

National Interest Analysis [2010] ATNIA 60

with attachment on consultation

**International Labour Organization Convention No. 162:
Convention Concerning Safety in the Use of Asbestos,
adopted at Geneva on 24 June 1986**

[2010] ATNIF 48

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. 162: Convention Concerning Safety in the Use of Asbestos*, adopted at Geneva on 24 June 1986 (the Convention) in accordance with Article 24(1), which provides the Convention is only binding upon ILO Member States that have registered their ratification with the Director-General of the ILO.
2. It is proposed that the Convention be ratified as soon as practicable. In accordance with Article 24(2), the Convention entered into force on 16 June 1989 (12 months after the date on which the ratifications of two Member States of the ILO had been registered). The Convention would enter into force for Australia 12 months after the date on which Australia's instrument of ratification is registered.
3. In accordance with ILO practice, it is not proposed that Australia make any reservation or declaration on ratification.

Overview and national interest summary

4. The Convention requires ratifying Member States to implement national laws or regulations prescribing the measures to be taken for the prevention and control of, and protection of workers against, health hazards due to occupational exposure to asbestos.
5. Ratification of the Convention would ensure that Australian workers will continue to enjoy the protection of a world class occupational health and safety (OHS) regime that reflects best practice in protecting employers and employees from the harmful effects of asbestos. All State and Territory Governments support ratification of the Convention.
6. Only two ILO Member States in the Asia-Pacific have ratified the Convention (Japan and South Korea). Ratification by Australia would provide leadership in the region by encouraging States to consider the merits of ratification and the effective implementation of international labour standards in the field of OHS.

Reasons for Australia to take the proposed treaty action

7. A decision to ratify the Convention would reflect, at the highest level, Australia's commitment to workplace health and safety, particularly in relation to the prevention of exposure to asbestos. The obligations under the Convention are consistent with the requirements of model legislation and codes of practice adopted by all jurisdictions in Australia to give effect to the decision to ban most uses of asbestos.
8. The decision to ban the import and use of chrysotile asbestos was made at the May 2001 meeting of the Workplace Relations Ministers' Council (WRMC). The National Occupational Health and Safety Commission (NOHSC) was also asked to undertake consultation to facilitate a ban on all other forms of asbestos.
9. The WRMC meeting in September 2001 endorsed proposed amendments to Schedule 2 (Substances prohibited for specific uses) of the NOHSC National Model Regulations for the Control of Workplace Hazardous Substances (Model Regulations), to prohibit the use of chrysotile, crocidolite and amosite asbestos. This meeting also endorsed implementation arrangements to affect the ban on chrysotile asbestos. This included the development of a nationally consistent approach to exemptions and a proposal to develop recommendations for prohibiting all other forms of asbestos. These amended regulations were adopted or referenced in the legislation of all jurisdictions in Australia. The ban on the use and importation of all forms of asbestos has been fully effective since 31 December 2003.
10. 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 and employer and worker representative organisations. One of the ILO's core functions is to establish and monitor a code of international labour standards that are embodied in conventions, protocols and recommendations developed by the three representative groups. The international labour code establishes minimum labour standards for workers in all types of industries and occupations throughout the world.
11. 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.
12. Australia has been a Member of the ILO since its establishment in 1919 and has ratified 55 out of the ILO's 188 conventions. Forty-seven of these conventions remain in force for Australia.
13. The Convention has been ratified by 32 States (see list in Background Information). A key strategic objective of Australia's engagement with the ILO is to provide policy leadership within the Asia-Pacific region in promoting labour standards. This important Convention has only been ratified by two States in the region. Ratification by Australia would encourage other Asia-Pacific States to consider the merits of applying international labour standards in the field of OHS.
14. Importantly, all State and Territory governments, 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 Convention prescribes measures that shall be taken by ratifying Member States for the prevention and control of, and protection of workers against, occupational exposure to asbestos.

16. The Convention requires national laws or regulations to be adopted to either prohibit the use of asbestos, control its use through the imposition of special rules and procedures, including authorisation, and/or replace asbestos with less harmful materials (Articles 9 and 10). The use of crocidolite (article 11) and the spraying of all forms of asbestos (Article 12) must be prohibited. Employers shall be made responsible for the establishment and implementation of practical measures for the prevention and control of the exposure of workers to asbestos and for their protection against hazards due to asbestos (Article 16).

