

SUPPLEMENTARY SUBMISSION NO. 1.1
TT on 12 March 2013



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President Gerardine (Ged) Kearney
Secretary Dave Oliver

Ref: GK:il-dd

3 May 2013

Senator Matt Thistlethwaite
Chair
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

By email: jsct@aph.gov.au

Dear Chair,

ACTU Submission – Joint Standing Committee on Treaties – Inquiry into ILO Convention No. 138: Convention concerning Minimum Age for Admission to Employment

I am pleased to provide a submission from the Australian Council of Trade Unions (ACTU) regarding the Committee's inquiry into the *ILO Minimum Age Convention, 1973 (No. 138)*.

The ACTU look forward to appearing before the Committee to discuss this submission further. Should you have any further queries with respect to the submission please don't hesitate to contact Ingrid Landau on (03) 9664 7336.

Yours sincerely,

Ged Kearney
President

ACTU Submission

ACTU Submission to the Joint Standing Committee on Treaties Inquiry into the
*International Labour Organisation Convention No. 138: Convention Concerning
Minimum Age for Admission to Employment*



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Introduction

1. The Australian Council of Trade Unions (ACTU) welcomes the opportunity to make a submission to the Joint Standing Committee on Treaties inquiry into the *International Labour Organisation Convention No. 138: Convention concerning Minimum Age for Admission to Employment*, tabled on 12 March 2013.
2. The ACTU represents almost 2 million working Australians and their families. At the international level, the ACTU actively participates in the International Labor Organisation (ILO) by virtue of our status as the officially recognised most representative organisation of workers in Australia. We are an active affiliate of the International Trade Union Confederation (ITUC) and its regional body, the ITUC-Asia Pacific.
3. As a member of the International Labour Affairs Committee (ILAC) of the National Workplace Relations Consultative Council, the ACTU has been consulted by the Australian Government with respect to the proposed ratification of the *ILO Convention No. 138: Convention Concerning Minimum Age for Admission to Employment* ('Convention No. 138'). The ACTU has consistently expressed its support for Australia's ratification of Convention No. 138 and has encouraged the Federal Government to work cooperatively with the states and territories towards ratification of this important international instrument.
4. The ACTU strongly supports Australia's ratification of Convention No. 138. Upon ratification, Australia will be a party to all eight of the conventions identified by the ILO as constituting fundamental rights of workers. We believe this is a significant achievement, and an important demonstration of Australia's commitment to promoting respect for labour rights in Australia, our region and globally.

Comments on the national interest analysis (NIA)

Reasons for Australia to take the proposed treaty action

5. The ACTU believes there are three major reasons why Australia should ratify Convention No. 138. These are outlined briefly below.

Support for the policy objectives underpinning Convention No. 138

6. The ACTU supports the principles embodied in the Convention. We believe laws and practices should be in place to protect and foster the well-being of young people through ensuring that any work does not interfere with their schooling, endanger them or harm their physical, mental, moral or social development. At the same time, we welcome the recognition in the Convention's concept of 'light work' that many young people benefit from participation in the workforce in a safe and appropriate manner. For young people, work can assist in developing independence, self-esteem, financial awareness, skills and friendships.
7. We believe that ratification of Convention No. 138 provides Australia with an important framework and guidance for ensuring its laws and practices are consistent with these principles. We believe such a framework is particularly important to promote consistently across state and territories, which continue to be largely responsible for laws regulating child employment.

Ratification of all 8 fundamental ILO conventions

8. Convention No. 138 is the only fundamental ILO convention that Australia has yet to ratify. Through its failure to ratify Convention No. 138, Australia stands in the way of the ILO's efforts for global recognition of fundamental labour rights through universal ratification of the fundamental conventions.
9. The ILO has identified eight conventions as 'fundamental', covering subjects that are considered as fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.¹
10. The ILO is pursuing the objective of universal ratification of the eight fundamental conventions by 2015. At present, over two thirds of the ILO's 185 member states have ratified all 8 of the fundamental conventions.

¹ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998).

11. Australia has ratified 7 of the 8 fundamental conventions. These conventions and the dates of ratification are listed below.

