



**Australian Government**

**Department of Education, Employment and Workplace Relations**

The Hon Richard Marles MP  
Chair  
Joint Standing Committee on Treaties  
Parliament House  
CANBERRA ACT 2600

23 May 2013

**Inquiry into International Labour Organisation treaties tabled on 12 March 2013:  
Minimum Age Convention, 1973 (No. 138)  
Labour Inspection (Agriculture) Convention, 1969 (No. 129)**

The Department of Education, Employment and Workplace Relations (the Department) thanks the Committee for the opportunity to appear before it on 13 May 2013. The Department provides the following information as requested by the Committee and can provide further information upon request.

**Correction of fact to Hansard**

At page 14 of the Hansard Ms Tara Williams and I, appearing on behalf of the Department, stated that the Australian Chamber of Commerce and Industry (ACCI) is responsible for bringing the views of the National Farmers Federation (NFF) in relation to the Minimum Age Convention and the Labour Inspection (Agriculture) Convention to the attention of the Australian Government.

The Department has now clarified with ACCI that the NFF is not an affiliate. The Department apologises for this error during the hearing and further information on this matter as requested by the Committee is below.

**Responses to questions raised by the Committee in Hearing of 13 May 2013**

1. *What are the positions of the National Farmers Federation (NFF) and state-based NFF affiliates concerning ratification of ILO Conventions 138 and 129?*

Australia's obligations under the ILO Constitution, Conventions 138 and 129 and the *Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)* is to consult the "most representative organisations of employers and workers" – known as 'social partners' – when considering ratification of ILO conventions. Australia's social partners are the Australian Chamber of Commerce and Industry (ACCI), the Australian Industry Group (Ai Group) and the Australian Council of Trade Unions (ACTU) – those being recognised by the Australian Government as the most representative organisations of employers and workers respectively. Formal consultation with Australia's social partners occurs regularly through the International Labour Affairs Committee (ILAC), a sub-committee of the National Workplace Relations Consultative Committee (NWRCC).



While ILAC is directly consulted on proposals to ratify ILO conventions, these matters are also considered by NWRCC – the parent committee of ILAC. ILAC is a standing item on the NWRCC agenda and summary of key issues and a record of each ILAC meeting are presented to each NWRCC meeting. NWRCC is a tripartite body comprising 15 members, including the NFF, from a broader representation of worker and employer organisations than ILAC. NWRCC is chaired by the Australian Government Minister for Workplace Relations.

During the period of consideration of the Minimum Age Convention and the Labour Inspection (Agriculture) Convention outcomes of ILAC meetings have been included on NWRCC agenda on five occasions:

- NWRCC 112 – 13 December 2010
- NWRCC 113 – 4 April 2011
- NWRCC 114 – 25 May 2012
- NWRCC 115 – 15 October 2012
- NWRCC 116 – 7 March 2013

A NFF representative attended each of these NWRCC meetings. The Department is not aware of any concerns of the NFF, nor any of its state farm organisations or commodity councils, on the proposed ratification of the Conventions being raised within this forum. Through the NWRCC the NFF has been aware of the Australian Government's consideration of ratification of the Minimum Age Convention and the Labour Inspection (Agriculture) Convention since 2010. NWRCC 116 was explicitly informed at its 7 March 2013 meeting that the Conventions would shortly be tabled in Parliament and that members would have the opportunity to make a submission. The NFF did not make a submission to the Committee.

As outlined in evidence on the 13 May 2013, Australia is already in compliance with both Conventions and no legislative or regulatory change is required in any jurisdiction to enable ratification. In relation to the Minimum Age Convention, work in a family business will be excluded from the application of the Convention. The Labour Inspection (Agriculture) Convention is focussed on ensuring proper inspection and enforcement of domestic workplace relations and occupational health and safety laws already in place in jurisdictions. It does not create any new rights for employees or new obligations for employers in the agriculture sector.

The Department has contacted the NFF and will meet with them on Tuesday 28 May 2013. Further information on the NFF's views will be provided to the Committee following this meeting.

*2. Could the Department provide examples of international scrutiny Australia has faced having not ratified Convention 138?*

The ILO, as a specialised agency of the United Nations, does not coerce states or exclude states from ILO membership or positions on ILO bodies on the basis of failure to ratify ILO Conventions. It is also extremely rare for governments to publicly criticise other governments for not having ratified multilateral treaties.

