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The Parliament of the Commonwealth of Australia

# **Report 56**

**Treaties tabled on 8 October 2003**

**Economic and Commercial Cooperation — Kazakhstan**

**ILO Convention No. 182 — Elimination of Worst Forms of Child Labour**

November 2003  
Canberra

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## Membership of the Committee

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## **Terms of reference**

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analysis and proposed treaty actions presented or deemed to be presented to the Parliament,
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
  - (i) either House of the Parliament, or:
  - (ii) a Minister; and
- c) such other matters as may be referred to the Committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



## List of abbreviations

ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
Austrade	Australian Trade Commission
DEWR	Department of Employment and Workplace Relations
DFAT	Department of Foreign Affairs and Trade
DTA	Double Taxation Agreement
ILO	International Labour Organization
MFN	Most Favoured Nation
NIA	National Interest Analysis
SMEC	Snowy Mountain Engineering Corporation
WRMC	Workplace Relations Ministers' Council
WTO	World Trade Organization





# List of recommendations

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## Introduction

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## Economic and Commercial Cooperation with Kazakhstan

### Recommendation 1

The Committee supports *Agreement between the Government of Australia and the Government of the Republic of Kazakhstan on Economic and Commercial Cooperation, done at Almaty on 7 May 1997* and recommends that binding treaty action be taken.

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

### 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.

### 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.

## **Appendix A — Submissions**

## **Appendix B — Witnesses**



## Introduction

### Purpose of Report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of two proposed treaty actions tabled on 8 October 2003<sup>1</sup> specifically
- *Agreement between the Government of Australia and the Government of the Republic of Kazakstan on Economic and Commercial Cooperation, done at Almaty on 7 May 1997*
  - *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.*

### Briefing documents

- 1.2 The advice in this report refers to the National Interest Analyses (NIAs) prepared for these proposed treaty actions. Copies of the NIAs are available from the Committee's website at <http://www.aph.gov.au/house/committee/jsct/index.htm> or may be obtained from the Committee Secretariat. These documents were

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1 *Senate Journal*, 8 October 2003, p. 2473 and *House of Representatives Votes and Proceedings*, 8 October 2003, p. 1217.

prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty.

- 1.3 Copies of treaty actions and NIAs can also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade (DFAT). The Australian Treaties Library is accessible through the Committee's website or directly at <http://www.austlii.edu.au/au/other/dfat>.

## **Conduct of Committee's review**

- 1.4 The Committee's review of the treaty actions canvassed in this report was advertised in the national press and on the Committee's website.<sup>2</sup> In addition, letters inviting comment were sent to all State Premiers and Chief Ministers and to individuals who have expressed an interest in being kept informed of proposed treaty actions such as these. A list of submissions and their authors is at Appendix A.
- 1.5 The Committee also took evidence at a public hearing held on 13 October 2003. A list of witnesses who gave evidence at the public hearing is at Appendix B. A transcript of evidence from the public hearing can be obtained from the Committee Secretariat or accessed through the Committee's internet site at <http://www.aph.gov.au/house/committee/jsct/index.htm>.

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2 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 29 October 2003. Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee.

## Economic and Commercial Cooperation with Kazakhstan

### Introduction

- 2.1 The purpose of the *Agreement between the Government of Australia and the Government of the Republic of Kazakhstan on Economic and Commercial Cooperation, done at Almaty on 7 May 1997* is to facilitate trade and economic cooperation between Australia and Kazakhstan.<sup>1</sup>
- 2.2 The Agreement requires the countries to grant each other Most Favoured Nation (MFN) treatment in respect of duties, taxes or charges imposed in connection with the import or export of goods.<sup>2</sup> It also provides a context within which future commercial disputes can be managed. It also provides that the Agreement be brought into force by an exchange of notes.<sup>3</sup>

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1 According to para. 37 of the National Interest Analysis (NIA), when the Agreement was signed in 1997, the standardised Roman spelling of the country name was 'Kazakstan' and was therefore used throughout the treaty text. In 1998 Kazakhstan advised that the correct standardised Roman spelling was 'Kazakhstan'. The latter spelling is used throughout this chapter.

