

INTERNATIONAL LABOUR ORGANISATION

MINIMUM AGE CONVENTION, 1973 (NO. 138)

LABOUR INSPECTION (AGRICULTURE) CONVENTION, 1969 (NO. 129)

JSCOT HEARING 13 MAY 2013

OPENING STATEMENT

Thank you Chair.

1. The Department welcomes the opportunity to appear before the Committee today in relation to the proposal to ratify two important International Labour Organisation Conventions - the Minimum Age Convention (Convention 138) and the Labour Inspection in Agriculture Convention (Convention 129).
2. I understand that these two Conventions will be considered in turn, but to assist the Committee I will be making an opening statement in relation to both conventions.

Rationale for ratification

3. As outlined in the National Interest Analyses, the Australian Government considers that ratification of these Conventions would:
 - demonstrate that both Australia's approach to child employment and its labour inspection system in agriculture reflect the internationally agreed minimum standards, and
 - significantly enhance Australia's credibility, authority and leadership within the ILO, the international community and the Asia-Pacific region.

4. In recent years the Australian Government has enhanced its engagement with the ILO to the extent that it is now plays an influential leadership role. Ratification of ILO Conventions - such as the four Conventions this Committee recommended for ratification in 2011 and the two before the Committee today – is an important means to support Australia's interventions on fundamental labour rights issues.
5. The Minimum Age Convention is the only one of the eight fundamental conventions Australia is yet to ratify. The Labour Inspection in Agriculture Convention is the last of the four governance conventions.
 - Australia has been criticised internationally for its lack of ratification of the Minimum Age Convention.
6. Ratification of these conventions would mean Australia can join the overwhelming majority of ILO members (89%), including countries such as the United Kingdom, to have ratified all eight fundamental Conventions thus meeting the ILO and international community's goal for universal ratification by 2015. In addition, Australia would also join a select group of countries to have ratified all fundamental and governance Conventions.
7. At a more practical level, Australia's ratification of these conventions would enhance its ability to address labour rights issues authoritatively, particularly within the Asia-Pacific region where over half of the 215 million child labourers and over 70 per cent of the agricultural workforce are found.

8. Ratification, particularly of the Minimum Age Convention, would also strengthen Australia's negotiating position in relation to labour clauses in free trade agreements.

- I note that this Committee¹, as well as the Joint Committee on Foreign Affairs, Defence and Trade², has previously recommended that core labour standards should be pursued in trade negotiations.
- Ratification will ensure Australia is able to credibly reinforce its commitment to the eradication of child labour and exercise authority in ensuring other parties to trade agreements do likewise.

Consultation

9. As this Committee would be aware, consultation is a critical part of Australia's ratification process. It is also central to the tripartite nature of the ILO particularly in relation to the development and application of ILO Conventions.

- As outlined in the consultation attachment to the NIAs, over approximately the last three years, there have been extensive consultations, at both the Ministerial and Departmental level, with states and territories and Australia's ILO social partners – the ACTU, ACCI and Ai Group.

¹ In its Report 102 (tabled 24 June 2009) re establishing an ASEAN – Australia – New Zealand FTA, JSCOT recommended that "the Australian Government include consideration of environment protection, protection of human rights and labour standards in all future negotiation mandates for free trade agreements".

² Joint Standing Committee on Foreign Affairs, Defence and Trade, 'Inquiry into Australia's relationship with ASEAN', June 2009, p. xxii

10. Turning first to states and territories, consistent with the 1996 COAG treaty-making principles, consultation has occurred at every step in this process:

- In 2011, all state and territory governments agreed to consider the Conventions as a priority for ratification.
- Since then the Conventions have been discussed by workplace relations Ministers at three meetings of the COAG *Select Council on Workplace Relations* and its predecessor, and been the subject of Ministerial correspondence.
- At a Departmental level, the Conventions have been discussed on a regular basis since October 2010 both with policy and legal experts and senior departmental officials across the jurisdictions.

11. In relation to consultations with our social partners, Australia's compliance with the Conventions has been discussed in detail on a regular basis since 2010.

