

International Labour Organization Convention No 182: Elimination of the Worst Forms of Child Labour

- 3.1 The *International Labour Organization Convention No. 182: Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour done at Geneva on 17 June 1999* requires ratifying International Labour Organization (ILO) member states to take immediate and effective measures to prohibit and eliminate the worst forms of child labour, as a matter of urgency.
- 3.2 The Commonwealth Government proposes ratification of ILO Convention No. 182, subject to legislation being in place for all Australian jurisdictions for Australia to meet its obligations prior to ratification.¹

Background

- 3.3 The Convention entered into force generally on 19 November 2000 and is the 'fastest ILO Convention to be ratified in the ILO's 82-year history'.² The Committee understands that the Convention has been ratified by 144 of the 177 ILO member states, indicating the level of global support for the Convention's provisions.³

1 National Interest Analysis (NIA), para. 2.

2 NIA, para. 3 and <http://www.ilo.org/public/english/standards/ipecc/index.htm>

3 Mr Rex Hoy, *Transcript of Evidence*, 13 October 2003, p. 13; NIA, para. 9.

- 3.4 The Convention has been included as one of the ILO's Fundamental Conventions for the purposes of the 1998 *Declaration on Fundamental Principles and Rights at Work*.⁴ The Convention was adopted by the International Labour Conference on 17 June 1999 with the unanimous support of delegates voting in the plenary session.⁵
- 3.5 Mr Rex Hoy, from the Department of Employment and Workplace Relations (DEWR), informed the Committee that Australia and Israel are the only western countries that have not yet ratified the Convention.⁶

Scope of Convention

- 3.6 Article 2 of the Convention prescribes the term 'child' to apply to all persons under 18 years of age. The worst forms of child labour, determined in Article 3, include
- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children
 - the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances
 - the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties
 - work which is likely to harm the health, safety or morals of children.

Obligations

- 3.7 The obligations of ratifying ILO member states are prescribed in Articles 4 to 8 of the Convention. Specifically, ratifying states are required to

4 Para. 8 of the NIA states that the aim of the Declaration is to encourage member states to respect, promote and realise the International Labour Organization (ILO) fundamental principles, including the abolition of child labour, whether or not those states have ratified the corresponding fundamental conventions.

5 NIA, para. 5.

6 Mr Rex Hoy, *Transcript of Evidence*, 13 October 2003, p. 13.

- determine (by national laws and regulations) and periodically review the types of work likely to harm the health, safety or morals of children
 - establish and designate appropriate mechanisms to monitor the implementation of provisions giving effect to the Convention
 - design and implement programmes of action to eliminate the worst forms of child labour
 - take all necessary measures to ensure effective implementation and enforcement of the Convention
 - ensure effective and time-bound measures be taken to prevent the engagement of children in the worst forms of child labour, to provide for the removal of children from such labour, ensure access to free basic education, and identify children at special risk
 - designate the competent authority responsible for implementation
 - take appropriate steps to assist members in giving effect to the provisions of the Convention.⁷
- 3.8 The Committee understands that implementation of the Convention's obligations falls partly within the jurisdiction of the Commonwealth Government, but primarily within the jurisdictions of the state and territory governments.⁸

Entry into force

- 3.9 Under Article 10, the Convention would enter into force for Australia 12 months after its ratification has been registered with the Director-General of the International Labour Office.

Compliance by states and territories

- 3.10 The NIA states that the Australian Government cannot become party to a treaty where the laws in any Australian jurisdiction would be at variance with obligations under the proposed treaty when it enters
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7 NIA, paras 12-15.