Under the *1998 Declaration on the Fundamental Principles and Rights at Work and its Follow-Up* (the Declaration) member states have an obligation, even if they have not ratified the eight





fundamental conventions, “to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights.”<sup>1</sup>

As stated in the submission of the ACTU and the evidence provided orally by the Department, in line with the Follow Up procedure to the Declaration, ILO Member States must report annually to the ILO’s decision-making body, the Governing Body, on the manner it gives effect to unratified ‘fundamental’<sup>2</sup> conventions and measures taken to ratify them (known as an annual report). Since 2006<sup>3</sup> Australia has been required to report annually to the Governing Body in relation to the Minimum Age Convention. Australia is now just one of 20 countries (and one of just four major industrialised countries) to have not ratified the Convention and this fact has been increasingly noted by the Governing Body in reviewing the annual reports.<sup>4</sup> This is an example of the type of implicit but consistent criticism that Australia is subject to by virtue of its ongoing failure to ratify the Convention. In addition, other international stakeholders have recommended that Australia ratify the Minimum Age Convention, including the International Trade Union Confederation.<sup>5</sup>

As noted at paragraph 9 of the National Interest Analysis and paragraph 6 of the Department’s opening statement to the public hearing (submission no. 9), ratification of the Minimum Age Convention will mean Australia can join the majority of ILO member states to have ratified all eight fundamental conventions within the ILO’s goal of 2015 for universal ratification. The ILO’s campaign for universal ratification by 2015 (launched in 1995) - by its very nature - is designed to intensify pressure on member states that have not ratified the fundamental conventions. As increasing numbers of states ratify the eight conventions, the pressure that is brought to bear on those that have not inevitably intensifies. As the Department has stated, Australia’s ratification of the Convention within the 2015 timeframe would strengthen Australia’s credentials within the broader international community as well as enable it to authoritatively address labour rights issues. Australia’s lack of ratification of the Convention acts as a constraint to effectively fulfilling this leadership role, particularly in the Asia-Pacific region.

---

<sup>1</sup> ILO 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up, para 2

<sup>2</sup> The eight conventions identified as the ‘fundamental’ conventions are: *Freedom of Association and Protection of the Right to Organise Convention, 1948* (No. 87); *Right to Organise and Collective Bargaining Convention, 1949* (No. 98); *Forced Labour Convention, 1930* (No. 29); *Abolition of Forced Labour Convention, 1957* (No. 105); *Minimum Age Convention, 1973* (No. 138); *Worst Forms of Child Labour Convention, 1999* (No. 182); *Equal Remuneration Convention, 1951* (No. 100); *Discrimination (Employment and Occupation) Convention, 1958* (No. 111)

<sup>3</sup> Australia ratified the *Worst Forms of Child Labour Convention, 1999* (No. 182) on 19 December 2006.

<sup>4</sup> For example see Minutes of the 307<sup>th</sup> Session of the Governing Body, Item 3, pp 9-10 [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_142975.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_142975.pdf), accessed on 15/5/2013

<sup>5</sup> International Trade Union Confederation, “Internationally recognised core labour standards in Australia: Report for the WTO General Council Review of the Trade Policies in Australia” April 2011, p 8, [http://www.ituc-csi.org/IMG/pdf/ITUC\\_australia\\_report\\_final.pdf](http://www.ituc-csi.org/IMG/pdf/ITUC_australia_report_final.pdf), accessed on 15/5/2013



3. Please provide a list of the ILO Member States which have ratified all eight 'fundamental' Conventions and all four 'governance' Conventions.

38 (of 185) ILO Member States have ratified all eight 'fundamental' Conventions and all four 'governance' Conventions. These are:

Albania	Latvia
Azerbaijan	Madagascar
Belgium	Moldova, Republic of
Bosnia and Herzegovina	Montenegro
Burkina Faso	Netherlands
Costa Rica	Norway
Czech Republic	Poland
Denmark	Portugal
El Salvador	Romania
Estonia	Saint Vincent and the Grenadines
Fiji	Serbia
Finland	Slovakia
France	Slovenia
Germany	Spain
Guatemala	Sweden
Hungary	The Former Yugoslav Republic of Macedonia
Iceland	Togo
Italy	Ukraine
Kazakhstan	Uruguay

I trust this information is of assistance. I can be contacted on (02) 6121 5470 or via email at [jody.anderson@deewr.gov.au](mailto:jody.anderson@deewr.gov.au) should the Committee require any further information.

Yours Sincerely,

Jody Anderson  
Branch Manager  
Balanced Work and International Labour  
Workplace Relations Policy Group  
Department of Education, Employment and Workplace Relations

