] to take the necessary measures to harmonize the provisions of the national legislation with Article 6 of the Convention so as to establish a minimum age for admission to apprenticeship of 14 years"* (p.309).

Apprentices and Hazardous Work – Under 16 years

Even if there is reliance placed on Art.3(3) in relation to persons who are 16 years carrying out hazardous work, the CoE has indicated in its General Survey (2012) for *"governments to take the necessary measures to ensure that young persons below 16 years of age engaged in apprenticeship do not undertake hazardous work".* (p.170). The CoE in their General Report (2013) indicated that *"it strongly urges the Government [of Greece] to take the necessary measures to bring its national legislation into conformity with Article 3(3) of the Convention by providing that no person under 16 years of age may be authorized to perform hazardous work under*

any circumstance" (p.306).

The CoE in its General Survey (1981) considers that *"a general prohibition of hazardous work, without additional measures, is unlikely to have much practical effect. If the types of employment or work which are too hazardous for young persons to perform are not designated specifically, there is usually no way for a young person to be prohibited from performing a particular dangerous job"* (paragraph 225). Paragraph 10 of Recommendation No. 146 considers that there should be a *"list"* of prohibited work which ought to be periodically revised.

ARTICLE 8

Art.8 provides for exceptions for artistic performances. However, there are two conditions listed below:

a) After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

b) Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

Paragraphs [18] and [31] of the NIA refers to this article of the Convention but does not indicate which laws currently comply with Art.8 of the Convention. The references to general laws covering education, OHS and child welfare legislation in the NIA at paragraph [31] would suggest that Australia does appear to strictly comply with the Art.8 requirements.

ARTICLE 9

<u>Penalties</u>

Art.9(1) of the Convention requires all necessary measures, including the provisions of appropriate penalties. This article is referred to in paragraph [19] of the NIA. As indicated above, there is a lack of a coherent framework governing the minimum age of employment currently in Australia. There are a range of penalties under state and territory laws for a miscellaneous range of breaches of laws, however, it is unclear how Australia can demonstrate compliance with Art.9 generally, without a general minimum age of employment.

<u>Persons Responsible for Compliance and Register</u>

The State must define under Art.9(2) the *"persons responsible for compliance with the provisions giving effect to the Convention"*. Moreover, under Art.9(3), the member State *"must prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of person whom he employs or who work for him and who are less than 18 years of age."*

There is no information in the NIA about who are the *"persons responsible for compliance with the provisions giving effect to the Convention"* under Art.9(2). There is no consistent legislative framework established which would indicate that Australia currently complies with Art.9. Paragraph 16(c) of Recommendation No.146 further provides that *"children and young persons working in the streets, in outside stalls, in public places, in itinerant occupations or in other circumstances which make the checking of employers' records impracticable should be issued licences or other documents indicating their eligibility for such work".*

Reporting Obligations

The CoE in their General Survey (2012) have indicated that "*it consistently requests governments to provide information in their reports submitted under article 22 of the ILO Constitution on the number of inspections, the number and nature of violations detected relating to child labour (disaggregated, where possible, by sex and age) and the penalties applied"* (p.178).

4.4 Regulation Impact Statement and Costs

Paragraphs [32] and [33] of the NIA indicate that there *"are no costs associated with the ratification of the Convention, as existing Commonwealth, State and Territory laws and practices comply with the provisions of the Convention"* and *"a Regulation Impact Statement is not required"*.

As indicated in this submission, ACCI believes that there are serious questions over the state of our technical compliance with the Convention.

4.5 Data on Child Employment in Australia

Data about the employment details of children aged 5-14 years was collected in the Child Employment Survey, conducted throughout Australia in June 2006 as a supplement to the Australian Bureau of Statistics (ABS) monthly Labour Force Survey (LFS). The survey collected details about whether children had worked, when they worked, their reasons for working, and their working arrangements over the 12 months prior to the survey. This is the first time the Child Employment Survey has

been conducted.

A summary of the relevant ABS data is contained in the ABS *"Year Book Australia"* (2008) in **Annexure 5.**

5. CONCLUSION

5.1 Why Ratification is Opposed

ACCI remains of the firm view that it is not in the national interest for the Australian Government to ratify C138 for the reasons articulated in this submission.

