

INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS:

**NO. 83: LABOUR STANDARDS (NON-METROPOLITAN
TERRITORIES) CONVENTION, 1947**

**NO. 85: LABOUR INSPECTORATES (NON-METROPOLITAN
TERRITORIES) CONVENTION, 1947**

**NO. 86: CONTRACTS OF EMPLOYMENT (INDIGENOUS WORKERS)
CONVENTION, 1947**

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No. 83: Labour Standards (Non-Metropolitan Territories) Convention, 1947

No. 85: Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947

No. 86: Contracts of Employment (Indigenous Workers) Convention, 1947

Date of tabling of Proposed Treaty Actions

1. 14 May 2003.

Nature and Timing of Proposed Treaty Actions

2. The proposed binding treaty action is denunciation of the three International Labour Organization (ILO) Conventions listed above. The denunciations will take effect within the relevant twelve month 'window of opportunity' for each Convention (commencing 15 June 2004 for Convention No. 83; 26 July 2005 for Convention No. 85 and 13 February 2003 for Convention No. 86).

3. The standard final provisions of each Convention provide that a ratifying State may denounce it after the expiration of 10 years from the date on which the Convention first came into force internationally. In order to denounce a Convention the ratifying State must submit an instrument stating that intention to the Director-General of the International Labour Organization (ILO) for registration. The instrument must be submitted during the year following the expiration of the 10 year period, otherwise the State will remain bound by the Convention for another 10 years. The denunciation shall not take effect until one year after the date on which it is registered. The effect of denunciation would be to terminate Australia's obligations the relevant Conventions.

4. Convention No. 83 came into force on 15 June 1974, and can be denounced in the twelve months following 15 June 2004. Convention No. 85 came into force on 26 July 1955, and can be denounced during the twelve months following 26 July 2005. Convention No. 86 came into force on 13 February 1953, and can be denounced in the twelve months following 13 February 2003. It is proposed to submit the instruments of denunciation to the Director-General of the ILO during the appropriate 12 month denunciation periods for each Convention.

Overview and National Interest Summary

5. It would be appropriate for Australia to denounce Conventions No. 85 and No. 86 as they have been declared 'not applicable' to Norfolk Island by the Australian Government after consultations with the Government of Norfolk Island (Norfolk Island was the only Australian territory to which they could have been applied). Therefore, the ILO does not require Australia to report on their implementation. Convention No. 83 lacks wide support (it has only been ratified by Australia and the United Kingdom out of the ILO's 175 member States) and the ILO no longer promotes its ratification. By denouncing these Conventions Australia will indicate to the world community that it no longer supports the retention of these Conventions in the international labour code.

Reasons for Australia to take the proposed treaty action

6. The ILO is a specialised agency of the United Nations. The ILO establishes and supervises international labour standards which are embodied in either Conventions or Recommendations (the latter are not legally binding). Australia has been a member of the ILO since its establishment in 1919 and has ratified 57 out of the ILO's 184 Conventions. Forty-eight of these Conventions remain in force for Australia. In order to ensure that the international labour standards promulgated by the ILO are to continue to be relevant, member States should regularly review those Conventions to which they are party. When Conventions are identified as being out of date or irrelevant, member States should take appropriate action, including the denunciation of such Conventions.

7. Australia has taken the view in recent years that it should not remain party to outdated ILO Conventions. This is in accordance with a proposed amendment to the ILO Constitution adopted in 1997, which will allow the abrogation or repeal of any ILO Convention that had 'lost its purpose' or that 'no longer made a useful contribution' to attaining ILO objectives. Australia formally accepted this amendment on 11 October 2001,¹ but it has not yet received a sufficient number of acceptances to come into effect.

8. Conventions No. 83, No. 85 and No. 86 have been identified as irrelevant to Australia. Declarations have been lodged with the ILO in relation to the application of these three Conventions to Norfolk Island. All three Conventions apply to non-metropolitan territories, which in the ILO context refers to the external territories of a member State, whether they are self-governing or not. The purpose of the Conventions, which were adopted soon after the Second World War, was to highlight the extension of a number of standards of a more general character to the workers in non-metropolitan territories. These Conventions are now effectively superfluous, given that Article 35 of the Constitution of the ILO requires member States who ratify a Convention to subsequently make a declaration concerning the application of that Convention to its non-metropolitan territories. For Australian purposes, there is no need for Conventions which specifically apply ILO standards to Norfolk Island.