8 NIA, para. 16.

into force for Australia.⁹ In relation to ILO Convention No. 182, the Committee was informed that not all jurisdictions fully comply with the Convention, but that all Australian jurisdictions implement most of its provisions of the Convention through legislation.¹⁰

3.11 In some jurisdictions, legislation does not fully implement Articles 1, 2 and 3(b) to extend protection from child pornography and pornographic performances to encompass 16 and 17 years olds.¹¹ Therefore, the Committee understands that some jurisdictions will be required to amend legislation to ensure compliance with the Convention.¹²

3.12 The Committee understands the reasons for DEWR's desire to proceed with ratification of the Convention, which was demonstrated by Mr Rex Hoy's statement that

the government chose to commence the parliamentary process prior to all compliance legislation being enacted in order to speed up the overall ratification process.¹³

3.13 The Committee is concerned however that this motivation may lead to incomplete or inaccurate evidence being presented to it. At the public hearing held on 13 October 2003, the Committee was advised that New South Wales and Queensland were the only states that fully comply with the provisions of the Convention.¹⁴ The Committee is concerned that evidence from the WA Government highlights a potential problem when a proposed treaty action is considered without definitive statements as to the compliance of state and territory legislatures *at the time* of consideration by the Committee.¹⁵

3.14 A late submission received from the Government of Western Australia presents both a contrary view and a situation that is of concern to the Committee in terms of the accuracy and completeness of evidence presented to it. The submission states

The Commonwealth had previously informed Western Australia that its State legislation was not compliant, in that it did not provide as broad protection of children as required

9 NIA, para. 17.

10 NIA, para. 16.

11 NIA, para. 16.

12 NIA, para. 20.

13 Mr Rex Hoy, *Transcript of Evidence*, 13 October 2003, p. 13.

14 Mr Rex Hoy, *Transcript of Evidence*, 13 October 2003, p. 14.

15 Government of Western Australia, *Submission*, p. 1.

under the Convention. Approval to make the necessary changes to WA legislation to address the non-compliance issues raised by the Commonwealth was to be put before the Western Australian Cabinet in mid-November. In the last few days however, WA has received informal advice from the Commonwealth that it has reassessed Western Australia's legislation and that it is compliant with the terms of the Convention.¹⁶

Recommendation 2

Where the provision of accurate information on the status of State and Territory legislative compliance cannot be provided at the time of the public hearing, the Committee must be provided with updated evidence as it is available, up until the tabling of the Committee's report.

- 3.15 The NIA refers to the possibility that modifications to components of the national classification scheme will be required.¹⁷ It notes that such amendments to the scheme would not be required prior to ratification as this falls under the obligation to eliminate, rather than prohibit, the worst forms of child labour.¹⁸ According to the NIA the amendments, if required, would need to be made within a reasonable period of time following ratification.

Time-frame for compliance

- 3.16 The NIA suggests that the enactment of all legislation necessary for full compliance may 'take some time to complete'.¹⁹ The Committee expressed concern at the length of time that may be required, especially in the light of the 12 years it took for formal agreement to be reached with all States and Territories on ratification of ILO Convention No. 155.²⁰ Concerning Convention No. 182, Mr Hoy informed the Committee that

16 Government of Western Australia, *Submission*, p. 1.

17 NIA, para. 18.

18 NIA, para. 18.

19 NIA, para. 2.

20 This matter was reported in the Committee's *Report 55: Treaties tabled in September 2003*.

All ministers have given commitments to make the necessary legislative amendments as soon as possible, but I cannot give you a time frame because it is essentially in their hands.²¹

3.17 Mr Hoy further advised the Committee that the DEWR is actively pursuing, on a regular basis, the issue of compliance with the State and Territory governments.²² He advised that State and Territory governments are also being asked to provide frequent updates on their progress in developing and implementing compliance legislation.²³ Mr Hoy noted that it was intended that the Convention be discussed at the next Workplace Relations Ministers' Council (WRMC) meeting, to be held on 20 November 2003 and will provide another opportunity to seek progress reports from state and territory governments.²⁴

3.18 The Committee heard from Mr John Rowling, also of the Department of Employment and Workplace Relations, that

We meet with officials from the states pretty regularly, and through the technical officers as well as through the officials leading up to Workplace Relations Ministers Council meetings.²⁵

