

**National Interest Analysis [2013] ATNIA 1
with attachment on consultation**

**International Labour Organization Convention No. 129:
Convention concerning Labour Inspection in Agriculture**

(Geneva, 25 June 1969)

[2013] ATNIF 1

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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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. 129: Convention concerning Labour Inspection in Agriculture*, adopted at Geneva on 25 June 1969 (the Convention).
2. In accordance with its Article 29(2), the Convention entered into force generally on 19 January 1972, being 12 months after the date on which the ratifications of two ILO Members had been registered with the Director-General. Article 29(1) provides the Convention is binding only upon ILO Members that have registered their ratification with the Director-General of the International Labour Office.
3. It is proposed that Australia ratify the Convention as soon as practicable. Under Article 29(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.
4. It is not proposed that Australia will make any reservation or declaration on ratification. After ratification, pursuant to Article 35 of the ILO Constitution, Australia may lodge a declaration concerning the application of the Convention to Norfolk Island, following consultations with the Norfolk Island authorities.

Overview and national interest summary

5. The primary purpose of the Convention is to establish and maintain a system of labour inspection in agriculture to enforce effectively the relevant legal provisions relating to workers' conditions of work and other matters relating thereto. The body supervising and controlling labour inspection must be sufficiently resourced with appropriately qualified personnel in order to carry out its functions.
6. Ratification of the Convention would assist in ensuring that Australia maintains a labour inspection regime consistent with internationally-agreed standards within an industry important to Australia's economic prosperity.
7. The Convention is the only one of the ILO's four 'governance' conventions which Australia has not ratified. Ratification would enhance Australia's international standing and demonstrate ongoing commitment to implementation of core ILO conventions.

Reasons for Australia to take the proposed treaty action

8. Ratification of the Convention would reflect Australia's recognition of the importance of ensuring a robust and effective labour inspection regime in an industry of significance to Australia's national economy. Furthermore, ratification of the Convention would complement the measures taken to implement the other core labour inspection convention Australia has already ratified – *ILO Convention No. 81: Convention concerning Labour Inspection in Industry and Commerce* [1976] ATS 14, which was adopted at Geneva on 11 July 1947 and entered into force for Australia on 24 June 1976.

9. The ILO's 2008 *Declaration on Social Justice for a Fair Globalization* identifies four conventions which are the standards that are the most significant from the viewpoint of governance (known as the 'governance' conventions). Ratification of the Convention at this time would strengthen Australia's credentials within the broader international community by ensuring it has ratified all four 'governance' conventions within the ILO's goal of 2015 for universal ratification of those conventions. Should Australia also ratify *ILO Convention 138: Convention concerning the Minimum Age for Admission to Employment*, adopted at Geneva on 26 June 1973 (for which a proposal is currently before Parliament¹), 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.

10. A key objective of Australia's engagement with the ILO is to provide policy leadership within the Asia-Pacific region in promoting international labour standards. The ILO estimates that the Asia-Pacific region accounts for 70 per cent of the more than 1 billion agriculture workers worldwide.² As the Convention has been ratified by just one country in the region (Fiji), ratification by Australia would encourage other Asia-Pacific countries to consider the merits of applying international labour standards to safeguard the rights of workers in the agricultural industry.

11. The Convention has been ratified by 52 out of the 185 ILO Members.

ILO

12. The ILO is a specialised agency of the United Nations with 185 Members. 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. Conventions and protocols are legally binding on Members that ratify them. Together, the

¹ [2013] ATNIA 2, tabled on 12 March 2013

² International Labour Organisation, *Global Employment Trends Model 2007*, Table 3.1

international labour code establishes minimum labour standards for workers in all types of industries and occupations throughout the world.

13. The 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. Australia has been a Member of the ILO since its establishment in 1919 and has ratified 58 out of the ILO's 189 conventions. Fifty of the conventions remain in force for Australia.

Obligations

14. Article 3 of the Convention obliges each Member to establish and maintain an effective system of labour inspection in the agricultural industry.

15. Article 6 of the Convention provides that the functions of the system of labour inspection are to: secure the enforcement of the legal provisions relating to conditions of work and the protection of workers, such as provisions relating to hours, wages, leave and occupational health and safety (OHS); provide advice and information to employers and workers concerning the most effective means of complying with their legal obligations; and to make recommendations for reform to relevant domestic laws.