2 NIA, para. 6.

3 NIA, para. 2.

## Background

- 2.3 This is the second time that this proposed treaty action has come under scrutiny by this Committee. It was first concluded, signed and tabled in 1997<sup>4</sup> but, after consideration, the Committee recommended in its *Eleventh Report*<sup>5</sup> that ratification not proceed at that time.

## Findings of the 1997 Review

- 2.4 The Committee discovered that Telstra had experienced severe difficulties in the operation of a joint venture in Kazakhstan, resulting in legal complications and financial losses, the details of which are set out in the Committee's *Eleventh Report*. The Committee considered that Australian ratification of the Agreement would demonstrate Australia's endorsement of a standard of commercial relations that the Committee considered unacceptable.
- 2.5 The *Eleventh Report* also commented extensively on flaws in the consultation process. The Committee was highly critical of aspects of the behaviour of the Department of Foreign Affairs and Trade (DFAT) in not presenting pertinent evidence, finding that 'both the NIA and much of the information given at the first hearing were seriously deficient'.<sup>6</sup>
- 2.6 In its *Eleventh Report* the Committee specifically recommended that
- Australia not ratify the proposed Economic and Commercial Agreement with Kazakhstan at this time
  - that Agreement should not be reconsidered for ratification unless and until there are demonstrations by Kazakhstan of good faith in its trade and investment relations with Australia, in particular appropriate compensation for Telstra
  - should the situation change in Kazakhstan, and before a decision is made to ratify such an Agreement, a revised National Interest Analysis should be tabled in both Houses

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4 *Senate Journal*, 26 August 1997, p. 5708 and *House of Representatives Votes and Proceedings*, 26 August 1997, p. 6865.

5 Tabled on 24 November 1997, *Senate Journal*, pp. 9266-9267 and *House of Representatives Votes and Proceedings*, pp. 11046-11048.

6 Joint Standing Committee on Treaties, *Eleventh Report*, p. 13.

of the Parliament including the reasons for the new circumstances.<sup>7</sup>

## Outstanding issues and their resolution

2.7 In September 1999, an agreement was reached by the Minister for Foreign Affairs and the Minister for Trade that a revised NIA be prepared, but ‘elections intervened’.<sup>8</sup> The Government Response to the *Eleventh Report*, which was tabled in the Senate in August 2001, advised that ‘Telstra’s difficulties with Kazakhtelecom (*sic*) have been resolved’, and that a revised NIA would be prepared.<sup>9</sup> The subsequent preparation and completion of a new NIA was then delayed due to ‘competing work priorities and an absence of any significant pressure from Australian business’.<sup>10</sup>

2.8 The Committee heard that while Telstra was ‘concerned about the slow pace of the liquidation’,<sup>11</sup> they were ‘generally satisfied’ with the process.<sup>12</sup> The Committee also understands that some assets were not able to be recovered.<sup>13</sup>

2.9 Another concern raised by the Committee in its *Eleventh Report* related to the modest size of the trade flow between Australia and Kazakhstan,<sup>14</sup> and the reasons for the initial signature of an economic and commercial cooperation agreement where ‘contacts between the two nations are not great’—

If Telstra’s experience is in any way typical, Australian and international companies will be wary of doing business in Kazakhstan and there will be little point in having any agreements for the protection of trade and investment there.<sup>15</sup>

2.10 The Committee recognises however that ongoing stability and economic growth in Kazakhstan are favourable factors in the re-evaluation of this proposed treaty action.

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7 Joint Standing Committee on Treaties, *Eleventh Report*, pp. 15-16.

8 NIA, para. 4.

9 *Senate Journal*, 9 August 2001, pp. 26012-26013.

10 NIA, para. 4.

11 Dr Alexandra Siddall, *Transcript of Evidence*, 13 October 2003, p. 3.

12 NIA, para. 10.

13 NIA, para. 10.

14 Joint Standing Committee on Treaties, *Eleventh Report*, p. 13, notes that the two-way trade flow was only A\$2.11 million.