Fundamental Convention	Date of ratification
<i>Forced Labour Convention, 1930</i> (No. 29)	02 Jan 1932
<i>Freedom of Association and Protection of the Right to Organise Convention, 1948</i> (No. 87)	28 Feb 1973
<i>Right to Organise and Collective Bargaining Convention, 1949</i> (No. 98)	28 Feb 1973
<i>Equal Remuneration Convention, 1951</i> (No. 100)	10 Dec 1974
<i>Abolition of Forced Labour Convention, 1957</i> (No. 105)	07 Jun 1960
<i>Discrimination (Employment and Occupation) Convention, 1958</i> (No. 111)	15 Jun 1973
<i>Worst Forms of Child Labour Convention, 1999</i> (No. 182)	19 Dec 2006

Table 1: Ratification of ILO fundamental conventions – Australia

12. Out of the total 185 ILO member-states, 165 states have ratified Convention No. 138. Australia is one of only 20 ILO member-states that have yet to ratify this Convention.

13. Australia's failure to ratify Convention No. 138 is noted by the international community on an ongoing basis. The original instrument which identified the eight fundamental conventions – the *Declaration on Fundamental Principles and Rights at Work and its Follow Up, 1998* – contains a follow up procedure which provides an opportunity to review on an annual basis the efforts made in accordance with the Declaration by member-states which have not yet ratified all the fundamental Conventions. Under this procedure, member-states that have not yet ratified all the ILO fundamental conventions must report to the ILO on an annual basis on the status of the relevant rights and principles, impediments to ratification and areas where ILO assistance may be required. These reports are reviewed by the ILO's Governing Body.

14. Finally, ratification by Australia of all 8 fundamental ILO Conventions is consistent with, and further demonstrates Australia's commitment to adherence to, labour standards within bilateral and multilateral trade agreements. As the Committee would be well aware, these trade agreements often confirm parties' commitment to fundamental rights at work, as set out in the ILO's *Declaration on Fundamental Principles and Rights to Work and its Follow Up* (1998), and underpinned by the 8 fundamental ILO conventions. This Committee has on a number of occasions recommended that labour standards be included in all future negotiation mandates for free trade agreements.² The Joint Standing Committee on Foreign Affairs, Defence and Trade has also recommended that the fundamental labour rights be pursued in future free trade agreements and that existing trade agreements that do not contain such issues be reviewed.³ The ACTU submits that ratification of the final fundamental convention would place Australia in a much stronger position upon which to pursue the inclusion of labour clauses in trade agreements and to demonstrate its commitment to the obligations imposed through such clauses.

Regional leadership

15. The ACTU strongly supports the Australian Government's commitment to ratification as part of its broader objective to provide policy leadership within the Asia Pacific region in promoting international labour standards. We fully concur with the National Interest Analysis's proposition that ratification would greatly enhance Australia's ability to address labour rights issues authoritatively, particularly within the Asia-Pacific region where many children work.

16. Australia is a proud and longstanding member of the ILO and a major budgetary contributor, most notably for projects in our region. This support and leadership in our region is evinced through activities of the social partners in the region, as well as AusAID funding programs in the region, including the Australia-ILO Partnership Agreement 2010 - 2015. The Australian Government focuses a significant proportion of our support in the region on improving working conditions and standards in less developed countries and communities. This includes on projects around the elimination of child labour. The ACTU believes it is important to our ongoing credibility in these endeavours that we can not only claim but *demonstrate* our commitment to

² Joint Standing Committee on Treaties, Report 102, Chapter 2, 'Agreement Establishing the ASEAN Australia New Zealand Free Trade Area, Recommendation 5, p. 16; Report 130: Malaysia-Australia Free Trade Agreement tabled on 14 August 2012, [3.21].

³ Joint Standing Committee on Foreign Affairs, Defence and Trade, 'Inquiry into Australia's relationship with ASEAN', June 2009, p. xxii.

the four fundamental ILO principles and rights at work, including through having ratified all 8 relevant ILO conventions.

17. The task of upholding and promoting the ILO's fundamental conventions is only more important given that the Asia Pacific region has the lowest ratification of Convention No. 138 out of all the regions of the world: with only 21 out of the 34 states having ratified the convention. This contrasts with 51 out of 51 states in Europe, 51 out of 54 in Africa, and 10 out of 11 in the Arab states.

