

National Interest Analysis [2010] ATNIA 62

with attachment on consultation

**International Labour Organization Protocol of 2002 to Convention No. 155
concerning Occupational Safety and Health and the Working Environment, 1981,
adopted at Geneva on 20 June 2002**

[2010] ATNIF 47

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

**International Labour Organization Protocol of 2002 to Convention No. 155
concerning Occupational Safety and Health and the Working Environment, 1981,
adopted at Geneva on 20 June 2002
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Nature and timing of proposed treaty action

1. The proposed treaty action is ratification of the International Labour Organization (ILO) *Protocol of 2002* (the Protocol) to *Convention No. 155 concerning Occupational Safety and Health and the Working Environment* adopted at Geneva on 22 June 1981 (the Convention). The Protocol was adopted by the International Labour Conference at Geneva on 20 June 2002.
2. The Protocol aims to implement Articles 4 and 11 of the Convention. The Protocol may be ratified by those Member States that have ratified the Convention. Australia ratified the Convention on 26 March 2004.
3. It is proposed that the Protocol be ratified as soon as practicable. In accordance with Article 8(2), the Protocol entered into force on 9 February 2005, being 12 months after the date on which the ratifications of two Member States of the ILO had been registered with the Director-General of the International Labour Office. The Protocol would enter into force for Australia 12 months after the date on which Australia's ratification is registered with the Director-General of the International Labour Office.
4. In accordance with established ILO practice, it is not proposed that Australia make any reservation or declaration on ratification.

Overview and national interest summary

5. The objective of the Protocol is to implement Articles 4 and 11 of the Convention by requiring ratifying Member States to implement national laws or regulations that determine the responsibilities of employers with respect to recording and notification to relevant authorities of occupational accidents and diseases. Member States are also required to determine the criteria and time limits for notification, the data to be notified and to publish annual statistics.
6. Ratification of the Protocol would support the implementation of the Convention which Australia has already ratified. Ratifying the Protocol would also commit Australia to maintaining an occupational health and safety (OHS) regime consistent with internationally-recognised standards. This would in turn strengthen Australia's commitment to employers and employees and to the implementation of the Convention and to OHS best practices.
7. Further, as no other country in the Asia-Pacific has ratified the Protocol, 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 in the field of OHS.

Reasons for Australia to take the proposed treaty action

8. Ratification of the Protocol would strengthen Australia's credentials within the international community to effectively implement a comprehensive best practice OHS regime based on internationally-recognised standards. Furthermore, one of the key objectives of the Protocol, the publication of national statistics under Part III, has a direct correlation with the development of comprehensive OHS data collection on injury and disease, including regular reporting. Regular reporting has been identified in the *National Occupational Health and Safety Strategy 2002-2012* (agreed by all State and Territory governments as well as the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions) as an area for national action.

9. In addition, the requirements of the Protocol to oblige employers to record occupational accidents and diseases, notify the competent authorities of occupational accidents and diseases within a set timeframe, and consult with their employees on OHS issues are consistent with the key elements of OHS frameworks in all Australian jurisdictions.

10. Australia has been a Member of the ILO since its establishment in 1919 and has ratified 59 out of the ILO's 188 Conventions and five Protocols. Forty-seven of these Conventions and Protocols remain in force for Australia. 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 Protocol has not yet been ratified by any other country in the region, ratification by Australia would encourage other Asia-Pacific countries to consider the merits of applying international labour standards in the field of OHS.

11. 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.

12. 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.

13. The Protocol has been ratified by 7 countries (see Annexure 1).

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 Protocol (see Attachment on Consultation).

Obligations

15. The objective of the Protocol is to implement Articles 4 and 11 of the Convention by requiring Member States to establish and periodically review requirements and procedures for the recording and notification of occupational accidents and diseases (Article 2).

16. Article 3 requires Member States to determine, by laws or regulations or any other method consistent with national conditions and practice, the responsibility of employers to record occupational accidents and diseases, to maintain records appropriately, to provide information about the recording system to workers and their representatives and to refrain from disciplining workers for reporting occupational accidents. The Article also requires a determination of the information to be recorded, the duration for maintaining these records and the measures needed to ensure the confidentiality of data in the employer's possession.

17. Article 4 requires Member States to determine the responsibility of employers to notify the competent authorities of occupational accidents and diseases and to provide information to workers and their representatives concerning the notified cases. The Article also provides that arrangements for notification and criteria and time limits for notification shall be established.

18. Article 5 requires that notification shall include data on the enterprise and employer, the injured persons and the nature of their injuries or disease, and the circumstances of the accident or exposure to health hazards to cause an occupational disease.

19. Article 6 provides that each Member State shall annually publish statistics based on the notifications received and other available information. The statistics shall be based on the classification schemes established under the auspices of the ILO or other competent international organisations (Article 7).

20. 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. The first report would be due on 1 September in the first 12 months immediately following the Convention coming into force for Australia.

Implementation

21. Implementation of the Protocol's obligations falls primarily within the jurisdictions of the State and Territory governments, and partly within the jurisdiction of the Commonwealth Government. Law and practice at the Commonwealth, State and Territory levels of government is consistent with Australia's obligations under the Protocol.

22. The Protocol is implemented in Australia via a combination of general and industry-specific OHS legislative frameworks throughout the federal, State and Territory jurisdictions. At the Commonwealth level, the Protocol is implemented via the *Occupational Health and Safety Act 1991 (Cth)*, the *Occupational Health and Safety (Maritime Industry) Act 1993 (Cth)*, the *Safety, Rehabilitation and Compensation Act 1988 (Cth)*, the *Seafarers' Compensation and Rehabilitation Act 1992 (Cth)* and the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)*. Similar legislation exists in the States and Territories. All relevant legislation includes the requirement for employers to: record occupational accidents and diseases; inform their employees of the recording

system and notified cases; and notify the competent authority of occupational accidents and diseases that have occurred under their purview within a set timeframe.

