

**National Interest Analysis [2022] ATNIA 5
with attachment on consultation**

**International Labour Organization Protocol of 2014 to Forced Labour Convention
1930 (No. 29)**

adopted at Geneva on 11 June 2014

[2022] ATNIF 5

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

International Labour Organization Protocol of 2014 to Forced Labour Convention 1930 No. 29

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[2022] ATNIA 5

[2022] ATNIF 5

Nature and timing of proposed treaty action

1. The proposed treaty action is ratification of the International Labour Organization (ILO) *Protocol of 2014 to Forced Labour Convention 1930 No. 29*, adopted at Geneva on 11 June 2014 (the Protocol).
2. In accordance with Article 8(2), the Protocol entered into force generally on 9 November 2016, being 12 months after the date on which the ratifications of two ILO Members had been registered by the Director-General. Article 8(2) provides that the Protocol is binding only upon ILO Members that have had their ratifications registered by the Director-General of the ILO.
3. It is proposed that Australia ratify the Protocol as soon as practicable. Under Article 8(2), the Protocol would enter into force for Australia 12 months after the date on which Australia's ratification is registered by the Director-General.
4. It is not proposed that Australia would make any reservation or declaration upon ratification.

Overview and national interest summary

5. The primary purpose of the Protocol is to ensure the effective prevention and elimination of forced or compulsory labour, to provide protection and access to appropriate and effective remedies to victims, such as compensation, and to sanction perpetrators of forced or compulsory labour.
6. Ratification would enhance Australia's standing in the international community and demonstrate Australia's ongoing commitment to the implementation of key ILO conventions and protocols.

7. Ratification would highlight the importance Australia places on addressing forced labour, as well as other forms of modern slavery, and enhance Australia's ability to address these practices authoritatively, particularly within the Asia-Pacific region.

Reasons for Australia to take the proposed treaty action

8. Ratification of the Protocol would reflect Australia's global leadership on modern slavery and forced labour issues. Ratification of the Protocol would build on a range of recent domestic law and policy initiatives which aim to prevent and eliminate forced labour and other modern slavery practices, including the *Modern Slavery Act 2018 (Cth)* (the Act) and the *National Action Plan to Combat Modern Slavery 2020-25*.¹ Ratifying the Protocol would validate and highlight Australia's continued commitment to the domestic and international effort to address forced labour practices.

9. A key objective of Australia's engagement with the ILO is to provide policy leadership within the Asia-Pacific region in promoting international labour standards and addressing forced labour practices. The ILO estimates that there are more than 11 million victims of forced labour in the Asia-Pacific region.² This accounts for more than fifty percent of the global estimated number of victims of forced labour. Ratification would enable Australia to play a greater and more authoritative role in promoting better implementation of the Protocol and measures to prevent and eliminate forced labour in the region.

10. The Protocol supplements and modernises the ILO *Forced Labour Convention, 1930 (No. 29)* (the Convention), which together with the ILO *Abolition of Forced Labour Convention 1957 (No. 105)*, provides an international framework and standards for the elimination of forced labour globally. Australia ratified the Convention on 2 January 1932 and the *Abolition of Forced Labour Convention* on 7 June 1960. Ratification of the Protocol at this time ensures that these Conventions remain effective in the modern context and that Australia's adoption of the international forced labour framework is comprehensive and responsive to modern forms of slavery. Ratification would also complement measures taken to implement other core international forced labour standards, including the *United Nations Convention against Transnational Organised Crime 2000* and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000*.

11. Ratification of the Protocol at this time would strengthen Australia's credentials within the broader international community by ensuring it has ratified key conventions and protocols relating to forced labour, as well as demonstrating its commitment to eradicating these practices globally. The Protocol is being increasingly adopted by the global community. Since 2015, the Protocol has been ratified by 56 of the 187 ILO Members including New Zealand, Canada, Germany, France, Denmark, Norway, Sweden

¹ Progressing ratification of the *Forced Labour Protocol of 2014* is Action Item 9 under the National Action Plan.

² International Labour Organization and Walk Free Foundation, "Global Estimates of Modern Slavery: Forced Labour and Forced Marriage", 2017.

and the United Kingdom. It would also support Australia's regional leadership through Co-Chairing the Bali Process on Trafficking in Persons and Related Transnational Crime and its Government and Business Forum.

