International Treaty Examination of the International Labour Organisation Convention 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively

Report of the Foreign Affairs, Defence and Trade Committee

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Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the International Labour Organisation Convention 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively and draws the following matters to the attention of the House. We recommend that the House take note of this report.

Introduction

The International Labour Organisation (ILO) Convention 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (the Convention) and the national interest analysis (NIA) were presented to the House on 22 December 2002 in accordance with Standing Orders 384 and 385.

This report sets out our examination of the Convention and the fact that different political parties represented on our committee have different views on the ratification of this treaty. The NIA for the Convention is appended to this report.

Labor, Progressive and Green members support ratification

Labour, Progressive and Green members believe there are a number of advantages to New Zealand becoming party to the Convention. Labour, Progressive and Green members believe ratification of this fundamental ILO convention demonstrates New Zealand’s ongoing support for the ILO and its objectives. Ratification of the Convention also builds on the five fundamental ILO conventions that New Zealand is currently party to.

Existing New Zealand law, policy and practice are consistent with the Convention. Specifically, the Employment Relations Act 2000 has an objective ‘to promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively’. These principles include the development of productive employment relationships through the promotion of collective bargaining and employees having the freedom to choose whether or not to form a union to further their collective employment interests, as well as protection from discrimination in employment based on their membership or non-membership of a trade union.

We are advised that, as the requirements of the Convention are embodied in New Zealand’s current law, policy and practice, there are no disadvantages to the Convention entering into force in New Zealand. Therefore, Labour, Progressive and Green members support ratification of the Convention. We note that, as of 6 March 2003, the Convention had been ratified by 152 of the ILO’s 175 member states.

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1 Employment Relations Act 2000, section 3(b).
2 National Interest Analysis of the Convention, page 2.
3 Advice from the Department of Labour (ITE/BARG/DOL/1)
National Party, United Future Party and New Zealand First Party members’ minority views

The National Party and New Zealand First Party do not support ratification of the Convention. We note the Convention was established in 1951. It begs the question as to why the New Zealand Government should now seek to ratify it 52 years later.

The NIA suggests the Labour-Progressive Government considers ratification of the Convention would reinforce the philosophy of the Employment Relations Act 2000. The principles of that Act include the promotion of collective bargaining, in which it gives unions a monopoly. The Employment Relations Act also permits only unions to vote on the type of employment agreement that will cover a workplace, or take strike action.

The National Party, the United Future Party and New Zealand First Party do not support ratification of a convention that reinforces these principles that could constrain the rights and freedoms of individual workers. National, United Future and New Zealand First support employees being free to enter into their own negotiation arrangements with employers including arrangements that enable them to bargain collectively, should they wish, without union involvement.

Conclusion

After consideration and advice from the Department of Labour, Labour, Progressive and Green members support the ratification of the Convention. The National Party, the United Future Party and the New Zealand First Party members remain opposed.
Appendix

Approach to this examination
We met on 6, 20 and 27 March to consider the international treaty examination of the International Labour Organisation Convention 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively. Our examination took 28 minutes. Advice was received from the Department of Labour.

Committee members
Hon Peter Dunne (Chairperson, United Future)
Graham Kelly (Deputy Chairperson, Labour)
Tim Barnett (Labour)
Martin Gallagher (Labour)
Keith Locke (Green)
Dr Wayne Mapp (National)
Ron Mark (New Zealand First)
Hon Matt Robson (Progressive)
Dr the Hon Lockwood Smith (National)

Evidence and advice received
In addition to the Treaty and National Interest Analysis, we considered the following advice during this examination:

• List of Member States that have ratified Convention 98 (ITE/BARG/DOL/1)
ILO CONVENTION 98 CONCERNING THE RIGHT TO ORGANISE AND COLLECTIVE BARGAINING 1949

National Interest Analysis

Date of Proposed Binding Treaty Action

1. An Instrument of Ratification will be deposited with the International Labour Organisation (ILO) following consideration of Convention 98 on the Right to Organise and Collective Bargaining 1949 (Convention 98) in accordance with the international treaty examination process. Convention 98 entered into force in 1951. It will enter into force for New Zealand twelve months after the date on which its ratification has been registered with the Director General of the ILO.

Reasons for New Zealand to Convention 98

Advantages

2. It is assessed that there are a number of advantages to New Zealand of the Convention 98 entering into force for New Zealand, namely:

New Zealand law, policy and practice are consistent with Convention 98, specifically the ERA has an explicit objective to “To promote observance in New Zealand of the principles underlying ILO Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively”. These principles include:

- The development of productive employment relationships through the promotion of collective bargaining;
- Employees have the freedom to choose whether or not to form a union to further their collective employment interests;
- Employees are protected from discrimination in employment based on their membership or non-membership of a trade union;
- Employees are not required to cease to be a member of a union or a particular union as a condition of employment;
- Employees are not required to become or remain a member of a union as a condition of employment; and
- Preference is not given to a person in obtaining or retaining employment on the basis of their membership of a particular union or non-membership of a particular trade union.

New Zealand’s ratification of Convention 98, a fundamental ILO convention, would demonstrate its support for the ILO and its objectives. There are eight fundamental ILO conventions, of which New Zealand is currently party to five.¹

¹ The eight fundamental ILO conventions are:
- Forced Labour Convention, 1930 (Convention 29);
Disadvantages

3. It is assessed that there are no disadvantages to New Zealand of Convention 98 entering into force for New Zealand as the requirements of Convention 98 are embodied in New Zealand’s current law, policy and practice.