15 Joint Standing Committee on Treaties, *Eleventh Report*, p. 13.



- 2.11 In terms of a presence in the region and future possibilities for increased bilateral trade, the Committee notes that Australia's profile in Kazakhstan is 'not as high as it was in the nineties, when this agreement was first signed', and that the Australian embassy in Almaty (opened in 1995) has since closed.<sup>16</sup> While the Committee accepts DFAT's opinion that the agreement is seen as 'an opportunity to give some ballast to the bilateral relationship', it is not convinced that this alone is reason enough to proceed to ratification of the proposed treaty.
- 2.12 In the *Eleventh Report*, the Committee noted evidence from DFAT that the rule of law was 'virtually non-existent' in Kazakhstan at that time.<sup>17</sup> The Committee notes the revised NIA observes that
- Corruption, particularly in the court system, remains an impediment to the development of a functioning market economy. Australian lawyers working in Kazakhstan have reported frustration at having to deal with a corrupt judiciary.<sup>18</sup>
- 2.13 DFAT accepts that Kazakhstan is 'a risky environment and commercial enterprises are entered into at their own risk' by companies.<sup>19</sup> The Committee was concerned that companies be educated adequately as to the difficulties that may be experienced in entering into economic relationships with entities in Kazakhstan. Ms Margaret Twomey, from DFAT, explained that some 'fairly blunt data' exists, for example Transparency International's corruption rating, and further, that the experience of Telstra in Kazakhstan 'would be well known now within the business community.'<sup>20</sup>
- 2.14 Further comment about these issues and other issues arising from the Committee's first consideration of the Agreement in 1997 will be made throughout this chapter.

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16 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 5; NIA, paras 8 and 9. The NIA states at para. 9. that the embassy closed in 1999.

17 Joint Standing Committee on Treaties, *Eleventh Report*, p. 5.

18 NIA, para. 13.

19 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 9.

20 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 9.

## Features of the Agreement

- 2.15 The Committee noted in its *Eleventh Report* that the agreement 'is fundamentally a trade agreement which has some implications for investment and wider cooperation'.<sup>21</sup> DFAT advised the Committee that the provision of a framework within which future commercial disputes can be managed 'is useful in Kazakhstan's commercial environment where links between business and government still remain strong.'<sup>22</sup>
- 2.16 In evidence taken at a public hearing on 30 September 1997, the Committee was advised that
- ...when doing business with economies in transition, there are generally three planks in the raft of legal agreements. The first is a double taxation agreement (DTA), the second is an investment promotion and protection agreement and the third is a trade agreement. Although the enforcement provisions of the latter are weak, it does include MFN status, if only for customs and similar matters.<sup>23</sup>
- 2.17 The Committee notes that the Agreement is
- not an investment promotion and protection agreement and does not obviate the need for individual businesses to make their own assessment of business risk when exporting to or importing from another country.<sup>24</sup>
- 2.18 The Committee also notes that the text of the Agreement corresponds closely to the text of similar agreements between Australia and Estonia, Latvia and Lithuania. As stated in the introduction to this chapter, the Agreement obliges each state to encourage alternative dispute resolution procedures and requires the Parties to grant each other MFN treatment in respect of duties, taxes or charges imposed in connection with the import or export of goods. The Agreement also encourages due regard for the protection of intellectual property.
- 2.19 The Committee notes that the Agreement commits Australia to encourage close cooperation and dialogue through a variety of activities, which may include providing assistance to Australian trade

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21 Joint Standing Committee on Treaties, *Eleventh Report*, p. 8.

22 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 2.

23 Joint Standing Committee on Treaties, *Eleventh Report*, p. 8.

24 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 2.

missions or businesses in Kazakhstan, or Kazakhstani businesses in Australia,<sup>25</sup> and that the Agreement is not enforceable.<sup>26</sup>

- 2.20 Article 9 of the Agreement provides that it will remain in force for an initial period of five years. Thereafter, the Agreement will remain in force until the expiration of 90 days from the date on which either party receives written notice of desire to terminate the Agreement from the other.
- 2.21 While the Committee notes that Australia's commercial interests in Kazakhstan are modest at present, it acknowledges that Kazakhstan is rich in resources and is enjoying strong economic growth, and therefore agrees with representatives from DFAT that there is potential for Australian traders and investors. The NIA suggests that as Kazakhstan 'works its way to realising its significant economic potential', the proposed Agreement will 'help position Australian traders for the future.'<sup>27</sup>

## **Economic environment in Kazakhstan**

- 2.22 The Committee was interested to learn of the economic environment and growth projections in Kazakhstan. The Country Brief prepared by DFAT on Kazakhstan reports that it has 'vast untapped natural resource and fossil fuel reserves'.<sup>28</sup> DFAT reported that Kazakhstan is
- enjoying strong economic growth, sustained now for the past three years, with predicted growth of six to seven percent per annum for the next few years. The national currency is stable and inflation has been reduced to manageable levels. Kazakhstan's record on economic reform is strong.<sup>29</sup>
- 2.23 Given this positive indication, the Committee was also interested therefore to learn that economic development has been 'disappointingly slow'.<sup>30</sup> In her opening remarks to the Committee at

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25 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 2.

