

17 April 2013

To:
State and Territory IR Ministers
State and Territory Education Ministers

Dear

The Gillard government's March 2013 decision to ratify an international treaty on minimum age of employment before the 14th September federal election has implications for the rights, obligations and laws of State and Territory governments which, under Australia's federal system, exercise jurisdiction over key aspects of school and vocational education.

Ratification would compel State and Territory law and practice to be, and remain, in strict compliance with this (40 year-old) Geneva based convention, and force all governments of the Australian federation (including yours) to submit to the International Labour Organisation's (ILO) jurisdiction over its regulation of work by persons under 18 years.

Ratification also permits third parties (including Australian or unattached global trade union interests) to commence international proceedings alleging breach of the Convention, with the stigma of a government having to defend itself against a 'child labour' allegation. For example, if a trade union believed that after-school short shifts by students in shops was objectionable under the terms of the Convention, they could seek an international ruling on the matter.

ACCI is the representative of the Australian private sector at the ILO and supports much of its work. I am a member of the ILO's Governing Body, and lead global employers in aspects of its supervisory machinery for Convention compliance.

This notwithstanding, ACCI does not support ratification of C138 by Australia, and we seek your support in that regard.

A summary of our reasons are set out in a speech I delivered on 11th April to the International Labour and Employment Relations Association (attached). We particularly draw your attention to the fact that:

- It is hard to understand how it can be in the national interest to bring into Australian law a rule which starts with the proposition that persons under the age of 18 should be prohibited from getting a job;
- There is no need for domestic ratification given the way State Education Acts operate;
- Enforceable obligations on State and Territories would extend to process issues, such as mandatory consultation with trade unions on the design of vocational employment arrangements for persons under the age of 18 years;

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- Every current and future act of employment by a person under the age of 18 years in your State or Territory, whether in the public or private sector, would need to fall within one of the exemptions set out in the Convention, otherwise Australia will be in breach and your government may be asked to account to the Commonwealth (and through the Commonwealth, to the ILO) for that breach; and
- Ratification of an international treaty over the objection of one of the ILO's tripartite stakeholders (employers) is and of itself, fraught. Doing so when Australia does not have a dedicated law on the minimum age of employment is unwise and adds to reputational and litigation risk.

That previous Australian governments since the mid 1970's, including the Labor governments of Bob Hawke, Paul Keating and Kevin Rudd resisted trade union pressure for ratification, largely for these reasons, is telling. We emphasise that simply because a State or Territory believes its current law and practice to be in compliance is not a sufficient basis to act passively on this issue. For reasons mentioned above, that assessment would, after ratification, fall to the ILO, on both substantive and procedural aspects of the Convention.

The matter is now before the federal parliament's Joint Standing Committee on Treaties for inquiry and report. ACCI will provide a submission to the inquiry by 3rd May opposing ratification. We request you to do likewise, as a matter of urgency.

ACCI's Director of Workplace Policy and Director of Legal Affairs, Daniel Mammone, would be pleased to discuss this matter, and can be contacted on (03) 9668 9950 or Daniel.mammone@acci.asn.au

Yours sincerely,

Peter Anderson
Chief Executive