23. The majority of national statistics concerning occupational accidents and diseases are collected and published by Safe Work Australia in a manner consistent with the Protocol.

24. In accordance with 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 the instrument has been established in all jurisdictions, and the relevant governments have provided individual formal agreement to ratification.

25. Between 2005 and 2010, all State and Territory governments formally agreed to ratification of the Protocol and advised that their law and practice is consistent with the obligations under the Protocol.

Costs

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

Regulation Impact Statement

27. 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

28. No future treaty action is expected to arise out of the ratification process for the Protocol. Unlike ILO Conventions, the Protocol does not provide a mechanism for its amendment. However, future revision of the Protocol could be made by a decision of the Governing Body of the ILO to place such revision on the agenda of the annual International Labour Conference (ILO Standing Orders Articles 34(4)) or of a preparatory technical conference (Constitution, Article 14(2); Standing Orders, Articles 34(5) and 36). Alternatively, the International Labour Conference may, by two-thirds of the votes cast by the delegates present, decide to include a subject on the agenda of the following session (Constitution, Article 16(3)) to revise the Protocol. Proposals to amend existing labour standards occur rarely.

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

Withdrawal or denunciation

30. Article 9(1) of the Protocol provides for denunciation of the Protocol by a Member State within a twelve month period following the expiration of ten years from the date of the entry into force of the corresponding Convention (as provided for under Article 25(1) of the Convention). In respect of a Member State that has not exercised this right to denounce the Protocol, the Protocol

may be denounced only at the expiration of a further ten years and thereafter at ten-yearly intervals (Article 25(2) of the Convention). Such denunciation shall not take effect until one year after the date on which it is registered (Article 9(3)). Furthermore, denunciation of the Convention by a Member State which has ratified the Protocol will automatically involve the denunciation of the Protocol (Article 9(2)).

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

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

33. The next opportunity to denounce the Convention would be in the 12 months following 11 August 2013 (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 process including including tabling and consideration by JSCOT.

Contact details

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

ATTACHMENT ON CONSULTATION

International Labour Organization Protocol of 2002 to Convention No. 155 concerning Occupational Safety and Health and the Working Environment, 1981, adopted at Geneva on 20 June 2002 [2010] ATNIF 47

CONSULTATION

Consultation with State and Territory governments

34. There has been consultation with State and Territory governments on the International Labour Organization (ILO) *Protocol of 2002* adopted at Geneva on 20 June 2002 (the Protocol), to *Convention No. 155 concerning Occupational Safety and Health and the Working Environment* adopted at Geneva on 20 June 2002, at both the Ministerial and official level.

35. States and Territories were provided with the opportunity to comment on the draft texts of the Protocol and to provide information for inclusion in the briefing for the Australian delegation to the International Labour Conference in 2002 (which was the meeting at which the Protocol was adopted).

36. The status of Australia's compliance with the Protocol and prospects of ratification have regularly been discussed at the annual meetings of Commonwealth, State and Territory officials responsible for ILO matters. Most recently, the Protocol 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 Protocol was also provided to the Standing Committee on Treaties for the following meetings:

- 26 September 2007 (pre-briefing provided on 5 September 2007); and
- 10 May 2010 (pre-briefing provided on 28 April 2010).

37. On 30 July 2004, the then Minister for Employment and Workplace Relations, the Hon Kevin Andrews MP, wrote to State and Territory governments informing them of his in-principle support for ratification of the Protocol and seeking views on Australia's compliance with the Protocol.

38. On 7 December 2005, then Minister Andrews wrote again to State and Territory governments seeking formal agreement to ratify the Protocol and an assessment on law and practice in their respective jurisdictions.

39. Between 2005 and 2010, all State and Territory governments provided formal support to ratification of the Protocol, and made available updated advice indicating that their law and practice was consistent with the Protocol. The dates on which this advice was provided is also listed below.

- New South Wales - 8 August 2006 (compliance confirmed 11 June 2010);
- Victoria - 26 May 2010 (compliance confirmed 4 May 2010);

- Queensland - 20 December 2005 (compliance confirmed 24 May 2010);
- Western Australia - 5 March 2010 (compliance confirmed 5 March 2010);
- South Australia - 18 May 2007 (compliance confirmed 20 April 2010);
- Tasmania - 20 October 2009 (compliance confirmed 28 April 2009);
- Northern Territory - 12 April 2010 (compliance confirmed 10 February 2009); and
- Australian Capital Territory - 23 March 2006 (compliance confirmed 18 June 2010).

40. At a meeting of the Workplace Relations Ministers' Council held on 3 April 2009 (80th meeting), Ministers agreed that consideration of ratification of the Protocol 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 Protocol in 2010.

Other consultation

41. 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 Protocol was adopted by the ILO in 2002. 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.

42. 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 Protocol.

43. 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 Protocol.

Annexure 1

BACKGROUND INFORMATION

The following Member States have ratified the International Labour Organization Protocol of 2002 adopted at Geneva on 20 June 2002, to Convention No. 155 concerning Occupational Safety and Health and the Working Environment adopted at Geneva on 22 June 1981:

Albania
El Salvador
Finland
Luxembourg
Slovenia
Sweden
Syrian Arab Republic