26 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 4.

27 NIA, para. 5.

28 DFAT, Kazakhstan - Country Brief  
<http://www.dfat.gov.au/geo/kazakhstan/index.html>

29 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 2.

30 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 2.

the public hearing on 13 October, Ms Twomey noted that since independence from the former Soviet Union in 1991,

Kazakhstan has shown itself to be one of the most stable members of the Commonwealth of Independent States and the most economically viable amongst the Central Asian republics.<sup>31</sup>

- 2.24 The Committee also heard that among the former Soviet countries, apart from Russia, Kazakhstan is seen as having the greatest potential for the development of Australian commercial interests.<sup>32</sup> According to Ms Twomey

To put it in general terms, while the Kazakhstan economy booms, as it is doing now as a result of its oil and mineral exports, and that boom will get bigger, that will strengthen the economy. It will give greater wealth to the citizens of Kazakhstan, who will in turn change their living habits. We see a myriad of different export opportunities opening up.<sup>33</sup>

## Trade prospects

- 2.25 Despite positive economic trends in Kazakhstan, the NIA states that recent trade levels have been 'disappointingly low'.<sup>34</sup> In 2002, Australia's exports to Kazakhstan totalled A\$5.7 million, and imports from Kazakhstan totalled A\$1.9 million.<sup>35</sup> As stated earlier, in 1996 total two-way trade amounted to only A\$2.11 million.<sup>36</sup>
- 2.26 Despite the relatively small trade involvement in economic terms to date, DFAT was optimistic about the future of trade relations. The Committee was concerned that the relatively small number of responses by industry groups and governments consulted was reflective of a high level of disinterest in future involvement, however Ms Twomey suggested that

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31 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 1.

32 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 1.

33 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 6.

34 NIA, para. 5.

35 DFAT, Kazakhstan - Country Brief  
<http://www.dfat.gov.au/geo/kazakhstan/index.html>

36 Joint Standing Committee on Treaties, *Eleventh Report*, p. 9.

It is more the case that most of [the companies] do not hold out much interest now. We would argue that what this treaty is about is positioning ourselves for the long-term future.<sup>37</sup>

- 2.27 The Committee notes that while agribusiness was seen to be a potential area of trade and investment at the time of the negotiation of the treaty, expectations were not fulfilled, although Austrade continues to see potential activity in this and other areas.<sup>38</sup> The NIA also notes that new areas of commercial interest are developing, including the development of the oil and gas sector - 'a big ticket item for potential Australian trade and investment'.<sup>39</sup>
- 2.28 The Committee also understands that while the proposed Agreement does not cover services, 'it may pave the way for the future export of services to Kazakhstan by Australian companies in sectors such as education and consultancy'.<sup>40</sup> The Committee was advised that the Snowy Mountain Engineering Corporation (SMEC) has identified future opportunities in Kazakhstan and has an office in Almaty.<sup>41</sup>
- 2.29 The Committee notes that the presence and involvement in Kazakhstan of international agencies such as the Asian Development Bank, the European Bank for Reconstruction and Development and the World Bank may mean that Australian companies may benefit from contract work under the aegis of those institutions.<sup>42</sup>
- 2.30 The Committee was advised that the education sector is identified as receiving 'probably the second greatest level of interest at the moment'.<sup>43</sup> The Committee was interested to learn of an Austrade-coordinated trade mission undertaken by Curtin University in Western Australia, and their indication that
- ...this sort of agreement would be very positive in improving the profile of educational services, as other agreements have done in other countries. It does promote the idea of Australia as a world leader in education.<sup>44</sup>

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37 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 7.

38 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 6.

39 NIA, para. 15.

40 NIA, para. 17.

41 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 6.

42 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 8.

43 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 8.

