

ILO Convention 190

ACTU Submission to the Joint Standing Committee on Treaties

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Introduction

About the ACTU

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. It has played the leading role in advocating for, and winning the improvement of working conditions, including on almost every Commonwealth legislative measure concerning employment conditions and trade union regulation. The ACTU has also appeared regularly before the Fair Work Commission and its statutory predecessors, in numerous high-profile test cases, as well as annual national minimum and award wage reviews.

The ACTU is Australia's sole peak body of trade unions, consisting of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates who together have over 1.7 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

Background

The ACTU welcomes the opportunity to make a submission in support of ratification of the *International Labour Organization Convention concerning the elimination of violence and harassment in the world of work (No. 190)* (Geneva, 21 June 2019) (**C.190**) to the Joint Standing Committee on Treaties.

The ACTU and its affiliates have long been calling for stronger and more effective measures to prevent, address and redress all forms of violence, harassment and discrimination at work and at home. The union movement has campaigned for stronger provisions under anti-discrimination, industrial relations and work health and safety laws, including as part of the *National Inquiry into Sexual Harassment in Australian Workplaces* conducted by the Australian Human Rights Commission (AHRC) which resulted in the Respect@Work Report and its 55 recommendations. Ratification of C.190 was one of the recommendations of the Respect@Work Report. Since the publication of the Report, unions have been calling for the recommendations to be implemented, and the Government has committed to the implementation of all 55 recommendations.

For over a decade, unions campaigned for, and won, the right to take paid family and domestic violence leave in workplaces across the country, resulting in over six thousand employers (including all State and Territory Governments) providing the right to 1.2 million workers. The ultimate aim of the union campaign - a universal entitlement accessible to all workers in the National Employment Standards - has recently been achieved with the passing of the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*.

The ACTU was also involved in the Standard-Setting discussions for C.190 at the International Labour Conferences in 2018 and 2019, and voted for the adoption of the new Convention and its accompanying Recommendation 206 (R.206).

The COVID-19 pandemic has shown that ratification of C.190 and R.206 is more important than ever. COVID-19 has had a disproportionate impact on women and has increased the risk of gendered violence, both at work and home. Frontline workers faced increased risks of violence and harassment, and rates of domestic and family violence spiked around the world. The ACTU is pleased to see that the Government has committed to the ratification and implementation of C.190 and R.206, and we urge that this occur as a matter of priority, so that Australia can adequately respond to violence and harassment at work in a nationally consistent way, and consistent with International Labour Standards.

Importance of C.190 in addressing violence and harassment

Family and domestic violence

Family and domestic violence is the leading cause of death, disability and illness among women aged 15-44 years of age.¹ A staggering 2.2 million Australians have experienced violence from a partner since the age of 15 and 1.2 million Australians have experienced violence from another family member.² The statistics are even more alarming for women – 1 in 4 women have experienced violence from a partner since the age of 15 and on average one woman a week is killed by a current or former partner.³ Family and domestic violence is estimated to cost the national economy \$20 billion per annum or around 1% of GDP.⁴

Gendered violence at work

Despite Australia having legislation making sexual harassment unlawful for over 30 years, its prevalence has not reduced over this time⁵ and it remains a widespread and commonplace problem with one in three workers having experienced sexual harassment at work in the last five

¹ Victoria Health, 2018, <https://www.vichealth.vic.gov.au/our-work/preventing-violence-against-women>

² Australian Institute of Health and Welfare, 7 July 2022, Family, domestic and sexual violence, (webpage, accessed 12 December 2022) [Family, domestic and sexual violence - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au/family-domestic-and-sexual-violence)

³ Fair Work Commission, 5 April 2022, Information note - Initiatives to reduce family and domestic violence in Budget 2022-23 <https://www.fwc.gov.au/documents/sites/family-domestic-violence-leave/research/am202155-info-note-budget-050422.pdf>

⁴ Expert Report of Dr. James Stanford, Annexure JS-3 (from p47) to the Witness Statement of Dr James Stanford, filed in Family and domestic violence leave review 2021 (AM2021/55) <https://www.fwc.gov.au/documents/sites/family-domestic-violence-leave/submissions/am202155-sub-ws-js-actu-300721.pdf>

