

National Interest Analysis [2010] ATNIA 61

with attachment on consultation

**International Labour Organization Convention No. 175:
Part-Time Work,
adopted at Geneva on 24 June 1994**

[2010] ATNIF 49

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

International Labour Organization Convention No. 175: Part-Time Work, adopted at Geneva on 24 June 1994

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Nature and timing of proposed treaty action

1. The proposed treaty action is ratification of the *International Labour Organization (ILO) Convention No. 175: Part-Time Work*, adopted at Geneva on 24 June 1994 (the Convention) in accordance with Article 13(1), which provides the Convention is binding only upon ILO Member States that have registered their ratification with the Director-General of the International Labour Office.
2. It is proposed that the Convention be ratified as soon as practicable. In accordance with Article 13(2), the Convention entered into force on 28 February 1998, being 12 months after the date on which the ratifications of two Member States of the ILO had been registered with the Director-General. Under Article 13(3), the Convention would enter into force for Australia 12 months after the date on which Australia's ratification is registered with the Director-General.
3. In accordance with established ILO practice it is not proposed that Australia will make any reservation or declaration on ratification.

Overview and national interest summary

4. The primary purpose of the Convention is to ensure treatment of part-time workers is equal to that accorded to comparable full-time workers. The Convention requires ratifying Member States to take measures to ensure that part-time workers receive the same protection as full-time workers, for example, in respect of the rights to organise and bargain collectively; occupational safety and health; discrimination in employment and occupation, and leave entitlements. In addition, it also requires States to take measures to ensure part-time workers do not receive a wage lower than that of comparable full-time workers; to facilitate access to productive and freely chosen part-time work; and to ensure that transfers between full-time to part-time work is voluntary.
5. Ratification of the Convention would commit Australia to protecting the rights of part-time workers in a way that is consistent with international standards. This is particularly significant in the Australian context, where part-time work is a common form of working arrangement used predominantly to balance paid work with study or family commitments. Furthermore, ratification of this Convention will complement other international instruments already ratified by Australia. All State and Territory governments support ratification of the Convention.
6. As no other country in the Asia-Pacific region has ratified the Convention, ratification by Australia would provide leadership to the region by encouraging countries to consider the merits of ratification and the effective implementation of international labour standards that guarantee the equality of rights and protections of part-time workers with their full-time equivalents.

Reasons for Australia to take the proposed treaty action

7. Ratification of the Convention at this time would strengthen Australia's credentials within the international community to effectively provide equality of rights and protection between part-time and full-time workers in respect of pay and employment conditions whilst also ensuring that employees have a genuine choice between part-time and full-time work. This recognises the importance of part-time work to supporting greater participation in the labour force, especially for parents and young people who often use this form of employment to balance paid work with study or family commitments. Furthermore, ratification of the Convention would complement international instruments already ratified by Australia, such as *ILO Convention No. 156: Workers with Family Responsibilities*, adopted at Geneva on 23 June 1981.

8. A key strategic objective of Australia's engagement with the ILO is to provide policy leadership within the Asia-Pacific region in promoting international labour standards. As the Convention has not been ratified by any country within the region, ratification by Australia would encourage other Asia-Pacific countries to consider the merits of applying international labour standards that safeguard the rights of workers to decent pay and conditions.

9. The ILO is a specialised agency of the United Nations with 183 Member States. The ILO is tripartite in structure and has equal representation of governments, employer and worker representative organisations. One of the core functions of the ILO is to establish and monitor a code of international labour standards which are embodied in conventions, protocols and recommendations developed by the three representative groups. Together, the international labour code establishes minimum labour standards for workers in all types of industries and occupations throughout the world.

10. The ILO supervises the implementation of conventions and protocols by Member States who are parties to those instruments, most notably through the Committee of Experts on the Application of Conventions and Recommendations. Australia has been a Member State of the ILO since its establishment in 1919 and has ratified 59 out of the ILO's 188 conventions. Forty-seven of the ILO conventions remain in force for Australia.

11. The Convention has been ratified by 13 countries (see Annexure 1).

12. Compliance with the Convention in Australia is primarily achieved through the *Fair Work Act 2009 (Cth)* (Fair Work Act), which since 1 January 2010 has regulated the terms of employment and working conditions of approximately 96 per cent of all private sector employees in Australia. The obligations of the Convention support the policy intentions behind the Fair Work Act, which has as one of its objects the need to assist employees to balance their work and family responsibilities by providing them with genuine flexible working arrangements.

13. Of the various flexible working arrangements undertaken by employees in Australia, part-time work is one of the most common forms. The most recent Australian Bureau of Statistics labour force data show that of the 9,770,500 employees in May 2010, 29.2 per cent (or 2,848,600) worked part-time.¹

¹ Source: Australian Bureau of Statistics, *Labour Force, Australia, Detailed, Quarterly* (Cat. No. 6291.0.55.003), May 2010.

14. Importantly, all State and Territory governments as well as the Australian Chamber of Commerce and Industry, the Australian Council of Trade Unions and the Australian Industry Group have provided their support for the ratification of the Convention (see Attachment on Consultation).