Economic, Social, Cultural and Environmental Effects

4. There may be indirect economic and social benefits arising from Convention 98 entering into force, and the reinforcement of the philosophy of the Employment Relations Act. The Act seeks to generate economic and social benefits through its emphasis on the building of productive employment relationships.

Obligations Arising from Ratifying Convention 98

5. By ratifying Convention 98, New Zealand would undertake to:

• Ensure that workers enjoy adequate protection against acts of anti-union discrimination in respect of their employment;

• Protect against the dismissal of, or otherwise prejudice to, a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours;

• Provide that workers' and employers' organisations enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration;

• Establish appropriate mechanisms for the purpose of ensuring respect for the right to organise as defined in the Convention; and

• Take measures appropriate to national conditions to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Reporting requirements

6. Ratification of Convention 98 would result in ongoing reporting requirements. One year after Convention 98 came into force for New Zealand, the Government would be required to provide a detailed report to the ILO on the situation with regard to New Zealand’s domestic law and practice as they comply with the provisions of

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention 87);
- Right to Organise and Collective Bargaining Convention, 1949 (Convention 98);
- Equal Remuneration Convention, 1951 (Convention 100);
- Abolition of Forced Labour Convention, 1957 (Convention 105);
- Discrimination (Employment and Occupation) Convention, 1958 (Convention 111);
- Minimum Age Convention, 1973 (Convention 138); and
- Worst Forms of Child Labour Convention, 1999 (Convention 182).

New Zealand is currently party to Conventions 29, 100, 105, 111 and 182.
Convention 98. Further detailed reports would be required every two years after the first report. These reports would be scrutinised by supervisory bodies established by the ILO, such as the Committee of Experts and the Freedom of Association Committee, who have responsibility for regular supervision of the observance by member States of their standards-related obligations.

Costs

7. It is assessed that there are no associated direct costs to achieve the ongoing fulfilment of New Zealand’s obligations under Convention 98. The costs associated with compatibility with Convention 98 are already met through the provision of ongoing assistance and services through the provisions of the Employment Relations Act 2000.

Future Protocols

8. At this stage there are no plans by the ILO to adopt any subsequent protocols or other amendments to Convention 98.

Implementation

9. An assessment of law, policy and practice with the provisions of Convention 98 indicates that the existing mechanisms for addressing breaches of freedom of association are sufficient to fulfil New Zealand’s obligations under the Convention 98 without the need for any legislative changes.

Consultation

10. The Ministries of Foreign Affairs and Trade, Youth Affairs, Women’s Affairs, Economic Development, Justice, Social Development and Pacific Island Affairs, the State Services Commission, Te Puni Kokiri, the Department of the Prime Minister & Cabinet and the Treasury have been consulted on the proposed ratification of Convention 98.

The New Zealand Council of Trade Unions (NZCTU) and Business New Zealand have been consulted on the proposed ratification of Convention 98. The NZCTU supports ratification of Convention 98.

Business New Zealand does not support the ratification of Convention 98 because in their view the provisions of the Employment Relations Act 2000 are inconsistent with the requirements of Convention 98. Business New Zealand’s view is that the Act does not permit employees to freely associate by virtue of only members of a registered union being able to:

- Bargain for a collective employment agreement;
- Vote on the type of employment agreement that will cover a workplace;
- Take strike action;
- Attend paid stop-work meetings; and
- Take employment relations education leave.
Business New Zealand’s view focuses on the Employment Relations Act’s requirements that collective bargaining occurs through a registered union. The ILO has not raised any issues of compatibility with Convention 98 in relation to the Employment Relations Act’s union registration requirements. Jurisprudence from the ILO’s Freedom of Association Committee refers to whether the conditions required for registration impair the guarantees laid down by Convention 98 and create a serious obstacle to collective bargaining.

The Government does not consider that the conditions for union registration in New Zealand create a serious obstacle to employees organising collectively as the requirements are focussed on ensuring that unions are accountable to their members. To be considered for registration, an applicant must apply for registration in accordance with the requirements of the Employment Relations Act. The Act requires that:

- An object of the society is to promote its members' collective employment interests;
- The society is incorporated under the Incorporated Societies Act 1908; and
- The society’s rules are:
  - Not unreasonable;
  - Democratic;
  - Not unfairly discriminatory or unfairly prejudicial; and
  - Not contrary to law; and
  - The society is independent of, and is constituted and operates at arm’s length from, any employer.

The Government therefore considers that New Zealand law, policy and practice are compatible with Convention 98 and this Convention should be ratified.

Convention 98 includes an obligation for ongoing consultation with the social partners in respect of Convention 98. Consultation will be held under existing consultative mechanisms established by existing tri-partite structures.

**Withdrawal or Denunciation**

The Convention allows a Member to denounce the Convention after the expiration of ten years from the date on which the Convention 98 first comes into force, by notifying the Director-General of the ILO in writing. Such denunciation cannot take effect until one year after the date on which it is registered.

If a Member that has ratified Convention 98 does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in the Convention, it will be bound for another period of ten years and, thereafter, may denounce the Convention at the expiration of each period of ten years.