16. Articles 8 to 13 relate to labour inspection staff. Staff must be composed of public officials who are independent of changes of government and of improper external influences (Article 8) and must be recruited on the basis of merit (Article 9) with equal opportunities for men and women (Article 10). Inspection services must also ensure effective cooperation with other inspection services (Article 12) and with employers and workers, or their organisations, where they exist (Article 13).

17. Members must ensure that the number of labour inspectors is sufficient to effectively discharge their duties (Article 14), and that they have sufficient resources (Article 15).

18. Article 16 provides that labour inspectors must be empowered to enter workplaces for inspection and carry out examinations or inquiries, including interviewing employers and employees and requiring the production of documents.

19. Articles 17 to 19 relate to labour inspection services concerning OHS. Labour inspection services must be associated with the control of new plants, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health and safety (Article 17). Labour inspectors must also be empowered to inspect workplaces with respect to OHS, take measures to remedy defects, or halt works in the event of an imminent danger to health or safety (Article 18). Labour inspectorates must be notified of occupational accidents and cases of occupational disease occurring in the agricultural sector (Article 19).

20. Article 22 provides that persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to legal or administrative proceedings.

Article 24 provides that adequate penalties for violations shall be provided for by national laws and regulations and effectively enforced.

21. Article 26 requires the central labour inspection agency to publish (and lodge with the International Labour Office) an annual report on its work in the agricultural industry within a reasonable timeframe after the end of the year to which they relate. Article 27 sets out the type of information required in the report, including statistics on the various activities of the agency.

22. Under Article 22 of the ILO Constitution, each ILO Member 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, Members are required to report on the implementation of each ratified 'governance' convention to the ILO Committee of Experts on the Application of Conventions and Recommendations on a three-year cycle from the date the convention enters into force for that Member. For the Convention, the first report would be due on 1 September in the year after the Convention enters into force for Australia. For example, if Australia's ratification were deposited with the Director-General in 2013, the Convention would enter into force for Australia one year later, and the first report would be due on 1 September 2015.

Implementation

23. Law and practice at the Commonwealth, State and Territory levels is consistent with Australia's obligations under the Convention. All State and Territory governments have advised that their jurisdictions comply with the Convention (see paragraphs 39-53 for details of consultations with States and Territories).

24. Implementation of the Convention is primarily within the jurisdiction of the Commonwealth through the national system of labour inspection established by the *Fair Work Act 2009* (Cth) (FW Act). The FW Act covers all workplaces falling within the Commonwealth's jurisdiction (known as the 'national system'), including agricultural workplaces. 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 referral to support the operation of the FW 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 FW Act to the extent that they are constitutional corporations and are otherwise covered primarily by the *Industrial Relations Act 1979* (WA).

25. The FW Act establishes a safety net of minimum entitlements and conditions of employment for employers and employees in the national system. It also establishes the Office of the Fair Work Ombudsman (FWO), and confers powers and functions on the Fair Work Ombudsman and Fair Work Inspectors.

26. The FWO is a statutory authority responsible for providing education, assistance and advice about the Commonwealth workplace relations system as well as for impartially enforcing compliance with the FW Act. The Fair Work Ombudsman appoints Fair Work Inspectors that are employed under the *Public Service Act 1999* (Cth) and empowered to investigate and enforce compliance with relevant Commonwealth workplace laws and fair work instruments as provided under Articles 16 to 18 of the Convention. Fair Work Inspectors and Fair Work Infoline Advisors also provide education and advice to employers and employees to assist them understand their rights and obligations under Commonwealth workplace laws. The FWO is appropriately resourced with multiple locations across Australia as required by the Convention. As at 30 June 2012, the FWO's compliance and education activities were supported by more than 600 Fair Work Inspectors. This includes 183 Fair Work Inspectors working in State partner agencies and 92 dual-badged Fair Work Building Industry Inspectors. There are 53 offices across Australia.

27. From 1 July 2011 to 30 June 2012 the FWO investigated 28,412 complaints and recovered \$33,650,626 for employees. Furthermore, the FWO performed 6,547 audits on employers and recovered \$6,158,874 for employees as a result of targeted education and compliance campaigns.

28. As the national workplace relations regulator, the Fair Work Ombudsman provides an annual report to the Minister for Employment and Workplace Relations containing information as well as statistical data relating to inspection, compliance and enforcement activities.

29. States and Territories are responsible for implementing the Convention with respect to their OHS inspectorates and have a similar inspection system in relation to OHS matters in their jurisdictions.