Obligations

15. The objective of the Convention is to provide part-time workers with the same protection as full-time workers in respect of pay and employment conditions.

16. Article 4 of the Convention provides that each Member State shall take measures to ensure that part-time workers receive the same protection as comparable full-time workers, in respect of the rights to organise, bargain collectively and to act as workers' representatives; occupational safety and health; and discrimination in employment and occupation.

17. Article 5 provides that Member States shall take measures to ensure that part-time workers receive a basic wage which, when calculated proportionately on an hourly, performance-related or piece-rate basis, is not lower than the basic wage of comparable full-time workers.

18. Article 7 requires Member States to take measures to ensure part-time workers enjoy conditions equivalent to those of comparable full-time workers in relation to maternity leave, termination of employment, paid annual leave and sick leave. Any pecuniary entitlements arising in these areas may be determined in proportion to earnings or hours worked.

19. Article 9 requires Member States to take measures to facilitate access to productive and freely chosen part-time work which meets the needs of both employers and workers. These include review of laws and regulations which may prevent or discourage part-time work; use of employment services to identify and publicise part-time work opportunities; and, in developing employment policies, special attention to the needs and preferences of specific groups.

20. Article 10 requires Member States to take measures to ensure, where appropriate, that transfer from full-time to part-time work or vice versa is voluntary.

21. Under Article 22 of the ILO Constitution, Member States must submit an annual report to the International Labour Office on the measures which it has taken to give effect to the conventions to which it is a party, at the discretion of the Governing Body of the ILO. The Governing Body determines which conventions are to be reported on in any given year. Under the current reporting schedule, Member States are required to report on the implementation of each ratified convention to the ILO Committee of Experts on the Application of Conventions and Recommendations on a five-year cycle from the date the convention comes into force for that Member State. For this Convention, the first report would be due on 1 September in the first 12 months immediately following the Convention coming into force for Australia.

Implementation

22. Law and practice at the Commonwealth, State and Territory levels is consistent with Australia's obligations under the Convention.

23. Implementation of aspects of the Convention that relate to employment entitlements would fall primarily within the jurisdiction of the Commonwealth Government, with compliance achieved via the Fair Work Act. This follows the referral of workplace relations powers with respect to private sector employees by the governments of New South Wales, Queensland, South Australia and Tasmania effective as of 1 January 2010. Victoria referred workplace relations matters to the Commonwealth in 1996 and made a new reference to support the operation of the Fair Work Act in that State from 1 July 2009. Western Australia has not referred workplace relations matters to the Commonwealth. Employers and employees in Western Australia are covered by the Fair Work Act to the extent that they are constitutional corporations.

24. State and Territory governments would be responsible for implementing the Convention with respect to employees they continue to have responsibility for under their workplace relations laws (generally public sector employees and employees of non-constitutional corporations in Western Australia).

25. The Commonwealth, State and Territory governments would share responsibility for implementing those parts of the Convention that relate to occupational safety and health and anti-discrimination.

26. As indicated above, all jurisdictions advise that their law and practice is consistent with the Convention. The Fair Work Act and other relevant legislation applies equally to full-time and part-time employees in that the conditions available to full-time employees are also available to part-time employees (including on a pro-rata basis where relevant). For example, the protections afforded under occupational health and safety legislation, anti-discrimination legislation and the provisions of the Fair Work Act that deal with freedom of association, the right to bargain collectively, and discrimination and termination of employment apply equally to part-time and full-time employees. In addition, the Fair Work Act contains provisions that ensure that part-time workers are not treated less favourably than their full-time counterparts by ensuring that entitlements (such as basic rates of pay as well as paid leave) are available on a pro-rata basis. Finally, there are specific provisions in the Fair Work Act that facilitate access to freely chosen part-time work, as well as for the voluntary transfer from full-time to part-time work.

27. Under the 1998 *Labour Ministers' Council Resolution for a Framework Concerning Cooperation on ILO Matters*, the Commonwealth Government will not normally ratify an ILO convention unless compliance with the provisions of the instrument have been established in all jurisdictions, and the relevant governments have provided individual formal agreement to ratification.

28. Between 2007 and 2010, all State and Territory governments formally agreed to ratification of the Convention and have formally advised that their law and practice is consistent with the obligations under the Convention (see Attachment on Consultation).

Costs

29. There are no costs associated with the ratification of the Convention as existing Commonwealth, State and Territory laws and practices already comply with the provisions of the Convention.

Regulation Impact Statement

30. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and has confirmed that a Regulation Impact Statement is not required.

Future treaty action

31. No future treaty action is expected to arise out of the ratification process for the Convention. Pursuant to Article 17 of the Convention, at such times as it may consider necessary, the Governing Body of the ILO shall present the ILO International Labour Conference with a report on the working of the Convention and shall examine whether the question of its revision should be placed on the Conference agenda. There are presently no proposals to revise or amend the Convention before the Governing Body. Proposals to amend existing labour standards occur very rarely.