44 Dr Alexandra Siddall, *Transcript of Evidence*, 13 October 2003, p. 8.

- 2.31 The Queensland Government advised the Committee that the Agreement is consistent with the State's trade strategy and ...could create export opportunities in agribusiness, construction, consumer goods, food products, warehousing, transport, logistics, and mining and energy equipment, technologies and services.<sup>45</sup>
- 2.32 The commercial environment in Kazakhstan remains difficult, but the Committee accepts the Department's advice that Kazakhstan has made progress towards a favourable investment climate.<sup>46</sup> While business opportunities are currently limited the Committee also accepts DFAT's view that having a treaty of this kind will assist businesses seeking trade with Kazakhstan in the future.

## WTO admission

- 2.33 Kazakhstan has applied for membership of the World Trade Organisation (WTO). Ms Twomey informed the Committee that Kazakhstan will probably be admitted to the WTO in about three years, and that until that time, the MFN status for both states will be valuable.<sup>47</sup> The Committee notes however that WTO admission has been a stated goal since the first time the proposed treaty was reviewed, and that negotiations are 'ongoing'.<sup>48</sup>

## Implementation and costs

- 2.34 The Agreement will enter into force as soon as both parties have completed their domestic legal requirements. The Committee understands that Kazakhstan completed its domestic requirements in July 1997.<sup>49</sup>
- 2.35 The NIA states that no new legislation will be required, and that no additional direct costs will be incurred as a result of the treaty action.<sup>50</sup> However, according to the NIA, some costs may be incurred

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45 Queensland Government, *Submission*, p. 2.

46 NIA, para. 13.

47 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 5.

48 See Joint Standing Committee on Treaties, *Eleventh Report*, p. 6; Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 5.

49 NIA, para. 2.

50 NIA, paras 29 and 31.

in fulfilling the aims of the Agreement such as holding periodic government-to-government meetings.<sup>51</sup>

## Consultation

- 2.36 In its 1997 report the Committee expressed deep concerns regarding the manner in which consultations were conducted with the States and Territories

The NIA refers to Australian interests in mining, agriculture, telecommunications and provision of services in areas such as transport, public management training and the law. There is no evidence that any organisation or individual, outside Government agencies, with an actual or potential interest in Kazakhstan was contacted about this Agreement.<sup>52</sup>

- 2.37 The revised NIA states that ‘the consultation process primarily targeted the Australian energy and resources and agribusiness sectors, as these are the dominant export industries in Kazakhstan’.<sup>53</sup> The Committee was generally satisfied with the Consultations Annex provided with the NIA and considers that the 29 industry partners contacted provides a fair representation of the level of interest across a range of sectors and interests.

## Concluding observations and recommendation

- 2.38 During the Committee’s 1997 review of this proposed treaty action, concerns were raised about the benefits of entering into such an Agreement with Kazakhstan.<sup>54</sup> At the conclusion of the current review, the Committee continues to doubt the tangible effects of entering into this treaty and finds that the claims of DFAT and Austrade that the economic outlook in Kazakhstan will continue to improve and involvement by Australian industry will continue to expand are unconvincing.

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51 NIA, para. 31.

52 Joint Standing Committee on Treaties, *Eleventh Report*, p. 14.

53 NIA, para. 32.

54 Joint Standing Committee on Treaties, *Eleventh Report*, p. 14.

2.39 The Committee notes that this proposed treaty action would be the only bilateral Agreement between Australia and Kazakhstan. The Committee understands that no further treaties are currently being negotiated, nor does it appear that any are proposed for the future.<sup>55</sup> The Committee acknowledges Ms Twomey's remarks with concern and interest

At the time of Kazakhstan's independence there was quite a flurry of activity on the part of the Australian government and many other governments with regard to agreements. As time wore on and the boom did not show itself to be quite the El Dorado that some might have thought it would have been, we rationalised our agreement activity with them.<sup>56</sup>

2.40 The Committee recognises that substantial resources are involved in negotiating treaties and ensuring their entry into force, and is concerned that in the case of this proposed treaty action, the outcome may not be clearly justified or quantified. The Committee is not convinced that the economic and political situation in Kazakhstan can be predicted with any confidence, and therefore the benefits of the proposed Agreement may be difficult to define.