3.19 In addition, Mr Greg Manning from the Attorney-General's Department informed the Committee that the issue of compliance with the Convention is on the agenda and discussed in both the Standing Committee on Attorneys-General and the Standing Committee on Treaties.²⁶

3.20 Mr Rex Hoy noted that subject to and following the recommendation of the Committee to ratify the Convention

It is envisaged that Executive Council approval for ratification could then be obtained very quickly once all jurisdictions have enacted the necessary laws.²⁷

21 Mr Rex Hoy, *Transcript of Evidence*, 13 October 2003, p. 14.

22 Mr Rex Hoy, *Transcript of Evidence*, 13 October 2003, p. 14.

23 Mr Rex Hoy, *Transcript of Evidence*, 13 October 2003, p. 13.

24 The Committee was not aware of specific outcomes of this meeting at the time of printing.

25 Mr John Rowling, *Transcript of Evidence*, 13 October 2003, p. 15.

26 Mr Greg Manning, *Transcript of Evidence*, 13 October 2003, p. 15.

27 Mr Rex Hoy, *Transcript of Evidence*, 13 October 2003, p. 13.

Costs

- 3.21 The NIA states that, apart from the introduction of amending legislation in some jurisdictions, there are no costs associated with the ratification of the Convention as Australia already substantially complies with its provisions.²⁸

Consultation

- 3.22 The NIA states that, in relation to ILO conventions, it is standing practice to obtain formal agreement of the State and Territory governments before ratifying a convention.²⁹
- 3.23 The NIA Consultations Annex notes that the Minister for Employment, Workplace Relations and Small Business wrote to the State and Territory Ministers responsible for workplace relations on 16 May 2001, formally requesting that governments agree to ratification and take appropriate measures to ensure compliance. Within a two year period³⁰, all state and territory governments provided formal agreements to ratification, expressing support for the Convention.³¹ At the WRMC meeting held in March 2003, Ministers renewed their commitment to ratification and ‘agreed to do whatever they could to fast-track’ the process.³²
- 3.24 The Committee also understands that the views of the Australian Council of Trade Unions (ACTU) and the Australian Chamber of Commerce and Industry (ACCI) were formally sought by the Department of Employment, Workplace Relations and Small Business in 1999.³³ The NIA Annex on Consultations states that support was obtained in October 1999 and August 2000 respectively.
- 3.25 The ACTU, in its submission to this inquiry, has advised the Committee that it strongly supports the ratification of the Convention

28 NIA, para. 19.

29 NIA, para. 17.

30 NSW was first to formally agree on 10 July 2001, with the ACT providing the last notification on 5 March 2003.

31 NIA Annexure - Consultations.

32 NIA Annexure - Consultations.

33 NIA Annexure - Consultations.

and ‘urges the Committee to recommend that the Australian Government takes the steps to immediately ratify it’.³⁴

- 3.26 The submission to the Committee from the Justice and International Mission Unit, Synod of Victoria and Tasmania of the Uniting Church in Australia also ‘welcomes moves towards Australia ratifying’ the Convention.³⁵

Conclusion and recommendation

- 3.27 The Committee supports ratification of ILO Convention No. 182, in recognition of the importance and wide support of the Convention and to demonstrate Australia’s abhorrence of the worst forms of child labour and its commitment to their eradication.

Recommendation 3

The Committee supports *International Labour Organization Convention No. 182: Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour done at Geneva on 17 June 1999* and recommends that, subject to all legislation being in place for Australia to meet the required obligations, binding treaty action be taken.

Dr Andrew Southcott
Chair

³⁴ Australian Council of Trade Unions, *Submission*, p. 1.

³⁵ Justice and International Mission Unit, Synod of Victoria and Tasmania of the Uniting Church in Australia, *Submission*, p. 1.