- This includes at seven meetings of the *International Labour Affairs Committee* (ILAC), as well as the opportunity for social partners to raise issues with the Minister through ILAC's parent Committee, the *National Workplace Relations Consultative Council*.
- In addition, the Department has engaged with the social partners out of session of these formal meetings offering to discuss technical compliance issues.

Compliance

12. In terms of Australia's compliance with the Conventions, the Government is confident that all jurisdictions comply in full with no change to legislation, regulation or practice required.

13. Consistent with the 1996 COAG treaty-making principles, Australia cannot ratify a treaty until all jurisdictions are in compliance. This process is not taken lightly. Australia's compliance has been confirmed through:

- Analysis by technical experts and confirmation by legal experts in each jurisdiction.
- In the majority of states and territories compliance has been considered by their Cabinets.
- The Office of International Law, in the Attorney- General's Department has extensively reviewed compliance at both a Commonwealth and state and territory level. This provides the legal standpoint for ratification to proceed.
- The Office of Best Practice Regulation has confirmed that ratification results in no regulatory change, and that a Regulation Impact Statement is not required.

14. With the exception of Queensland in relation to Convention 129 (Labour Inspection in Agriculture)³, all jurisdictions support or have raised no objection to Australia's ratification of the Conventions⁴.

³ As per paragraph 47 of the National Interest Analysis on Convention 129, Labour Inspection in Agriculture, the Queensland Government advised that it would not provide formal support for Australia's ratification of the Convention. The Queensland Government considered that existing legislative protections for employees

Minimum Age Convention

15. Noting that all social partners support Australia's ratification of Convention 129 on Labour Inspection in Agriculture, I would like to address some of the compliance issues that have been raised in relation to the Minimum Age Convention.

16. To briefly reiterate the obligations the Convention will place on Australia:

- Firstly, the Convention requires ratifying countries to set a minimum age for admission to employment. The age should be closely linked to the end of the compulsory schooling period and should not be less than 15 years (Article 2).
- The Convention allows young people aged 13 to 15 – those still at school – to undertake what is called “light work” in a part-time capacity outside school hours and in work which does not prejudice their health, safety or welfare (Article 7).
- Work that is clearly hazardous is restricted to young people over 18 years, although this can be reduced to 16 years by the member state.

17. Compliance with the Convention must be considered in a holistic manner.

All jurisdictions have done so and all technical and legal aspects of the Convention have been considered in detail and measures have been taken

engaged in the agricultural sector are adequate and it does not consider ratification of the Convention a policy priority.

⁴ The Victorian Government has raised no objection to ratification of both Conventions and the Northern Territory Government has raised no objection to the ratification of Convention 129, Labour Inspection in Agriculture. All other jurisdictions have provided formal support for ratification for both Conventions.

to mitigate any risks of non-compliance on a technicality.

18. The National Interest Analysis clearly details how Australia, along with all states and territories, comply with these obligations based on the appropriate combination of existing legislative frameworks and practice.

That is:

- strong OHS laws ensures work undertaken by young people is age-appropriate and done in a safe manner
- child employment or welfare legislation in most jurisdictions provides specific regulation for the employment of children, and
- in respect to setting a minimum age, Australia is able to declare the minimum age of full-time employment to be 15. This is by virtue of jurisdiction's compulsory education requirements – that is, the minimum age for admission to full-time work is at least 15 years, and generally 17 years.

19. This point is demonstrated in the table on Page 20 of ACCI's submission.

20. As noted in ACCI's submission, through national policy and in practice, the *COAG National Participation Requirement (2009)* requires that the majority of young people must remain in school or registered training until they reach 17.

21. However, as the submission also indicates, a number of jurisdictions allow children to commence full-time employment at the conclusion of Year 10 (technically this means they could be 15 years of age).

22. Setting the minimum age for admission to full-time work at 15 years therefore is not problematic, but rather is important to mitigate possible compliance risks and to ensure the different jurisdictional requirements are taken into consideration without the need for regulatory change.

23. Secondly, as part of Australian community practice and accepted cultural norms, there are a range of instances where children under 13 may work, for example delivering newspapers after school or helping out in their parents shop or market stall.