9. The Governing Body of the ILO is currently giving consideration to shelving² Convention No. 83. Reasons why Australia should denounce Convention No. 83 include:

- a) As noted in paragraph 5 above, Convention No. 83 lacks widespread support, as the United Kingdom is the only other ratifying State.
- b) The ILO no longer promotes ratification of this Convention. The Governing Body of the ILO has indicated that the question of shelving this Convention will be re-examined in the light of consultations to be held with the member States concerned (i.e. Australia and the United Kingdom). The ILO has not yet made an approach to Australia in this regard. Denunciation would send the Governing Body a strong message that Australia no longer considers Convention No. 83 to be applicable or

¹ The matter of Australia's acceptance of the Constitutional amendment was tabled in the Australian on 27 February 2001. In its report tabled on 18 April 2001, the Joint Standing Committee on Treaties stated that it supported Australia's acceptance of the amendment and recommended that binding treaty action be taken.

² Shelving means that ratification of Conventions is not encouraged, their publication is discontinued, and detailed reports on the application of these Conventions are no longer requested. However, it leaves intact the right to invoke provisions relating to representations and complaints under articles 24 and 26 of the ILO Constitution. It also allows employers' and workers' organizations to continue to make comments in accordance with the regular supervisory procedures, and the ILO Committee of Experts to review these comments and to request, if appropriate, detailed reports under article 22 of the Constitution. Finally, shelving has no impact on the status of these Conventions in the legal systems of the member States that have ratified them.

relevant, and that Conventions with so few ratifications should not enter into and/or remain in force.

- c) Under Convention No. 83 the Australian Government was required to consider the appropriateness of applying the 13 Conventions listed in the Schedule to the Convention to Norfolk Island. Only four of the listed Conventions (i.e. Conventions No. 3, No. 17, No. 19 and No. 27) were declared applicable to Norfolk Island by the Australian Government. However, as Conventions No. 3 and No. 17 have not been ratified by Australia it is inappropriate to require Norfolk Island to continue to be bound by these standards which do not apply to the rest of the country. Furthermore, Norfolk Island will continue to be bound by Conventions No. 19 and No. 27 in accordance with the usual declarations made in relation to the application of any ratified ILO Convention.

10. Ratification of Convention No. 85 has had no practical effect, as the Convention was subsequently declared by Australia to be inapplicable to Norfolk Island, and therefore Australia has not been required to report to the ILO on its implementation.

11. Similarly, ratification of Convention No. 86 has had no practical effect, as it was subsequently declared to be inapplicable to Norfolk Island. In addition, ratifying countries are no longer asked to submit reports to the ILO on the application of Convention No. 86.

Obligations

12. Under Article 35 of the ILO Constitution, Conventions must be brought to the notice of the government of the territory after a Convention is ratified. Following this the member State, in agreement with the government of the territory, is to advise the ILO (by means of a Declaration) as to how the Convention is to be implemented in the territory. Declarations may indicate that the Convention is applicable, applicable with modification or inapplicable; and they may be varied from time to time if circumstances within the territory change.

13. Australia has made declarations with respect to the application of Conventions No. 83, No. 85 and No. 86 to the territory of Norfolk Island.

14. Convention No. 83 requires ratifying member States to indicate the extent to which they undertake to apply provisions of those Conventions set out in the Schedule to the Convention in their non-metropolitan territories. The Schedule contains the substantive provisions of Conventions relating to minimum age for entry to employment, medical examination of young persons, night work of young persons and women, maternity protection, underground work of women, workers' compensation, marking of weight on packages and weekly rest.

15. Australia declared Convention No. 83 applicable to Norfolk Island. The following declarations were made with respect to the Conventions listed in the Schedule to Convention No. 83:

- a) Conventions No. 17, 19 and 27 were declared applicable without modification, as Norfolk Island complies with their requirements;
- b) Convention No. 3 was declared applicable with modification to Norfolk Island. The modification is that the Convention only applies to public sector employees;
- c) Conventions No. 14, 15, 16, 45, 58, 59 and 77 were declared inapplicable, due to the lack of the kind of industry covered by the Conventions in Norfolk Island;

- d) Conventions No. 89 and 90 were declared inapplicable, as there is no industry of the kind covered by the Conventions carried on at night.

16. Norfolk Island has been required to report to the ILO periodically under Article 22 of the ILO Constitution on its compliance with Conventions No. 3, No. 17, No. 19 and No. 27. As Australia has ratified Conventions No. 19 and No. 27, the effect of denunciation would be that the Government of Norfolk Island would no longer be obliged to report to the ILO on its implementation of Conventions No. 3 and No. 17.

17. Convention No. 85 provides that labour inspection services consisting of suitably trained inspectors shall be maintained in non-metropolitan territories. It also provides that workers and their representatives shall be afforded every facility for communicating freely with inspectors, that inspectors shall be required to inspect conditions of employment at frequent intervals and that they be authorised by law to exercise certain specified powers. As the Convention was declared non-applicable to Norfolk Island denunciation will have no effect on Australia's international obligations.

18. Convention No. 86, which applies to workers belonging to or assimilated to the indigenous population of non-metropolitan territories, provides that maximum periods of service which may be stipulated or implied in any contract of employment, whether written or oral, are to be prescribed by regulations. As the Convention was declared non-applicable to Norfolk Island denunciation will have no effect on Australia's international obligations.

