

## Denunciation of International Labour Organization Conventions

### Proposed treaty action

- 5.1 This chapter considers the proposed denunciation of the following three International Labour Organization (ILO) Conventions:
- *No. 83: Labour Standards (Non-Metropolitan Territories) Convention, 1947;*
  - *No. 85: Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947; and*
  - *No. 86: Contracts of Employment (Indigenous Workers) Convention, 1947.*
- 5.2 In accordance with Article 35 of the ILO Constitution, Australia has declared that the above three ILO Conventions apply only to Norfolk Island.<sup>1</sup>

### Background

- 5.3 In 1997, the ILO adopted the Instrument for the Amendment of the Constitution of the International Labour Organisation, to allow the

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<sup>1</sup> National Interest Analysis (NIA), paras. 5 and 12.

abrogation of any ILO Convention that has 'lost its purpose' or 'no longer made a useful contribution' to attaining its objectives. The NIA states that Australia formally accepted this amendment on 11 October 2001. The Joint Standing Committee on Treaties examined the Amendment in Report 39, finding that it was a 'simple, sensible and no-cost treaty action' and recommended that binding treaty action be taken.<sup>2</sup> The proposed Amendment has not yet come into effect as it has not received a sufficient number of acceptances to-date.<sup>3</sup> In accordance with the spirit of the proposed amendment, Australia has determined that it should not remain party to outdated ILO Conventions.<sup>4</sup>

- 5.4 The NIA states that ILO Conventions No. 83, 85 and 86 have been identified as irrelevant by Australia. The Committee was advised by the Department of Foreign Affairs and Trade (DFAT), that the continued application of these conventions to Norfolk Island serves no purpose and that the proposed treaty actions are in accordance with 'the objective of ensuring that Conventions which are no longer relevant to our national circumstances do not form part of Australia's regulatory structures'.<sup>5</sup>

## Denunciation of ILO Convention No. 83

- 5.5 ILO Convention No. 83 requires ratifying countries to indicate the extent to which they undertake the provisions of the Conventions outlined in the Schedule to the Convention. The Schedule contains Conventions relating to the minimum age for employment, medical examination of young people, night work for young people and women, maternity protection, underground work for women, workers compensation, marking of weight on packages and weekly rest.<sup>6</sup>

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2 Joint Standing Committee on Treaties (JSCOT), *Report 39*, p. 33.

3 The proposed amendment requires ratification from two-thirds of the member states, that being 117 of the 175 member states. Phillip Knight, *Transcript of Evidence*, p. 29 and NIA, para. 7.

4 Phillip Knight, *Transcript of Evidence*, 16 June 2003, p. 27.

5 NIA, Consultations Annex, p. 1.

6 The Conventions outlined in the Schedule to the Convention are: C3 Maternity Protection Convention, 1919; C14 Weekly Rest (Industry) Convention, 1921; C15 Minimum Age (Trimmers and Stokers) Convention, 1921; C16 Medical Examination of Young Persons (Sea) Convention, 1921; C17 Workmen's Compensation (Accidents) Convention, 1925; C19 Equality of Treatment (Accident Compensation) Convention, 1925; C27 Marking of

- 5.6 The National Interest Analysis (NIA) states that denunciation of this Convention is appropriate as it lacks widespread support amongst ILO members (the United Kingdom is the only other ratifying state out of 175 ILO member states), and the ILO no longer promotes its ratification.<sup>7</sup> Further, it declared that of the 13 Conventions listed in the Schedule to Convention No. 83, only four were applicable.
- 5.7 Of the four applicable conventions in the Schedule to the Convention, C3 Maternity Protection Convention, 1919 and C17 Workmen's Compensation (Accidents) Convention, 1925, have not been ratified by Australia, and the NIA stipulates that it is inappropriate for Norfolk Island to be bound by standards which do not apply to the rest of the country. However, Australia will remain bound by the other two applicable Conventions listed in the Schedule, namely C19 Equality of Treatment (Accident Compensation) Convention, 1925 and C27 Marking of Weight (Packages Transported by Vessels) Convention, 1929.<sup>8</sup>