In conclusion, there are more risks associated with ratification action then there are benefits. The potential benefits as outlined in paragraphs [7] – [9] of the NIA are outweighed by the potential risks, including the significant damage to the reputation of Australia, a risk which is completely unwarranted and unnecessary.

There is no need for ratification as our domestic framework which covers industrial relations, employment law, compulsory education, occupational health and safety, are an appropriate safety-net of standards to protect children under 18 years of age who participate in paid or unpaid work in Australia.

The exemptions which will be relied upon are not able to be relied upon in perpetuity and there will need to be progressive amendment to Australian law and practice such that Australia does not so heavily rely, on an ongoing basis, on those exemptions and exceptions.

Criticisms alleged by a member State who has ratified the Convention, a relevant social partner or a supervisory body against Australia's compliance with the Convention will have some negative impact on Australia's reputation and standing.

There are no cases or data presented by the Australian Government to demonstrate why international treaty action on child employment is necessary or required. Given that work by persons under 18 years of some form has been part of the Australian ethos and culture for generations, the risk of adverse findings against Australia would jeopardise the important stepping stone that work provides to young people.

If the Australian Government proceeds to ratify the Convention, contrary to the views of the Australian business community, ACCI requests that the technical issues raised in this submission be further discussed with the social partners and relevant state and territory governments to ensure that law and practice will be and can remain in full compliance with the Convention.

6. ANNEXURES

ANNEXURE 1: *"Review of Tasmanian Child Labour Laws",* Workplace Standards Tasmania Department of Justice, July 2012.

ANNUXURE 2: General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008. Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution). Report III (Part 1B), International Labour Conference, 101st Session, 2012 (Extracts only).

ANNEXURE 3: Report of the Committee of Experts on the Application of Convention and Recommendations (articles 19, 22 and 35 of the Constitution). General Report and observations concerning particular countries. Report III (Part 1A), International Labour Conference, 102nd Session, 2013 (Extracts only).

ANNEXURE 4: Australian Curriculum, Assessment and Reporting Authority, *"National Report on Schooling in Australia 2010 Report"* (Extracts only).

ANNEXURE 5: ABS, *"Year Book Australia"* (2008) (Extracts only).

ANNEXURE 6: *"Status of ILO Conventions in Australia – 1994"*, Department of Industrial Relations, Canberra, December 1994 (Extracts only).

ANNEXURE 7A & 7B: Copy of correspondence (17 April, 2013) sent from ACCI Chief Executive, Peter Anderson, to relevant State and Territory Ministers (and accompanying attachment).

ANNEXURE 8: ILO Minimum Age Recommendation (1973) No. 146.

ACCI MEMBERS
CHAMBERS OF COMMERCE & INDUSTRY

ACT AND REGION CHAMBER OF COMMERCE & INDUSTRY 12A THESIGER COURT DEAKIN ACT 2600 T: 02 6283 5200 F: 02 6282 2436 E: chamber@actchamber.com.au **www.actchamber.com.au**	**BUSINESS SA** **ENTERPRISE HOUSE** 136 GREENHILL ROAD UNLEY SA 5061 T: 08 8300 0000 F: 08 8300 0001 E: enquiries@business-sa.com **www.business-sa.com**	**CHAMBER OF COMMERCE NORTHERN TERRITORY** CONFEDERATION HOUSE SUITE 1, 2 SHEPHERD STREET DARWIN NT 0800 T: 08 8982 8100 F: 08 8981 1405 E: darwin@chambernt.com.au **www.chambernt.com.au**
CHAMBER OF COMMERCE & INDUSTRY QUEENSLAND INDUSTRY HOUSE 375 WICKHAM TERRACE BRISBANE QLD 4000 T: 07 3842 2244 F: 07 3832 3195 E: info@cciq.com.au **www.cciq.com.au**	**CHAMBER OF COMMERCE & INDUSTRY WESTERN AUSTRALIA** 180 HAY STREET EAST PERTH WA 6004 T: 08 9365 7555 F: 08 9365 7550 E: info@cciwa.com **www.cciwa.com**	**NEW SOUTH WALES BUSINESS CHAMBER** LEVEL 15, 140 ARTHUR STREET NORTH SYDNEY NSW 2060 T: 132696 F: 1300 655 277 E: navigation@nswbc.com.au **www.nswbc.com.au**
TASMANIAN CHAMBER OF COMMERCE & INDUSTRY 309 Liverpool Street HOBART TAS 7000 T: 03 6236 3600 F: 03 6231 1278 E: admin@tcci.com.au **www.tcci.com.au**	**VICTORIAN EMPLOYERS' CHAMBER OF COMMERCE & INDUSTRY** 486 ALBERT STREET EAST MELBOURNE VIC 3002 T: 03 8662 5333 F: 03 8662 5462 E: vecci@vecci.org.au **www.vecci.org.au**	