17. Ratifying States must make employers responsible for the notification to relevant authorities of work involving exposure to asbestos (Article 13). Producers, manufacturers and/or suppliers must adequately label containers, asbestos and products containing asbestos (Article 14). Competent authorities must prescribe periodically reviewed limits for exposure of workers to asbestos and must take measures to prevent or control the release of asbestos dust into the air (Article 15). The demolition of structures containing friable asbestos insulation materials and the removal of asbestos from buildings shall only be undertaken by authorised persons (Article 17). Employers must provide appropriate work clothing and the handling and cleaning of that clothing must be carried out under controlled conditions. Washing facilities must also be provided (Article 18). Employers must dispose of asbestos waste in a way that does not pose a health risk to workers or people living in the vicinity of the enterprise (Article 19).

18. The Convention requires Member States to place obligations on employers to monitor airborne asbestos dust in the working environment and workers' health in connection with exposure to asbestos (Article 20). Workers exposed to asbestos shall be provided with medical examinations where necessary and consequential advice. The monitoring of workers' health shall not result in loss of earnings. When continued assignment to work involving asbestos is medically inadvisable, every effort shall be made to provide workers with other means of maintaining their income. Competent authorities shall develop a system of notification of all diseases caused by asbestos (Article 21).

19. Member States are also required to promote awareness of health hazards due to exposure to asbestos by disseminating information and ensuring that workplace education policies are established to train workers in the prevention and control of asbestos exposure (Article 22).

20. These laws and regulations must be enforced by an adequate system of inspection and provide necessary measures, including penalties, to ensure compliance (Article 5). They must be given effect in consultation with the most representative

organisations of employers and workers concerned and be periodically reviewed in the light of technical progress and advances in scientific knowledge (Article 3).

21. Under Article 22 of the ILO Constitution, Members States must submit an annual report to the ILO on the measures they have taken to give effect to the provisions of the conventions to which they are 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 to the ILO Committee of Experts on the Application of Conventions and Recommendations on the implementation of each ratified convention on a five-year cycle from the date each convention comes into force for each reporting Member State. The first report on the Convention would be due on 1 September in the first 12 months immediately following the Convention coming into force for Australia.

Implementation

22. Implementation of the Convention's obligations fall primarily within the jurisdictions of the State and Territory governments and partly within the jurisdiction of the Australian Government. Law and practice at the Commonwealth, State and Territory levels is consistent with Australia's obligations under the Convention.

23. In 2001, the NOHSC published National Model Regulations for the Control of Workplace Hazardous Substances (Prohibition of Asbestos) 2001 to give effect to policy decisions to ban most uses of asbestos in Australia. These regulations, along with the Code of Practice for the Safe Removal of Asbestos [NOHSC:2002(2005)] and the Code of Practice for the Management and Control of Asbestos in the Workplace [NOHSC:2018(2005)], which have been adopted or referenced in the legislation of all jurisdictions in Australia, give effect to the provisions of the Convention.

24. The legislation that pertains to asbestos safety in Australian workplaces and which gives effect to the Convention is currently under review as part of a national program to harmonise all Australian workplace health and safety legislation. The proposed model legislation will continue to give effect to this Convention once implemented. Specifically, at the 11 December 2009 meeting of the WRMC, Ministers agreed to request that Safe Work Australia consider consistency with and Australia's ability to ratify, the Convention when developing asbestos safety regulations.

25. Under the *1998 Labour Ministers' Council Resolution for a Framework Concerning Cooperation on ILO Matters*, the Commonwealth Government will not normally proceed with ratification of an ILO instrument unless compliance with the provisions of a convention has been established in all jurisdictions and the relevant governments have provided individual formal agreement to ratification. Between 2003 and 2010, all State and Territory Governments formally agreed to the proposed ratification of the Convention and advised that their law and practice is consistent with the obligations under the Convention.

Costs

27. 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.

Regulation Impact Statement

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

Future treaty action

29. No future treaty action is expected to arise in relation to this Convention. Any future revision of the Convention would require a decision of the Governing Body of the ILO to place such revision on the agenda of the annual International Labour Conference. In this regard, Article 28 of the Convention provides that, at such times as it may consider necessary, the Governing Body shall present to the International Labour Conference a report on the working of the Convention and shall examine the desirability of placing on the Conference agenda the question of its revision in whole or in part. There are presently no proposals to revise or amend the Convention before the Governing Body of the ILO. Proposals to amend existing labour standards occur very rarely.