Costs

30. 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 inspections will be carried out by existing Commonwealth, State and Territory agencies.

Regulation Impact Statement

31. 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

32. No future treaty action is expected to arise out of the ratification process for the Convention. Pursuant to Article 33 of the Convention, at such times as it may consider necessary, the Governing Body shall present the 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 and are typically effected by the adoption of a new convention, which would in turn be subject to ratification by Members.

33. 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

34. Article 30(1) of the Convention provides that a Member 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. If this right is not exercised, Members will be bound for another period of ten years and thereafter may denounce the Convention at the expiration of each subsequent ten-year period (Article 30(2)). Such denunciation would take effect one year after the registration of the act of denunciation with the Director-General (Article 30(1)).

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

36. The next opportunity to denounce the Convention would be in the 12 months following 19 January 2022 (the next ten-yearly interval after the date of entry into force of the Convention generally).

37. Article 34 of the Convention provides that if the ILO Conference adopts a new convention that revises this Convention in whole or in part, ratification of the new convention shall entail the immediate denunciation of this Convention unless otherwise specified.

38. Any action to denounce the Convention, or ratify a replacement 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

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CONSULTATION

Consultation with State and Territory governments

39. There has been consultation with State and Territory governments on the Convention at both the Ministerial and officials' levels.
40. 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 1968 (when the Convention was first discussed) and 1969 (which was the meeting at which the Convention was adopted).
41. The possible ratification of the Convention has been discussed on numerous occasions between the Commonwealth, States and Territories since it was adopted in 1969.
42. 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 annual meetings held in October 2010, September 2011 and September 2012. Regular teleconferences were also held throughout 2011 and 2012.
43. Briefing on the Convention was provided to the Standing Committee on Treaties for the meetings of 5 October 2011, 15 May 2012 and 4 October 2012.
44. On 20 March 2011, the then Minister for Employment and Workplace Relations, Senator Chris Evans (the former Minister), wrote to State and Territory workplace relations ministers seeking their agreement to consider four conventions for ratification in the 2011-2012 biennium, including the Convention. All State and Territory ministers agreed to these conventions.
45. On 14 July 2011, the former Minister wrote to State and Territory workplace relations ministers seeking advice on their support for ratification of the Convention and an assessment on law and practice in their respective jurisdictions. The current Minister for Employment and Workplace Relations, the Hon Bill Shorten MP, also wrote to relevant jurisdictions on 22 August 2012 where requested advice was still outstanding.

46. All State and Territory governments have made available advice indicating that their law and practice is consistent with the Convention. Furthermore, five of the eight governments have formally provided their support for Australia's ratification of the Convention. The Victorian and Northern Territory Governments have raised no objection to Australia's ratification of the Convention but are yet to provide formal advice of support for ratification.

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

48. Compliance in Queensland is based on existing legislative protections and no legislative change is required. Given that Queensland law and practice complies with the Convention, there is no legal barrier to ratification.

49. The Convention was discussed at the Workplace Relations Ministers' Council (WRMC) meeting of 10 August 2011 and the first meeting of the Council of Australian Governments Select Council on Workplace Relations (replacing the WRMC) on 6 July 2012.

Norfolk Island

50. Article 35 of the ILO Constitution provides that where the subject matter of a convention is within the self-governing powers of a non-metropolitan territory of a Member, that Member shall bring the relevant convention to the attention of government of the territory as soon as possible after ratification, with a view to its implementation by the territory. Thereafter the Member, with the agreement of the government of the territory, may lodge a declaration accepting the obligations of the relevant convention on behalf of the territory.

51. The *Norfolk Island Act 1979* provides that the Norfolk Island legislature (together with the Commonwealth) has legislative competence over 'labour and industrial relations, employees' compensation and occupational health and safety'. Accordingly, consistent with established practice, the Government will consult the Norfolk Island authorities following ratification of the Convention and, subject to their agreement, may lodge a declaration accepting the obligation of the Convention on behalf of Norfolk Island.

Other consultation

52. 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 periodic basis since the Convention was adopted by the ILO in 1969. 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 the Australian Industry Group (Ai Group). These organisations are, respectively, the worker and employer organisations that

represent Australia in the ILO. Most recently, the Convention has been discussed at the ILAC meetings of 1 November 2010, 25 February 2011, 3 May 2011, 14 October 2011, 9 March 2012 and 12 October 2012.

53. The ACTU, ACCI and the Ai Group support Australia's ratification of the Convention.