- As the Australian community and Australian governments' view these arrangements to be appropriate and safe ways for children to earn pocket money and develop a work ethic, there is no proposal (or requirement) to restrict these activities.
- Instead, to enable ratification of the Convention without regulatory change, Australia will utilise the flexibility provisions under Article 4 to exclude limited categories of employment from the application of the Convention – meaning these arrangements can continue.
- In considering ratification of the convention, the ILO has advised it would be appropriate for Australia to make these exclusions to enable ratification.
- Noting that states and territories are primarily responsible for implementing the Convention, the categories of employment that will be excluded differ across jurisdictions. However, as detailed in Paragraph 29 of the NIA, common across all are:
 - work in a family enterprise;
 - delivery work;
 - light domestic duties; and

- volunteer work.
- Following ratification, Australia is required to inform the ILO of the excluded categories of employment in its first report to the Committee of Experts on compliance in 2015.
- Australia's social partners were consulted in relation to the excluded categories as outlined in the NIA at ILAC meetings on 14 October 2011 and 12 October 2012. In addition, as required of Australia as a member of the ILO, they will be consulted and have the opportunity to comment on our first report to the Committee of Experts in 2015.
- Importantly, this report will also detail the extensive protections that still apply to young people under 13 in part-time work through compulsory education, OHS and child employment laws and the Fair Work Act.
- The use of this flexibility provision does not bring into question Australia's commitment to the abolition of child labour, rather it is a pragmatic and necessary way to ensure full compliance and that accepted Australian practice can continue.

24. Ratification of the Convention will not affect existing arrangements – children of school age will continue to be able to work part-time outside of school hours. Employers can continue to employ young people in accordance with current laws.

25. Australia's compliance with the Convention, has been informed by ILO advice noting that, after a thorough analysis of Committee of Experts jurisprudence, Australia's existing legislative framework appears consistent with the Convention.

- The Department is confident that any compliance issues raised by stakeholders would be defensible at both a principled and technical level.
- In the main, the complaints that receive international scrutiny in relation to this Convention are centred on those countries with systematic and pervasive problems of child labour, which Australia categorically does not have.

26. Finally, whilst ensuring compliance with each technical element of the Convention is important, this should not be done in isolation of the broader context and ultimate intent of the Convention. In this regard it is important to clearly understand the distinction between child labour and child employment.

- The ILO recognises that millions of young people legitimately undertake work, paid or unpaid, that is age-appropriate and which allows them to prepare for their working life and contribute to their own, their families and their countries well-being and income⁵.
- Whilst there is no universal definition of child labour, it is generally accepted that child labour is work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development⁶.

⁵ IPEC, Training resource pack for agricultural cooperatives on the elimination of hazardous child labour / International Labour Office, International Programme on the Elimination of Child Labour (IPEC). - Geneva: ILO, 2009, – 2 v., p 9

⁶ ILO, n.d, IPEC, *What is Child Labour*, accessed 9 May 2013, <http://www.ilo.org/ipec/facts/lang--en/index.htm>

- The ILO is clear that the term child labour does not include children participating in work that is appropriate to their level of development and which allows them to acquire practical skills⁷.

27. To suggest that ratification of the Convention would put a stop to young people participating in work or that Australia's holistic and comprehensive compliance with the Convention would be found wanting is not correct and does not recognise the very real problem of child labour that exists – not in Australia - but in our region.

Conclusion

28. In conclusion, ratification of ILO Conventions is taken very seriously by the Australian Government.

- Every attempt has been made to undertake transparent and comprehensive consultations with states and territories and social partners.
- Risks of technical issues of non-compliance have been addressed and balanced against the significant benefits for Australia's international leadership resultant from ratification.
- All states and territories have confirmed compliance and the majority support ratification.
- The Office of International Law and Office of Best Practice Regulation have confirmed that Australia can comply on the basis of current arrangements with no need for legislative or regulatory change.

⁷ IPEC, *op. cit.*, p 9

29. We therefore ask the Committee to support ratification of the Minimum Age Convention and the Labour Inspection in Agriculture Convention and recommend that binding treaty action be taken.

We would be happy to answer any questions the Committee may have.

Thank you.

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