Obligations

14. Article 1 of the Protocol obliges each Member to take effective measures to prevent and eliminate forced or compulsory labour, including developing a national policy and plan of action, provide to victims protection and access to appropriate and effective remedies and sanction perpetrators of forced or compulsory labour.

15. Article 2 of the Protocol requires Members to take certain measures to prevent forced or compulsory labour, including through education, ensuring laws cover all workers and sectors of the economy, protecting persons from possible abusive and fraudulent recruitment and placement practices, supporting due diligence in public and private sectors, and addressing the root causes and factors that heighten the risk of forced or compulsory labour.

16. Article 3 requires Members to take effective measures for the identification, release, protection, recovery and rehabilitation of victims of forced or compulsory labour.

17. Article 4 requires Members to ensure that all victims have access to appropriate and effective remedies, irrespective of their presence or legal status, and to take the necessary measures to ensure that authorities are entitled not to prosecute or penalise victims for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.

18. Article 5 requires Members to cooperate with each other to ensure the prevention and elimination of all forms of forced or compulsory labour.

19. Article 6 requires the measures taken by Members to apply the provisions of the Protocol and the Convention to be determined by national laws or regulations or by the competent authority, after consultation with organizations of employers and workers.

20. Under Article 22 of the ILO Constitution, each ILO Member must submit an annual report to the International Labour Office on the measures it has taken to give effect to the provisions of 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, Members are required to report on the implementation of each ratified 'fundamental' convention to the ILO Committee of Experts on the Application of Conventions and Recommendations on a three-year cycle from the date the convention enters into force for that Member. For this Protocol, the first report would be due on 1 September in the year after the Protocol enters into force for Australia.

Implementation

21. Law and practice at the Commonwealth, State and Territory levels is consistent with Australia's obligations under the Protocol. All State and Territory governments have advised that their jurisdictions will be in a position to comply with the Protocol by entry into force (see paragraphs 43-47 for details of consultations with States and Territories).

22. Implementation of the Protocol falls primarily within the jurisdiction of the Commonwealth and Australia gives broad effect to the Protocol primarily through Commonwealth law and practice. Australia's approach involves both regional activities in the Asia-Pacific and a range of domestic initiatives set out in Australia's *National Action Plan to Combat Modern Slavery 2020-25* (National Action Plan), the *Modern Slavery Act 2018*, as well as criminal, migration and industrial relations laws.

23. The Australian Government undertakes a range of measures which give effect to the obligation to prevent and eliminate forced or compulsory labour. The *Fair Work Act 2009* (Cth) (the Fair Work Act) sets out the minimum employment conditions and standards that must be met by employers covered by Australia's national industrial relations system. The Fair Work Act covers all employees in Australia's national industrial relations system, regardless of their visa status. The Fair Work Act has specific protections for vulnerable workers, including migrant workers, from exploitation.

24. Australia's National Action Plan, launched in December 2020, sets out the strategic framework for Australia's national response to modern slavery, inclusive of trafficking in persons, slavery and slavery-like practices such as forced labour. The National Action Plan identifies five National Strategic Priorities to focus the Government's efforts (Prevent; Disrupt, Investigate and Prosecute; Support and Protect; Partner; and Research), and commits to the delivery of 46 Action Items.

25. The Government's Support for Trafficked People Program (STPP) provides a range of support services, including secure accommodation, medical treatment, financial assistance, and access to legal and migration advice to all victims of human trafficking, slavery and slavery-like offences identified and referred by the Australian Federal Police. Australia's Human Trafficking Visa Framework (HTVF) enables foreign nationals, who do not already hold a valid visa and are suspected victims of human trafficking, slavery and slavery-like practices, to remain lawfully in Australia for an initial period of rest and recovery, assist with criminal justice processes and, in some circumstances, remain here permanently.