19. Each Convention includes standard articles permitting ratifying countries to denounce the Convention. The articles are Article 8 of Convention No. 83, Article 12 of Convention No. 85, and Article 11 of Convention 86. Once denunciation has taken effect the country concerned is no longer bound by the Convention and has no further obligations to meet in respect of the Convention.

Implementation

20. The three Conventions were ratified for Australia on the following dates: Convention No. 83 – 15 June 1973; Convention No. 85 – 30 September 1954; and Convention No. 86 – 15 June 1973. These Conventions were ratified on the basis of Commonwealth law and practice alone. As noted above, various declarations in respect of the application of these Conventions to Norfolk Island were made after appropriate consultations, including with the Norfolk Island Government.

21. No legislative or administrative action is required by either the Federal or the Norfolk Island Government to implement the denunciations at the domestic level.

Costs

22. There are no costs associated with the denunciation of these Conventions.

Consultation

23. The consultation process is outlined in the attachment. The treaty action proposed is supported by the Minister for Employment and Workplace Relations, the Minister for Regional Services, Territories and Local Government, the Government of Norfolk Island, the Australian Chamber of Commerce and Industry (ACCI) and the Australian Council of Trade Unions (ACTU). The proposal does not impact on the States and Territories.

Regulation Impact Statement

24. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future Treaty Action

25. No future treaty action would arise out of the denunciation process.

Withdrawal or denunciation

26. As noted in paragraph 3 above, the standard final provisions of each Convention permit their denunciation by a ratifying State during one-year intervals every 10 years after coming into force internationally. The relevant provisions of each Convention are: Convention No. 83 – Article 8; Convention No. 85 – Article 12; Convention No. 86 – Article 11.

Contact details

International (ILO) Section
Workplace Relations Policy and Legal Group
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CONSULTATIONS

INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS

No. 83: Labour Standards (Non-Metropolitan Territories) Convention, 1947

No. 85: Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947

No. 86: Contracts of Employment (Indigenous Workers) Convention, 1947

1. On 12 August 2002, the Minister for Employment and Workplace Relations formally requested the views of the Australian Chamber of Commerce and Industry (ACCI) and the Australian Council of Trade Unions (ACTU) on the denunciation of the above Conventions. The ACCI and the ACTU are the employer and worker organizations respectively which represent Australia in the ILO.
2. The ACTU advised by letter of 16 August 2002 that they have no objection to the proposed treaty action.
3. The ACCI advised by letter of 27 August 2002 that they support the denunciation of these Conventions as this would be consistent with the objective of ensuring that Conventions which are no longer relevant to our national circumstances do not form part of Australia's regulatory structures.
4. On 12 August 2002, the Minister for Employment and Workplace Relations formally requested the views of the Government of Norfolk Island through the Minister for Transport and Regional Services. The Minister for Transport and Regional Services referred the matter to the Minister for Regional Services, Territories and Local Government for attention. The Minister for Regional Services, Territories and Local Government advised by letter of 24 December 2002 that both he and the Government of Norfolk Island supported denunciation of the Conventions.
5. In accordance with Australian treaty-making policy and practice, the Department of Employment and Workplace Relations has undertaken consultation with its State and Territory counterparts. A letter advising of the proposal to denounce the Conventions was sent to each State and Territory Government on 29 August 2002. As the Conventions were originally ratified on the basis of Commonwealth action alone, the proposal does not impact on the States and Territories. All State and Territory Governments have replied. Of the responses, all either supported the proposals or did not object to the proposals.

CURRENT STATUS LIST

Labour Standards (Non-Metropolitan Territories) Convention, 1947 (No. 83)

Date of entry into force: 15.6.1974

2 ratifications

Australia	15.6.1973
United Kingdom	27.3.1950

Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)

Date of entry into force: 26.7.1955

5 ratifications

Australia	30.9.1954
Belgium	27.1.1955
France	26.7.1954
Papua New Guinea	01.5.1976
United Kingdom	27.3.1950

Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86)

Date of entry into force: 13.2.1953

23 ratifications

Australia	15.6.1973
Bahamas	25.5.1976
Barbados	08.5.1967
Ecuador	3.10.1969
Fiji	19.4.1974
Grenada	09.7.1979
Guatemala	13.2.1952
Guyana	08.6.1966
Jamaica	26.12.1962
Kenya	13.1.1964
Malawi	22.3.1965
Sabah	03.3.1964
Sarawak	03.3.1964
Mauritius	2.12.1969
Panama	19.6.1970
Sierra Leone	13.6.1961
Singapore	25.10.1965
Swaziland	26.4.1978
United Republic of Tanzania	30.1.1962
Uganda	04.6.1963
United Kingdom	27.3.1950
Yemen	14.4.1969
Zambia	2.12.1964