32. Any proposal to take binding treaty-action in respect of an instrument arising out of a revision of the Convention would be subject to Australia's domestic treaty-making procedures, including tabling and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

33. Article 14(1) of the Convention provides for denunciation of the Convention by a Member State after the expiration of ten years from the date of the entry into force of the Convention. In respect of a Member State that has not exercised the right to denounce the Convention within 12 months of the expiration of the ten year period as provided under Article 14(1), the Convention may be denounced only at the expiration of a further ten years and thereafter at ten-yearly intervals (Article 14(2)). Such denunciation shall not take effect until one year after the date on which it is registered (Article 14(1)). The document of denunciation should indicate that it is a formal denunciation, and state the Convention being denounced and the reasons for denunciation.

34. The ten-yearly interval for denunciation of an ILO Convention is a standard period and is included in all ILO conventions.

35. The next opportunity to denounce the Convention would be in the 12 months following 28 February 2018 (the next ten-yearly interval after the date of entry into force of the Convention generally). Any action to denounce the Convention would be subject to Australia's domestic treaty-making procedures.

Contact details

International Labour Standards Section
Workplace Relations Policy Group
Department of Education, Employment and Workplace Relations

ATTACHMENT ON CONSULTATION

International Labour Organization Convention No. 175: Part-Time Work, adopted at Geneva on 24 June 1994

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CONSULTATION

Consultation with States and Territory governments

36. There has been consultation with State and Territory governments on the International Labour Organization (ILO) Convention No. 175: *Part-Time Work*, adopted at Geneva on 24 June 1994 (the Convention) at both the Ministerial and official level.

37. States and Territories were provided with the opportunity to comment on the draft texts of the Convention and to provide information for inclusion in the briefing for the Australian delegation to the International Labour Conference in 1994 (which was the meeting at which the Convention was adopted).

38. The status of Australia's compliance with the Convention and prospects of ratification has been regularly discussed at the annual meetings of Commonwealth, State and Territory officials responsible for ILO matters. Most recently, the Convention was considered at meetings held in Darwin on 30-31 August 2005, in Canberra on 6 April 2006, in Brisbane on 30 July 2007, in Perth on 5 September 2008 and by teleconference on 30 September 2009. Briefing on the Convention was provided to the Standing Committee on Treaties for the following meetings:

- 18 April 2007 (pre-briefing provided on 28 March 2007; oral briefing provided at the meeting by representatives of the former Department of Employment and Workplace Relations);
- 26 September 2007 (pre-briefing provided on 5 September 2007); and
- 10 May 2010 (pre-briefing provided on 28 April 2010).

39. On 30 November 2006, the then Minister for Employment and Workplace Relations, the Hon Kevin Andrews MP, wrote to State and Territory governments seeking advice on their support for ratification of the Convention and an assessment on law and practice in their respective jurisdictions.

40. Between 2007 and 2010, all State and Territory governments provided formal support for ratification of the Convention, and made available updated advice indicating that their law and practice is consistent with the Convention. The dates on which this advice was provided is also listed below.

- New South Wales - 13 July 2010 (compliance confirmed 19 May 2010);
- Victoria - 26 May 2010 (compliance confirmed 4 May 2010);

- Queensland - 3 July 2009 (compliance confirmed 30 April 2010);
- Western Australia - 3 August 2007 (compliance confirmed 3 May 2010);
- South Australia - 3 April 2007 (compliance confirmed 20 May 2010);
- Tasmania - 4 December 2009 (compliance confirmed 4 December 2009);
- Northern Territory - 12 April 2010 (compliance confirmed 12 April 2010); and
- Australian Capital Territory - 23 August 2007 (compliance confirmed 23 August 2007).

41. At a meeting of the Workplace Relations Ministers' Council held on 3 April 2009 (80th meeting), Ministers agreed that consideration of ratification of the Convention would be pursued as expeditiously as possible. At its 84th meeting on 11 December 2009, Ministers noted the opportunity in 2010 to progress ratification of the Convention in 2010.

Other consultation

42. The proposed treaty-action has been discussed at meetings of the International Labour Affairs Committee (ILAC) of the National Workplace Relations Consultative Council on a regular basis since the Convention was adopted by the ILO in 1994. The ILAC comprises the Commonwealth Department of Education, Employment and Workplace Relations, the Australian Council of Trade Unions (ACTU), the Australian Chamber of Commerce and Industry (ACCI) and (since October 2008) the Australian Industry Group (Ai Group). These organisations are, respectively, the worker and employer organisations that represent Australia in the ILO. At ILAC's meeting on 31 October 2008, the ACTU, the ACCI and the Ai Group expressed support for Australia's consideration of ratification of the Convention.

43. On 30 June 2010, the Office of International Law in the Commonwealth Attorney-General's Department formally confirmed by letter that Commonwealth law and practice is consistent with the obligations under the Convention.

BACKGROUND INFORMATION

The following States were Parties to International Labour Organization Convention No. 175: Part-Time Work, adopted at Geneva on 24 June 1994, as at 3 November 2010:

Albania
Bosnia and Herzegovina
Cyprus
Finland
Guyana
Hungary
Italy
Luxembourg
Mauritius
Netherlands
Portugal
Slovenia
Sweden