

**National Interest Analysis [2024] ATNIA 8
with attachment on consultation**

**International Labour Organization Convention No. 191:
Safe and Healthy Working Environment (Consequential Amendments) Convention
adopted at Geneva on 12 June 2023**

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NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

**International Labour Organization Convention No. 191:
Safe and Healthy Working Environment (Consequential Amendments) Convention,
2023, adopted at Geneva on 12 June 2023**

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Nature and timing of proposed treaty action

1. The proposed treaty action is ratification of the *International Labour Organization Convention No. 191: Safe and Healthy Working Environment (Consequential Amendments) Convention, 2023*, adopted at Geneva on 12 June 2023 (Convention).
2. The Convention amends seven International Labour Organization (ILO) Conventions and one ILO Protocol.
3. The Convention amends the preambles of the following:
 - *Worst Forms of Child Labour Convention, 1999**
 - *Maternity Protection Convention, 2000*#
 - *Maritime Labour Convention, 2006**
 - *Promotional Framework for Occupational Safety and Health Convention, 2006*#
 - *Forced Labour Protocol of 2014 to the Forced Labour Convention, 1930**
 - *Work in Fishing Convention, 2007*#, and
 - *Domestic Workers Convention, 2011*#.
4. The Convention amends operative articles of the following:
 - *Violence and Harassment Convention, 2019**
 - *Maritime Labour Convention, 2006**, as amended, and
 - *Domestic Workers Convention, 2011*#.
5. For Australia, the new obligations that would be adopted by the proposed treaty action relate to the *Maritime Labour Convention, 2006*, as amended (MLC) and the *Violence and Harassment Convention, 2019 No. 190* (Convention No. 190), as these are the Conventions with operative amendments to which Australia is a party.

* Australia is a party to these instruments.

Australia is not a party to these instruments

6. In accordance with Article 4(1), other than for the MLC, the Convention will enter into force on the date on which the ratifications of two Members of the ILO (Members) have been registered with the Director-General of the International Labour Office. Once the Convention enters into force, it shall come into force for any Member on the date on which that Member's ratification is registered (Article 4(2)). As at 22 April 2024, no Members' ratifications had been registered.

7. Under Article 4(3), for amendments to the MLC, the Convention shall come into force in accordance with Article XIV of the MLC. Article XIV(4) of the MLC provides that amendments under the Convention will be deemed to have been accepted 12 months after the Convention, or the MLC as amended by the Convention, has been ratified by at least 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent. The Convention as it pertains to the MLC will then enter into force 12 months after the date of deemed acceptance, or 12 months after the date on which a Member's ratification of the Convention has been registered, whichever date is later (MLC, Article XIV(6)). As at 22 April 2024, the Convention has not yet come into force for the purposes of the MLC in accordance with Article XIV.

8. Article 2(1) of the Convention provides that once the Convention is in force, any ratifications of the specified ILO Conventions, or of the ILO Protocol, referred to in Article 1, will then be considered to have been ratified as amended by this Convention. Similarly, Article 2(2) provides that upon ratifying the Convention, each Member shall continue to be bound by the provisions of any of the specified ILO Conventions or ILO Protocol that it has previously ratified, as amended by the Convention. Article 5 further provides that the entry into force of the Convention shall close any of the Conventions or the Protocol to further ratification in their non-amended version.

9. It is proposed that Australia ratify the Convention as soon as practicable.

Overview and national interest summary

10. In 2022, the International Labour Conference amended the ILO Declaration on Fundamental Principles and Rights at Work to affirm that 'a safe and healthy working environment' is a fundamental principle and right at work, meaning that Members, by virtue of their ILO membership, have an obligation to respect, promote and realise this right. The purpose of the Convention is to make consequential amendments to ILO instruments necessary to reflect this change made by the International Labour Conference, to ensure the right to a safe and healthy working environment is addressed appropriately in existing ILO instruments.