30. 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 process, including tabling and consideration by the Joint Standing Committee on Treaties.

31. Article 1(2) allows a Member State ratifying the Convention to exclude particular branches of economic activity from the Convention's application, when it is satisfied that application to these branches is unnecessary. The Member State must first consult the most representative organisations of employers and workers concerned, and conduct an assessment of the health hazards involved and the safety measures applied. It is not proposed to exclude any branches of economic activity from the application of the Convention.

Withdrawal or denunciation

32. Article 25(1) provides for the denunciation of the Convention by a Member State during a twelve month interval after the expiration of a period of ten years commencing from the date on which the Convention first entered into force. If this right is not exercised, Member States will be bound for another period of ten years and thereafter may denounce the treaty at the expiration of ten-yearly intervals (Article 25(2)). Such denunciation would take effect one-year after the registration of the act of denunciation with the Director-General of the ILO (Article 25(1)).

33. The document of denunciation should indicate that it is a formal denunciation and should state the Convention being denounced, as well as the reasons for denunciation.

34. The ten-yearly interval for the 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 16 June 2019 (the next ten-yearly interval of the date of entry of the Convention generally). Any action to denounce the Convention would be subject to Australia's domestic treaty making processes.

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

36. There has been consultation with State and Territory Governments on the Convention at both the Ministerial and official level.

37. States and Territories were provided with the opportunity to comment on the draft texts and to provide information for inclusion in the briefing for the Australian delegation to the International Labour Conference in 1986 (which was the meeting at which the Convention was adopted).

38. The status of Australia's compliance with the Convention and prospects for ratification have been regularly considered at annual meetings of Commonwealth, State and Territory officials responsible for ILO matters. Specifically, the Convention was discussed at meetings held in April 1996, September 1998, October 1999, October 2000, April 2002, February 2003 and March 2004. Briefing on the Convention was provided to the Standing Committee on Treaties for the following meetings:

- 22 September 2005 (pre-briefing provided on 8 September 2005);
- 26 September 2007 (pre-briefing provided on 5 September 2007);
- 12 October 2009 (pre-briefing provided on 4 October 2009); and
- 10 May 2010 (pre-briefing provided on 28 April 2010).

39. On 7 December 2005, 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. At its 80th meeting on 3 April 2009, the Workplace Relations Ministers' Council (WRMC) identified a number of ILO Conventions as priority targets for ratification, including the Convention.

41. At its 84th meeting on 11 December 2009, the WRMC noted the opportunity to progress ratification of the Convention in 2010.

42. Ministers from all States and Territories have written to the Commonwealth to indicate that they support ratification and have provided law and practice reports indicating full compliance with the Convention. The dates on which this information was provided is listed below:

- New South Wales – 15 August 2006 (confirmed compliance 08 July 2010);
- Victoria – 26 May 2010 (compliance confirmed 26 May 2010);
- Western Australia – 24 December 2003 (compliance confirmed 3 May 2010);
- Northern Territory – 12 April 2010 (compliance confirmed 12 April 2010);
- Tasmania – 26 November 2009 (compliance 10 May 2010);
- South Australia – 24 May 2007 (compliance 20 April 2010); and
- Australian Capital Territory 23 May 2006 (compliance 15 June 2010).

Other consultation

43. On 7 December 2005, the then Minister for Employment and Workplace Relations, the Hon Kevin Andrews MP, wrote to the Australian Chamber of Commerce and Industry (ACCI) and the Australian Council of Trade Unions (ACTU) seeking their agreement to the ratification of the Convention. At the time, the ACTU and ACCI were members of the International Labour Affairs Council (ILAC), which is the forum through which worker and business representative organisations are consulted on ILO matters.

44. In October 2008, the Australian Industry Group (Ai Group) also became a member of ILAC. The Ai Group were also consulted on progress towards ratification of the Convention at the ILAC meetings on 3 March and 31 October 2008, 2 March and 23 October 2009, and 1 March 2010. At the Meeting on 31 October 2008, all ILAC members supported consideration of ratification of the Convention.

45. On 7 July 2010, the Office of International Law in the Commonwealth Attorney-General's Department formally confirmed by email that Commonwealth law and practice is consistent with the obligations under the Convention.