NATIONAL INDUSTRY ASSOCIATIONS

ACCORD – HYGIENE, COSMETIC AND SPECIALTY PRODUCTS INDUSTRY FUSION BUILDING SUITE 4.02, LEVEL 4, 22-36 MOUNTAIN STREET ULTIMO NSW 2007 T: 02 9281 2322 F: 02 9281 0366 E: emifsud@accord.asn.au www.accord.asn.au	**AGRIBUSINESS EMPLOYERS' FEDERATION** 250 FOREST ROAD LARA VIC 3215 T: 03 5272 9223 F: 03 5274 2084 E: aef@aef.net.au www.aef.net.au	**AIR CONDITIONING & MECHANICAL CONTRACTORS' ASSOCIATION** 30 CROMWELL STREET BURWOOD VIC 3125 T: 03 8831 2800 F: 03 9888 8459 E: natamca@amca.com.au www.amca.com.au
AUSTRALIAN BEVERAGES COUNCIL LEVEL 1, SUITE 4 6-8 CREWE PLACE ROSEBERRY NSW 2018 T: 02 9662 2844 F: 02 9662 2899 E: info@australianbeverages.org www.australianbeverages.org	**AUSTRALIAN DENTAL INDUSTRY ASSOCIATION** LEVEL 5, 757 ELIZABETH STREET ZETLAND NSW 2017 T: 02 9319 5631 F: 02 9319 5381 E: national.office@adia.org.au www.adia.org.au	**AUSTRALIAN FEDERATION OF EMPLOYERS & INDUSTRIES** PO Box A233 SYDNEY SOUTH 1235 T: 02 9264 2000 F: 02 9264 5699 E: admin@afei.org.au www.afei.org.au
AUSTRALIAN FOOD & GROCERY COUNCIL ASSOCIATION LEVEL 2, SALVATION ARMY BUILDING 2-4 BRISBANE AVENUE BARTON ACT 2600 T: 02 6273 1466 F: 02 6273 1477 E: info@afgc.org.au www.afgc.org.au	**AUSTRALIAN HOTELS ASSOCIATION** LEVEL 4, COMMERCE HOUSE 24 BRISBANE AVENUE BARTON ACT 2600 T: 02 6273 4007 F: 02 6273 4011 E: aha@aha.org.au www.aha.org.au	**AUSTRALIAN INTERNATIONAL AIRLINES OPERATIONS GROUP** C/- QANTAS AIRWAYS QANTAS CENTRE QCA4, 203 COWARD STREET MASCOT NSW 2020
AUSTRALIAN MADE, AUSTRALIAN GROWN CAMPAIGN SUITE 105, 161 PARK STREET SOUTH MELBOURNE VIC 3205 T: 03 9686 1500 F: 03 9686 1600 E:ausmade@australianmade.com.au www.australianmade.com.au	**AUSTRALIAN MINES & METALS ASSOCIATION** LEVEL 10, 607 BOURKE STREET MELBOURNE VIC 3000 T: 03 9614 4777 F: 03 9614 3970 E: vicamma@amma.org.au www.amma.org.au	**AUSTRALIAN PAINT MANUFACTURERS' FEDERATION** Suite 604, Level 6, 51 Rawson Street EPPING NSW 2121 T: 02 9876 1411 F: 02 9876 1433 E: office@apmf.asn.au www.apmf.asn.au
AUSTRALIAN RETAILERS' ASSOCIATION LEVEL 10, 136 EXHIBITION STREET MELBOURNE VIC 3000 T: 1300 368 041 F: 03 8660 3399 E: info@retail.org.au www.retail.org.au	**AUSTRALIAN SELF MEDICATION INDUSTRY** Suite 2202, Level 22, 141 Walker Street North Sydney NSW 2060 T: 02 9922 5111 F: 02 9959 3693 E: info@asmi.com.au www.asmi.com.au	**BUS INDUSTRY CONFEDERATION** LEVEL 2, 14-16 BRISBANE AVENUE BARTON ACT 2600 T: 02 6247 5990 F: 02 6230 6898 E: enquiries@bic.asn.au www.bic.asn.au
CONSULT AUSTRALIA LEVEL 6, 50 CLARENCE STREET SYDNEY NSW 2000 T: 02 9922 4711 F: 02 9957 2484 E: info@consultaustralia.com.au www.consultaustralia.com.au	**HOUSING INDUSTRY ASSOCIATION** 79 CONSTITUTION AVENUE, CAMPBELL ACT 2612 T: 02 6245 1300 F: 02 6257 5658 E: enquiry@hia.com.au www.hia.com.au	**LIVE PERFORMANCE AUSTRALIA** LEVEL 1, 15-17 QUEEN STREET MELBOURNE VIC 3000 T: 03 9614 1111 F: 03 9614 1166 E: info@liveperformance.com.au www.liveperformance.com.au

