



Australian Government
Department of Employment
and Workplace Relations

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Mr Josh Wilson MP
Chair, Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2601

By email: JSCT@aph.gov.au

Dear Chair

Response to questions on notice – International Labour Organization Conventions 187 and 191

I refer to the public hearings of the Joint Standing Committee on Treaties on the proposed ratification of the *Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)* and the *Safe and Healthy Working Environment (Consequential Amendments) Convention, 2023 (No. 191)* on 1 July 2024.

During the hearings the Department of Employment and Workplace Relations undertook to provide responses to two questions on notice. Please find enclosed the first response regarding the definitions of ‘a safe and healthy working environment’.

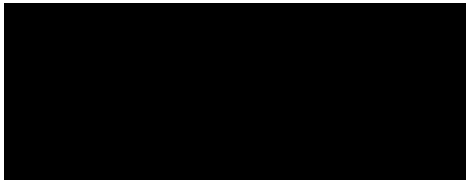
The second question was a standing question on notice in relation to indications of formal support for ratification from Western Australia, Tasmania, Victoria and the Northern Territory. Since the hearing, Western Australia and the Northern Territory have indicated their formal support for the ratification of both Conventions.

I note that on 20 May 2024 Tasmania’s Minister for Small Business and Consumer Affairs, the Hon Madeleine Ogilvie MP advised that that Tasmanian Government provides in-principle support for the ratification of both Conventions while it goes through its formal Cabinet processes.

The Victorian Government has already provided formal support for the ratification of Convention No.187 and is expected to consider the ratification of Convention No.191 in August 2024.

If the Department receives any further updates while the Committee is reviewing the treaty actions, we will notify the Committee via email to JSCT@aph.gov.au.

Yours sincerely



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Department of Employment and Workplace Relations

16 July 2024

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Response to Question on Notice from 1 July 2024 regarding the International Labour Organization
Safe and Healthy Working Environment (Consequential Amendments) Convention, 2023 (No. 191)

Senator Canavan: How do we define ‘a safe and healthy working environment’, in both the *Safe and Healthy Working Environment (Consequential Amendments) Convention, 2023 (No. 191)* and domestic laws?

The *Safe and Healthy Working Environment (Consequential Amendments) Convention, 2023 (No. 191)* adds the words ‘a safe and healthy working environment’ to two Conventions Australia has ratified, namely the *Violence and Harassment Convention, 2019 (No.190)* and the *Maritime Labour Convention, 2006 as amended*.

None of these three Conventions define ‘a safe and healthy work environment’, ‘work health and safety’, ‘occupational safety and health’, ‘health/ healthy’ or ‘safe/ safety’.

The two fundamental International Labour Organization Conventions that correspond to the right to ‘a safe and healthy work environment’ are the *Occupational Safety and Health Convention, 1981 (No.155)* and the *Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)*. Neither of these Conventions define ‘a safe and healthy work environment’, ‘work health and safety’, ‘occupational safety and health’, ‘healthy’ or ‘safe/ safety’.

Article 3(e) of the *Occupational Safety and Health Convention, 1981 (No.155)* provides that:

the term **health**, in relation to work, indicates not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work.

In the absence of definitions in the Conventions, the ordinary meaning of the words apply, in accordance with Article 31(1) of the *Vienna Convention on the Law of Treaties 1969* which provides that ‘[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose’.

In Australia, the Model Work Health and Safety Act provides that its main aim is ‘to secure the health and safety of workers and workplaces.’

‘Safety’ is not defined in the Model Work Health and Safety Act and has its ordinary meaning.

‘Health’ also has its ordinary meaning, however section 4 of the Model Work Health and Safety Act clarifies that ‘health means physical and psychological health’.

The *Occupational Health and Safety (Maritime Industry) Act 1993 (Cth)*, the *Occupational Health and Safety Act 2004 (Victoria)* and the *Employment Act 1988 (Norfolk Island)* use similar terms. Section 5 of Victoria’s Act provides that ‘health includes psychological health’. Otherwise, these laws do not define these terms and therefore ordinary meanings apply.

The Government is satisfied that Australian laws are consistent with, and compliant with, the *Safe and Healthy Working Environment (Consequential Amendments) Convention, 2023 (No. 191)*.