11. Ratification of the Convention would demonstrate Australia's commitment to workplace health and safety, and ensure Australia continues to promote a safe and healthy working environment and protect workers from occupational harm, particularly in the maritime sector and in relation to violence and harassment at work. Ratification would uphold Australia's standing in the international community and demonstrate Australia's commitment to the implementation of key ILO standards.

Reasons for Australia to take the proposed treaty action

12. Ratification of the Convention would complement measures taken to implement the two fundamental occupational safety and health (OSH) Conventions, in which the right to a safe and healthy working environment is expressed:

- a. *ILO Convention No. 155: Occupational Safety and Health Convention*, [2005] ATS 11, which was adopted at Geneva on 22 June 1981 and entered into force for Australia on 26 March 2005, and
- b. *ILO Convention No. 187: Promotional Framework for Occupational Safety and Health Convention*, adopted at Geneva on 15 June 2006 (not yet in force).

13. A key objective of Australia's engagement with the ILO is to provide leadership within the Asia-Pacific region in promoting international labour standards. Ratification would support Australia playing a more authoritative role in promoting ratification and implementation of the Convention and other ILO OSH Conventions.

Obligations

14. Article 1(3) of the Convention amends operative articles of two conventions that Australia has ratified, namely the MLC and Convention No. 190. Article 1(3) also amends an operative provision of the *Domestic Workers Convention 2011, No. 189*, which Australia has not ratified. As such, no new obligations arise in respect of the *Domestic Workers Convention 2011*. The remaining provisions of Article 1 amend preambular text which do not create new legal obligations.

MLC

15. Article 1(3) of the Convention provides for the words 'a safe and healthy working environment' to be added as a new subparagraph (e) of Article III of the MLC. Article III requires member states to ensure their national laws respect fundamental rights at work. Accordingly, Members' laws and regulations will need to respect, in the context of the MLC, the right to a safe and healthy work environment.

Convention No. 190

16. Article 1(3) provides that the words 'a safe and healthy working environment' be added to Article 5 of Convention No. 190, after the words 'employment and occupation' so that Article 5 reads:

With a view to preventing and eliminating violence and harassment in the world of work, each Member shall respect, promote and realize the fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation, *a safe and healthy working environment*, as well as promote decent work (emphasis added).

17. The amendment to Article 5 of Convention No. 190 will require Members' laws, policies and practices to respect, promote and realize the right of a safe and healthy work environment, with a view to the prevention and elimination of violence and harassment.

18. 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 Conventions to which it is a Party, at the discretion of the Governing Body of the ILO. Given the nature of the Convention, Australia would not be required to report on this particular Convention but would continue to report on the MLC and Convention No. 190, including in relation to these two new obligations.

Implementation

19. Australia has a well-developed national scheme to enable a safe and healthy working environment, consistent with the objectives of the Convention. This includes a combination of Commonwealth, State and Territory laws and policies, covering work health and safety, anti-discrimination, workplace relations, criminal activity and maritime safety.

MLC

20. The Australian Maritime Safety Authority is responsible for implementing the MLC in Australia and administers a range of laws and regulations that respect the right to a safe and healthy working environment. This includes:

- a. *Navigation Act 2012* (Cth)
- b. *Marine Order 11 (Living and working conditions on vessels) 2015*
- c. *Occupational Health and Safety (Maritime Industry) Act 1993*
- d. Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003, and
- e. Occupational Health and Safety (Maritime Industry) Regulations 1995.

21. The *Fair Work Act 2009* and Commonwealth anti-discrimination laws also contribute to ensuring a safe and healthy working environment.

22. These laws demonstrate that Australia respects a safe and healthy working environment in the context of the MLC.

Convention No. 190

23. The combination of a range of Commonwealth, State and Territory laws and policies provides a comprehensive framework to 'respect, promote and realize' the right to a safe and healthy working environment. This includes, but is not limited to:

- Workplace health and safety (WHS) laws, policies and practices aimed at creating a safe and healthy working environment and ensuring all in the

workplace take steps to prevent and address potential harms. The enforceable duties established by WHS laws collectively around Australia, operate to, in effect, confer a right on persons to a safe and healthy working environment.