MASTER BUILDERS AUSTRALIA LTD **LEVEL 1, 16 BENTHAM STREET** YARRALUMLA ACT 2600 T: 02 6202 8888 F: 02 6202 8877 E: enquiries@masterbuilders.com.au www.masterbuilders.com.au	**MASTER PLUMBERS' & MECHANICAL SERVICES ASSOCIATION OF AUSTRALIA (THE)** 525 KING STREET WEST MELBOURNE VIC 3003 T: 03 9329 9622 F: 03 9329 5060 E: info@mpmsaa.org.au www.plumber.com.au	**NATIONAL BAKING INDUSTRY ASSOCIATION** BREAD HOUSE, 49 GREGORY TERRACE SPRING HILL QLD 4000 T: 07 3831 5961 E: nbia@nbia.org.au www.nbia.org.au
NATIONAL ELECTRICAL & COMMUNICATIONS ASSOCIATION LEVEL 4, 30 ATCHISON STREET ST LEONARDS NSW 2065 T: 02 9439 8523 F: 02 9439 852 E: necanat@neca.asn.au www.neca.asn.au	**NATIONAL FIRE INDUSTRY ASSOCIATION** PO Box 46 BRUNSWICK SOUTH VIC 3055 T: 03 9020 7000 F: 03 8678 1269 E: info@nfia.com.au www.nfia.com.au	**NATIONAL RETAIL ASSOCIATION** PO Box 1544 COORPAROO DC QLD 4006 T: 07 3240 0100 F: 07 3240 0130 E: info@nra.net.au www.nra.net.au
OIL INDUSTRY INDUSTRIAL ASSOCIATION C/- SHELL AUSTRALIA GPO BOX 872K MELBOURNE VIC 3001 F: 03 9666 5008	**PHARMACY GUILD OF AUSTRALIA** LEVEL 2, 15 NATIONAL CIRCUIRT BARTON ACT 2600 T: 02 6270 1888 F: 02 6270 1800 E: guild.nat@guild.org.au www.guild.org.au	**PLASTICS & CHEMICALS INDUSTRIES ASSOCIATION** PO Box 422 FLINDERS LANE VIC 8009 T: 03 9611 5400 F: 03 9611 5499 www.pacia.org.au
PRINTING INDUSTRIES ASSOCIATION OF AUSTRALIA 25 SOUTH PARADE AUBURN NSW 2144 T: 02 8789 7300 F: 02 8789 7387 E: info@printnet.com.au www.printnet.com.au	**RESTAURANT & CATERING AUSTRALIA** Level 3, 154 Pacific Hwy St Leonards, NSW, 2065 T: 1300 722 878 F: 1300 722 396 E: restncat@restaurantcater.asn.au www.restaurantcater.asn.au	**VICTORIAN AUTOMOBILE CHAMBER OF COMMERCE** LEVEL 7, 464 ST KILDA ROAD MELBOURNE VIC 3004 T: 03 9829 1111 F: 03 9820 3401 E: vacc@vacc.asn.au www.vacc.com.au