Obligations

18. The obligations imposed by the Convention are summarised in the National Interest Analysis and the ACTU does not propose to repeat them in our submission. In brief, for developed countries such as Australia, the Convention requires states to specify a minimum age for work which should not be below the age for finishing compulsory schooling, and at least 15 years of age. It specifies a higher minimum age (18 years generally) for hazardous work which is likely to jeopardize children's physical, mental or moral health, safety or morals, and a lower minimum age of 13 – 15 between which children may engage in 'light work', understood as work that does not threaten their health and safety, or hinder their education or vocational orientation and training. The Convention contains flexibility clauses which enable signatory states to permit hazardous work for children aged 16 to 18 in certain circumstances where appropriate protections are in place, and/or to exclude from application of the Convention certain categories of employment or work where application of the provisions would present special and substantial problems.
19. We make several brief comments with respect to specific issues arising from the obligations imposed by the convention.

Use of flexibility provisions

20. As noted above, articles 3 and 4 of the Convention constitute flexibility clauses. These types of flexibility clauses are common devices used in ILO conventions and are intended to help accommodate the diversity of member nations' cultural, legal and institutional arrangements.

21. The Australian Government has indicated its intention to rely on the flexibility clauses in both articles 3 and 4 of the Convention.⁴ Both these articles (article 3(3) and article 4(1)) explicitly state that the competent authorities should only nominate such exclusions after consultation with the social partners (workers and employer organisations) concerned. The ACTU would seek to ensure consultation on the nature and extent of any proposed exemptions under the Convention occur through the ILAC prior to the submission of the Government's first report on the application of the Convention submitted under Article 22 of the ILO Constitution.

Vocational education and training arrangements

22. The ACTU notes that, by virtue of article 6 of the Convention, ratification will not impact upon Australia's vocational education and training arrangements for young people. This article of the Convention states that the Convention does not apply to work done by children and young persons in the context of recognised vocational education and training arrangements, including in schools, training institutions or the workplace.

Automatic denunciation of existing ILO Conventions to which Australia is a party

23. Ratification of Convention No. 138 by Australia will, by virtue of clause 10 of the Convention, result automatically in Australia's denunciation of three ILO Conventions: the *Minimum Age (Agriculture) Convention, 1921 (No.10)*; the *Minimum Age (Fishermen) Convention, 1959 (No. 112)*; *Minimum Age (Underground Work) Convention, 1965 (No. 123)*.⁵ This is because Convention No. 138 is considered to revise and supersede the industry-specific standards in these Conventions. The ACTU notes that through removing the requirement upon Australia to report on a regular basis with respect to the abovementioned conventions, ratification of Convention 138 will simplify, consolidate and streamline Australia's reporting processes under article 22 of the ILO Constitution.

Implementation

24. The ACTU recognises that Australia does not have a federal minimum age for admission to employment. Child employment issues continue to lie primarily under the jurisdictions of the State and Territory governments, many of which do not specify a minimum age for employment.

⁴ National Interest Analysis [2013] ATNIA 2, [14]-[15], [28]-[30].

⁵ We note that the National Interest Analysis (at [19]) lists two other conventions that will be denounced as a result of Australia's ratification of Convention No. 138: the *Minimum Age (Sea) Convention, 1920 (No. 7)* and the *Minimum Age (Sea) Convention (Revised), 1936 (No. 58)*. It is our understanding that Australia has already denounced these conventions through its ratification in 2011 of the *Maritime Labour Convention, 2006*.

25. However we note that the National Interest Analysis states that, in effect, that the combination of state and territory laws requiring that children attend school on a full time basis until a minimum age is reached (which is no lower than 15 across the jurisdictions), existing federal and state and territory laws relating to employment and occupational health and safety, and existing child employment laws, regulations and codes where they exist, effectively provide a level of protection in law and in practice that is sufficient to meet requirements of the Convention.
26. We note further that the National Interest Analysis states that all State and Territory Governments have engaged in a comprehensive analysis of the extent to which their laws and practice comply with the requirements of the Convention and have advised that their jurisdictions comply with the Convention, taking into account their reliance on the exclusions permitted under Articles 3 and 4 of the Convention.⁶

Conclusion

27. In summary, the ACTU supports the proposed treaty action with respect to *ILO Convention No. 138: Convention concerning Minimum Age for Admission to Employment*. Upon ratification of Convention No. 138, Australia will have ratified all eight of the ILO's fundamental conventions. We believe that this is a significant achievement and that Australia's status as a signatory to these conventions benefits Australia domestically and internationally.

⁶ National Interest Analysis [2013] ATNIA 2, [27].



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