26. Australia has comprehensive criminal offences that criminalise human trafficking, slavery and slavery-like practices, including servitude and forced labour. These offences, including specific offences criminalising causing a person to enter into or remain in forced labour and conducting a business involving forced labour, are set out in the *Criminal Code Act 1995* (Cth) and carry high maximum penalties (9 years' imprisonment, or 12 years' imprisonment for an aggravated offence). The *Migration Act 1958* (Migration Act) creates offences of allowing a person to work, or referring a person for work, if the person is an unlawful non-citizen or a lawful non-citizen working in

breach of a visa condition. The offences are escalated to aggravated offences if the worker is being exploited and the person knows of, or is reckless to, that circumstance. The Migration Act also provides for civil employer sanctions in the form of infringement notices and non-fault civil penalties, supplementing Australia's criminal offences.

27. The Commonwealth has implemented a wide range of measures to prevent forced or compulsory labour, including by contributing to initiatives which tackle the root causes of exploitation, raising awareness amongst the general community, and building the resilience of groups who may be vulnerable to these practices. This includes the commitment of \$4.4 million under the *National Action Plan to Combat Modern Slavery 2020-25* Grant Program to fund civil society, business and industry groups and academia to deliver anti-slavery projects, including awareness raising activities, training and resources targeting criminal labour exploitation. The Fair Work Ombudsman (FWO) also promotes compliance with workplace laws by providing education, assistance, advice and guidance to employers and employees, including vulnerable workers, in a number of languages and through various channels. The Australian Government also maintains specialist teams in the Australian Federal Police (AFP) to prevent, disrupt and investigate modern slavery and human trafficking practices; along with collaborative arrangements between the AFP, state and territory police forces, the Australian Border Force (ABF), the FWO and non-governmental organisations.

28. The *Modern Slavery Act 2018* (Cth) sets a clear standard for business action to address modern slavery in their global operations and supply chains. Under the Modern Slavery Act, thousands of businesses and other entities must submit annual modern slavery statements (statements) to the ABF for publication on an online register. These statements must address seven mandatory criteria set out in the Modern Slavery Act, including the reporting entity's actions to identify and address modern slavery risks in their global operations and supply chains. Under the Act, the Australian Government must also prepare an annual modern slavery statement which sets out the Government's due diligence efforts to address modern slavery practices in its own procurement activities.

29. The FWO and the Department of Home Affairs have established an Assurance Protocol to support temporary visa holders to go to the FWO for assistance in cases of workplace exploitation. Under the Assurance Protocol, temporary visa holders who have breached the work-related conditions of their visa because of exploitation will generally not have their visa cancelled as long as they meet certain criteria, including approaching the FWO for assistance. The Commonwealth legal system also contains a range of protections to ensure that victims would not be prosecuted for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour, including through the Commonwealth Director of Public Prosecutions,' 'Prosecution Policy of the Commonwealth' and the availability of certain defences, such as duress.

30. The Australia Government provides victims of modern slavery with access to civil mechanisms, such as the FWO and Fair Work Commission, and with the ability to pursue civil and administrative remedies, including for unpaid wages and entitlements,

irrespective of their nationality or visa status. Under Australia's federated legal system, victims of crime compensation has traditionally been a matter for the states and territories. Each jurisdiction has a victims of crime compensation scheme, most of which may be available to victims of slavery and slavery-like practices such as forced labour. Courts in Australia may also order offenders convicted of a Commonwealth offence to make reparation to victims for any loss suffered or expense incurred by reason of the relevant offence under the *Crimes Act 1914* (Cth).

31. Australia works to combat forced or compulsory labour by cooperating with other governments in the Asia-Pacific region and internationally. Australia plays a leadership role advocating for the promotion and protection of human rights, including adherence to international labour standards, in relevant international and regional fora, including through Co-Chairing the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process), the Bali Process Government and Business Forum, and the Bali Process Working Group on Trafficking in Persons. Australia also supports the Tripartite Action to Enhance the Contribution of Labour Migration to Growth and Development (TRIANGLE) in the Association of Southeast Asian Nations (ASEAN) (\$24m, 2015-27). This program, implemented by the ILO, seeks to assist migrant workers to understand their rights and thereby reduce their vulnerability to trafficking. The Australian Government also funds ASEAN–Australia Counter Trafficking (\$80m, 2019-28), which supports ASEAN Member States to implement and report on their obligations under the ASEAN Convention against Trafficking in Persons, Especially Women and Children. Under the National Action Plan, Australia also delivers targeted, peer-to-peer technical assistance and capacity building to Indo-Pacific partner governments to strengthen and effectively implement legal and policy frameworks to combat modern slavery, including forced labour.

