



15 December 2022

## Joint Standing Committee on Treaties

### International Labour Organization Convention concerning the elimination of violence and harassment in the world of work (No. 190)

Thank you for the opportunity to comment on the Australia's potential ratification of the International Labour Organization ("ILO") Convention concerning the elimination of violence and harassment in the world of work (No. 190) (the "Violence and Harassment Convention")

I am a Professor at Melbourne Law School, University of Melbourne and a member of the Centre for Employment and Labour Relations Law. I have particular expertise in international and comparative law. I was a Legal Specialist at the ILO between 2014 and 2016), working in the Labour Law and Reform Unit in Geneva. During this period, many of the early meetings about the Violence and Harassment Convention took place, and I participated in several of them. I continue to work for the ILO as a consultant, including on matters pertaining to work safety and health.

The views here reflect my own analysis only. They have not been endorsed by the ILO.

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**I strongly support Australia’s ratification of this very important Convention.** Although the Convention has not yet been classified by the ILO as fundamental,<sup>1</sup> it is one of the most significant ILO instruments that has been adopted in recent decades.

Australia’s ratification of the Violence and Harassment Convention is crucial not only because of its potential effects on Australian law and practice domestically, but also because it would show international leadership in the struggle against violence and harassment. This is particularly the case in the Asia Pacific region where so far only one other country (Fiji) has ratified the Convention.

The Violence and Harassment Convention represents a major international advance in the promotion of safe, healthy and equal working environments. As is now widely recognized, the working arrangements upon which much twentieth century law was premised are now fragmenting. Gig work, informal work, labour hire and work from home are just some of the forms of work that are becoming prevalent across the globe.

Unfortunately, in many countries, labour laws still tend to focus on standard employment relationships, so that insecure, precarious and informal forms of work receive less attention, or sometimes none at all.<sup>2</sup> Australia, at least in the work health and safety space, has been in the vanguard of moving away from this limited focus to a more comprehensive approach.<sup>3</sup>

The Violence and Harassment Convention reflects this more comprehensive approach and offers a model for countries to provide greater protection and support for the most marginalised workers. It does so in the following ways:

1. It applies not only to employees but to all workers, irrespective of their contractual status, and includes interns and apprentices, job-seekers, employers and volunteers.<sup>4</sup> This broad formulation enables gig workers, labour hire workers, and the self-employed to be protected. The Convention provides:

*Each Member which ratifies this Convention shall respect, promote and realize the right of everyone to a world of work free from violence and harassment (emphasis added).*<sup>5</sup>

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<sup>1</sup> The fundamental or “core” Conventions concern freedom of association and collective bargaining (Conventions No. 87 and 98); equality (Conventions No. 100 and 111); forced labour (Conventions No. 29 and 105, and the 2014 Protocol to Convention No.29); child labour (Conventions No.138 and No. 182); and work health and safety (Conventions No. 155 and 187).

<sup>2</sup> Judy Fudge and Guy Mundlak, ‘Law and Gendered Labour Market Segmentation’, *International Labour Review* 161, no. 4 (2022): (forthcoming).

<sup>3</sup> See Work Health and Safety Act 2011 (Cth); Richard Johnstone and Andrew Stewart, ‘Swimming against the Tide: Australian Labor Regulation and the Fissured Workplace’, *Comparative Labor Law & Policy Journal* 37, no. 1 (2015): 55–90.

<sup>4</sup> Article 2(1)

<sup>5</sup> Article 4.

2. It applies to both private and public sectors, the formal and informal economy and to urban and rural work.<sup>6</sup>
3. It takes a broad view of the workplace (or, using the terms of the Convention, the “world of work”), which includes digital work, work-related trips and social events.<sup>7</sup>
4. It links together work health and safety and equality law, rather than treating them as two silos, as many labour law systems do. “Gender-based violence and harassment” is highlighted.<sup>8</sup> This is, of course, very timely for Australia.
5. It recognises the wide range of possible harms that can result from violence and harassment: physical, psychological, sexual or economic.<sup>9</sup>
6. It requires a process for identifying and protecting people in the sectors most exposed to violence and harassment.<sup>10</sup>
7. It requires that protective measures be developed with the full input worker and employers representatives and is underpinned by freedom of association and the effective recognition of the right to bargain collectively.<sup>11</sup>
8. It obliges member states to require employers to take appropriate steps which are not absolute but rather feasible; the steps must be “commensurate with their degree of control” and “so far as is reasonably practicable”.<sup>12</sup>

As indicated above, Australia is very well placed to ratify this Convention, since its fundamental concepts reflect an approach already adopted by Australia’s work health and safety laws, and to at lesser extent, at least until recently, its equality laws.

I believe that Australia’s further implementation of the measures in this Convention will provide a model for many countries within our region that are often lagging on both health and safety and equality issues.<sup>13</sup> Australian labour laws are often consulted by other countries in our

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<sup>6</sup> Article 2(2).

<sup>7</sup> Article 3.

<sup>8</sup> Article 1. See also article 6.

<sup>9</sup> Article 1(a)

<sup>10</sup> Article 8.

<sup>11</sup> Articles 4, 5, 8, 9 and 11

<sup>12</sup> Article 9.

<sup>13</sup> It would not be politic to name these countries in this submission. However, as both an academic specialising in the labour laws of East and South Asia and as a former ILO official, and current consultant, I am happy to elaborate if necessary.

region that are considering ratifying and implementing ILO Conventions. The Commonwealth government can thus potentially contribute to addressing violence and harassment not only in this country but also among our neighbours.

I stand ready to address any issues that emerge from this submission.

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