## Denunciation of ILO Convention No. 85

- 5.8 ILO Convention No. 85 relates to the provision of labour inspection services. Specifically, the provision of suitably trained inspectors, the provision of 'every facility' for free communication between workers and inspectors, and that inspectors inspect conditions of employment at frequent intervals and that they be authorised to exercise certain powers by law.
- 5.9 Australia has declared this convention to be inapplicable to Norfolk Island following consultation with the Norfolk Island Government. Subsequently, Australia is no longer required to report on its implementation of this Convention to the ILO.<sup>9</sup>

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Weight (Packages Transported by Vessels) Convention, 1929; C45 Underground Work (Women) Convention, 1935; C58 Minimum Age (Sea) Convention (Revised), 1936; C59 Minimum Age (Industry) Convention (Revised), 1937; C77 Medical Examination of Young Persons (Industry) Convention, 1946; C89 Night Work (Women) Convention (Revised), 1948; and C90 Night Work of Young Persons (Industry) Convention (Revised), 1948. For a full listing of all ILO Conventions see:

<http://www.ilo.org/ilolex/english/cvlist.htm>.

7 NIA, paras. 5 and 9; Phillip Knight, *Transcript of Evidence*, 16 June 2003, p. 28.

8 NIA, para. 9.

9 NIA, para. 10.

## Denunciation of ILO Convention No. 86

- 5.10 ILO Convention No. 86 applies to workers belonging to or assimilated to the indigenous population of Norfolk Island. It provides that maximum periods of service that may be stipulated or implied in any contract of employment (written or oral) be prescribed by regulations.
- 5.11 As with ILO Convention No. 85, Convention No. 86 has been declared non-applicable following consultation with the Government of Norfolk Island, as it has had no practical effect.<sup>10</sup> Therefore, the ILO no longer requires Australia to submit reports on the application of this convention.

## Process of denunciations

- 5.12 The provisions for Conventions No. 83, 85 and 86 provide that a ratifying country may denounce the relevant Convention during a one-year period every ten years after the Convention first came into force internationally.
- 5.13 To denounce a Convention, a country must submit an instrument stating the intention to the Director-General of the ILO for registration. If the submission for denunciation is not made in the year following the ten year period, the country will remain bound for another ten years. The twelve month 'window of opportunity' for the three Conventions are as follows:
- Convention No. 83 commencing 15 June 2004;
  - Convention No. 85 commencing 26 July 2005; and
  - Convention No 86 commencing 13 February 2003.<sup>11</sup>
- 5.14 Denunciation will come into effect one year after the submission for denunciation has been registered with the ILO.

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10 NIA, para. 11.

11 NIA, para. 4.

## Costs

- 5.15 There are no costs associated with the denunciation of these Conventions.

## Consultation

- 5.16 The Committee notes the outcome of consultations with the Minister for Employment and Workplace Relations, the Minister for Regional Services, Territories and Local Government, the Government of Norfolk Island and the Australian Chamber of Commerce and Industry (ACCI). The NIA states that all parties support the proposed denunciations and noted that the Australian Council of Trade Unions (ACTU) had no objection to the proposal.<sup>12</sup>
- 5.17 Furthermore, the NIA provides that all State and Territory Governments either supported or did not object to the proposed denunciations of ILO Conventions No. 83, 85 and 86.<sup>13</sup>

## Conclusion and recommendation

- 5.18 The Committee supports the principle that outdated ILO Conventions that have lost their purpose or no longer make a useful contribution to attaining the objectives of the ILO, should be removed from the ILO's list of statutes. Hence the Committee supports the proposed denunciation of ILO Conventions No. 83, 85 and 86. The proposed treaty actions would ensure ILO Conventions are relevant to Australia's circumstances and clarify Australia's international obligations.

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12 Phillip Knight, *Transcript of Evidence*, 26 June 2003, p. 29.

13 NIA, Consultations Annex, p. 1.

**Recommendation 6**

**The Committee recommends that the Australian Government denounce the following International Labour Organization (ILO) Conventions:**

- **No. 83: Labour Standards (Non-Metropolitan Territories) Convention, 1947;**
- **No. 85: Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947; and**
- **No. 86: Contracts of Employment (Indigenous Workers) Convention, 1947.**