- The *Australian Work Health and Safety Strategy 2023-2033*, which provides a platform for further improving Australian WHS outcomes over the next decade.
- Safe Work Australia's role in developing national policy, systems and programmes to promote WHS across Australia.
- Anti-discrimination laws and practices and positive duties on employers to prevent certain forms of discrimination and harassment.
- The *Fair Work Act 2009* (Cth), which prohibits workplace sexual harassment and adverse action based on certain protected attributes, and enables the Fair Work Commission to make an order to stop bullying and to stop sexual harassment.
- Criminal laws that provide additional coverage against relevant conduct (such as stalking, assault and online harassment) that can apply at work where appropriate and necessary.
- The Respect@Work Council, which brings together government and community stakeholders to improve coordination, consistency and clarity across existing legal and regulatory frameworks.

24. No changes to Australian legislation will be required to implement the amendments the Convention will make to Australia's obligations under the MLC or Convention No. 190.

Costs

25. There are no costs associated with the ratification of the Convention.

Impact Analysis

26. The Office of Impact Analysis has advised that an Impact Analysis is not required.

Future treaty action

27. No future treaty action is expected to arise out of the ratification process for the Convention. Article 7 of the Convention provides that should the International Labour Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides, the ratification of the new revising Convention will result

in the immediate denunciation of the Convention. There are presently no proposals to revise or amend this Convention before the Governing Body.

28. The MLC and Convention No. 190 contain provisions on future treaty actions. For example, Articles 18 and 19 of Convention No. 190 provide for consideration of the question of revision of Convention No. 190 in whole or part, and if a new convention is adopted, the immediate denunciation of this Convention for those ratifying if and when the new revising convention enters into force. The MLC also has provisions on amendments to the MLC set out in Article XIV. There are presently no proposals to revise or amend Convention No. 190 or the MLC before the Governing Body. Any proposal to take binding treaty action in respect of an instrument arising out of a revision of a Convention would be subject to Australia's domestic treaty-making procedures, including consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

29. The Convention does not contain provisions on withdrawal or denunciation, other than in relation to Article 7 noted above. In any other circumstances, termination or withdrawal of the Convention could only occur consistently with Article 54(b) of the Vienna Convention on the Law of Treaties and would require the consent of all other parties.

30. The MLC and Convention No. 190 contain provisions on denunciation. For example, Article 15(1) of Convention No. 190 provides that a Member may denounce Convention No. 190 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 ten years and thereafter may denounce the Convention at the expiration of each successive ten-year period (Article 15(2)). Such denunciation would take effect one year after the registration of the act of denunciation with the Director-General (Article 15(1)). Article IX of the MLC contains similar provisions. Any action to denounce the Convention, or ratify a replacement convention, would be subject to Australia's domestic treaty-making procedures.

Contact details

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Workplace Relations Group
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ATTACHMENT ON CONSULTATION

International Labour Organization Convention No. 191: Safe and Healthy Working Environment (Consequential Amendments) Convention adopted at Geneva on 12 June 2023

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CONSULTATION

Consultation with State and Territory governments

1. There has been consultation with State and Territory governments on the Convention at both the Ministerial and officials' levels.
2. The Minister for Employment and Workplace Relations, the Hon Tony Burke MP, wrote to State and Territory industrial relations Ministers on 15 November 2023 and 27 March 2024 in relation to ratifying the Convention.
3. The status of Australia's compliance with the Convention and prospects of ratification has been discussed at regular meetings of Commonwealth, State and Territory officials responsible for ILO matters. Most recently, the Convention was considered at a meeting on 3 April 2024. All State and Territory governments have advised that their law and practice is consistent with the Convention.

Other consultation

4. 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 it was first considered by the ILO in 2022. The ILAC comprises the Commonwealth Department of Employment and Workplace Relations, the Australian Council of Trade Unions (ACTU) and the Australian Chamber of Commerce and Industry (ACCI). The ACTU and ACCI are, respectively, the worker and employer organisations that represent Australia in the ILO.
5. The ACTU and ACCI support Australia's ratification of the Convention.