2.41 Notwithstanding the above remarks, the Committee is prepared to accept the Department's view that as Kazakhstan's reform program and economic growth continues it is an increasingly attractive trading partner.<sup>57</sup> The Committee also concurs with the view that the Agreement

will support Australia's broader foreign policy goal of integrating Kazakhstan into the world economy by strengthening the legal and commercial framework which commits Kazakhstan to facilitate and develop trade on a stable and predictable basis.<sup>58</sup>

2.42 The Committee notes that the Agreement is one of 'encouragement' and is not an enforceable treaty.<sup>59</sup> It was initiated at a time when it was considered to be in the national interest to raise Australia's profile in newly emerging nations. The Committee acknowledges the benefits of the Agreement in providing a formal framework within

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55 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 7.

56 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 7.

57 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 2.

58 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 3.

59 Ms Margaret Twomey, *Transcript of Evidence*, 13 October 2003, p. 4.



which future commercial disputes can be managed but nonetheless questions the value of such treaties. However the Committee considers that, on balance, it is in the national interest to proceed with binding treaty action.

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**Recommendation 1**

**The Committee supports *Agreement between the Government of Australia and the Government of the Republic of Kazakhstan on Economic and Commercial Cooperation, done at Almaty on 7 May 1997* and recommends that binding treaty action be taken.**

## **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.<sup>1</sup>

### **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'.<sup>2</sup> 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.<sup>3</sup>

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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*.<sup>4</sup> The Convention was adopted by the International Labour Conference on 17 June 1999 with the unanimous support of delegates voting in the plenary session.<sup>5</sup>
- 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.<sup>6</sup>

## 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

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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.<sup>7</sup>
- 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.<sup>8</sup>

## **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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> Therefore, the Committee understands that some jurisdictions will be required to amend legislation to ensure compliance with the Convention.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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

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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.<sup>16</sup>

## 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.<sup>17</sup> 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.<sup>18</sup> 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'.<sup>19</sup> 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.<sup>20</sup> Concerning Convention No. 182, Mr Hoy informed the Committee that

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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.<sup>21</sup>

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.<sup>22</sup> He advised that State and Territory governments are also being asked to provide frequent updates on their progress in developing and implementing compliance legislation.<sup>23</sup> 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.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup>

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.<sup>27</sup>

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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.<sup>28</sup>

## 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.<sup>29</sup>
- 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 period<sup>30</sup>, all state and territory governments provided formal agreements to ratification, expressing support for the Convention.<sup>31</sup> 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.<sup>32</sup>
- 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.<sup>33</sup> 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

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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’.<sup>34</sup>

- 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.<sup>35</sup>

## 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.

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### 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**

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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.



## **Appendix A – Submissions**

- 1 Australian Council of Trade Unions
- 2 Australian Patriot Movement
- 2.1 Australian Patriot Movement (Supplementary)
- 3 Justice and International Mission Unit, Synod of Victoria and Tasmania of the Uniting Church in Australia
- 4 Cabinet Office, NSW Government
- 5 QLD Government
- 6 NSW Legislative Assembly
- 7 ACT Government
- 8 Tasmanian Legislative Council
- 9 Premier and Cabinet, Government of WA



## **Appendix B – Witnesses**

**Monday, 13 October 2003 – Canberra**

### **Attorney-General's Department**

Mr Paul Griffiths, Assistant Secretary, Office of Legal Services  
Coordination

Mr Greg Manning, Acting Assistant Secretary, Public International  
Law Branch, Office of International Law

Ms Fiona Jolly, Principal Legal Officer, Legal Services and Native Title  
Division

### **Department of Employment and Workplace Relations**

Mr Rex Hoy, Group Manager, Workplace Relations Policy Group

Mr John Rowling, Assistant Secretary, Safety, Compensation and  
International Branch

### **Department of Foreign Affairs and Trade**

Mr Alan Fewster, Executive Director, Treaties Secretariat, Legal  
Branch

Mr Colin Milner, Director, International Law Group, Legal Branch

Mr Ben Playle, Executive Officer, International Law and  
Transnational Crime Section, Legal Branch

Dr Alexandra Siddall, Desk Officer, Ukraine, Kazakhstan, Belarus

Ms Margaret Twomey, Assistant Secretary, Northern, Southern and Eastern Europe Branch

Mr Eric van der Wal, Director, Northern, Central and Eastern Europe Section