32. Australia's response to modern slavery, as articulated in the National Action Plan, is implemented in close consultation with members of the Australian Government's National Roundtable on Human Trafficking and Slavery and the Modern Slavery Expert Advisory Group. These forums include representatives from civil society, business, academia and unions to ensure Australia's efforts to combat trafficking in persons and slavery are developed and implemented on a whole-of-community basis. Australia's National Workplace Relations Consultative Council allows the Government, employers and employees to consult together on industrial relations and work health and safety issues of national concern, including forced labour issues.

33. In addition to the law and practice set out in the Commonwealth jurisdiction, all Australian States and Territories have advised that their law and practice will be in compliance with the obligations under the Protocol, where relevant, prior to ratification.

Costs

34. 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

35. The Office of Best Practice Regulation in the Department of Prime Minister and Cabinet has been consulted and has confirmed that a Regulation Impact Statement is not required.

Future treaty action

36. 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.

37. 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 procedures, including tabling and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

38. Article 9(1) of the Protocol provides that a Member may denounce the Protocol in accordance with Article 30 of the Convention. Article 30 of the Convention provides that a Member may denounce the Protocol during a twelve-month interval after the expiration of ten years from the date of the entry into force of the Convention. If this right is not exercised, Members will be bound for another period of five years and thereafter may denounce the Convention at the expiration of each successive five-year period (Article 30(2)). Such denunciation would take effect one year after the registration of the act of denunciation with the International Labour Office (Article 30(1)).

39. The ten-yearly interval for denunciation of an ILO Convention or Protocol is a standard period and is included in nearly all ILO Conventions and Protocols.

40. The next opportunity to denounce the Protocol would be in the 12 months following 9 November 2026 (the first ten-yearly interval after the date of entry into force of the Protocol).

41. Article 9(2) of the Protocol provides that, in accordance with Article 32 of the Convention, if the ILO Conference adopts a new convention that revises the Convention

or Protocol in whole or in part, ratification of the new convention shall entail the immediate denunciation of the Convention and Protocol unless otherwise specified.

42. Any action to denounce the Protocol, or ratify a replacement convention, would be subject to Australia's domestic treaty-making procedures.

Contact details

Economic and International Labour Branch
Industrial Relations Group
Attorney-General's Department

ATTACHMENT ON CONSULTATION

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[2022] ATNIA 5

[2022] ATNIF 5

CONSULTATION

Consultation with State and Territory governments

43. There has been consultation with State and Territory governments on the Protocol at both the Ministerial and officials level.
44. 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 2014 (which was the Conference at which the Protocol was adopted).
45. State and Territory Governments have been advised of the Protocol through the Standing Committee on Treaties' (SCOT) Schedule of Treaty Action. The Protocol has been on the list of treaties under negotiation, consideration or review by the Australian Government since 2016. No objections or concerns were raised by the State or Territory Governments as a result of this notification.
46. The status of Australia's compliance with the Protocol and prospects of ratification has been periodically discussed at meetings of Commonwealth, State and Territory officials responsible for ILO matters. All State and Territory governments have made available advice indicating that their law and practice is consistent with the Protocol.
47. On 19 April 2016, the then Minister for Employment, Senator the Hon. Michaelia Cash, wrote to State and Territory industrial relations Ministers seeking their agreement to ratify the Protocol. All State and Territory Governments agreed to ratification except for Western Australia, which indicated that legislative amendments would be required to enable compliance in that jurisdiction, which were subsequently made in December 2021 and are expected to commence in March 2022.

Other consultation

48. 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 periodic basis since the Protocol was adopted by the ILO in 2014. The ILAC comprises the Commonwealth Attorney-General's Department, the Australian

Council of Trade Unions (ACTU) and the Australian Chamber of Commerce and Industry (ACCI). These organisations are, respectively, the worker and employer organisations that represent Australia in the ILO. Most recently, the Protocol was discussed at the 9 December 2021 meeting of the NWRCC.

49. The ACTU and ACCI support Australia's ratification of the Protocol.