⁵ Good L, and Cooper R (2016) 'But It's Your Job To Be Friendly': Employees Coping With and Contesting Sexual Harassment from Customers in the Service Sector, *Gender, Work and Organization*, 23 (5), 447-469

years.⁶ ABS data indicates that one in two women and one in four men will be sexually harassed in their lifetime.⁷ The most recent survey conducted by the Australian Human Rights Commission (AHRC) in 2022 had very similar results to the last survey in 2018, finding that over three quarters of Australians aged 15 or older (77%) have been sexually harassed at some point in their lifetime (including 89% of women and 64% of men).⁸

Despite this being an issue which affects a majority of Australians, only 18% of people make a formal complaint. Of those who did report sexual harassment, 38% experienced negative consequences for their own employment, 40% said no changes occurred at their workplace subsequent to the complaint, and one quarter said it resulted in no consequences for the perpetrator.⁹ This is a clear demonstration that the laws Australia had in place prior to recent reforms were failing to protect people from violence and harassment at work.

Impact of the COVID-19 pandemic

COVID-19 further exacerbated existing gender inequalities. It led to increased unpaid care work for women, increased isolation, and higher financial insecurity and unemployment, resulting in a greater risk of gender-based violence and harassment, both at work and at home.¹⁰ Because women are over-represented in low paid, casual and insecure forms of work, their existing disadvantage was increased and entrenched by the economic consequences of COVID-19, such as loss of hours, stand downs and loss of jobs.

Economic independence and job security are crucial in enabling women to leave and recover from domestic violence, and to report violence at work without fear of losing their jobs. It is significant that half of all workplace sexual harassment in the last five years occurred within four industries in which insecure work is concentrated - healthcare and social assistance, retail trade, education and training, and accommodation and food services.¹¹ These workers are also amongst those that were on the frontline in care and service industries during the pandemic, and faced increased risks

⁶ Australian Human Rights Commission, Time for Respect: Fifth National Survey on Sexual Harassment in Australian Workplaces (2022)

⁷ Australian Bureau of Statistics, Personal Safety Survey (2016)

⁸ Australian Human Rights Commission, Time for Respect: Fifth National Survey on Sexual Harassment in Australian Workplaces (2022)

⁹ Australian Human Rights Commission, Time for Respect: Fifth National Survey on Sexual Harassment in Australian Workplaces (2022)

¹⁰ Boxall H, Morgan A & Brown R (2020), The prevalence of domestic violence among women during the COVID-19 pandemic. Statistical Bulletin no. 28. Canberra: Australian Institute of Criminology

¹¹ Australian Human Rights Commission, Time for Respect: Fifth National Survey on Sexual Harassment in Australian Workplaces (2022), p115

of violence and harassment from anxious and stressed customers, clients, patients, service users, students and the general public.

Lockdowns forced many people to work from home, isolating them from friends and family, and increasing the time spent with partners and the situational stressors on households associated with violence. For people experiencing family and domestic violence, attending work often provides a safe haven and a way to access vital support. Large numbers of workers were required to work from home regardless of whether it was a safe work environment for them.

Rates of domestic and family violence spiked around the world during the pandemic,¹² and Australia was no exception. Early data reported from a Monash University survey of family violence victim support practitioners showed that the number of first-time family violence reports had increased for 42% of those surveyed. Additionally, more than half of the respondents reported both the frequency and severity of violence against women had increased.¹³ Research from the Australian Institute of Criminology also showed that women experienced an increased rate of domestic violence during COVID-19 than they were before it began, with a large proportion experiencing violence for the first time.¹⁴

ILO Convention on Violence and Harassment 2019 and Recommendation No. 206

C.190, together with R.206, provide a clear and comprehensive framework for employers and governments to prevent, address and reduce the risks of violence and harassment at work, and contain important guidance for governments and employers on how to protect workers in a world of work that has changed rapidly as a result of the pandemic. For example, C.190 and R.206:

- Protect against all forms of violence and harassment in the world of work, which is particularly important as COVID-19 has reshaped the way we work. For example, it covers violence and harassment occurring during commuting to and from work, and violence and harassment enabled through information and communications technologies;
- Protect all individuals in the world of work, irrespective of their contract status, workers whose employment has been terminated, volunteers, trainees and apprentices, etc;

¹² [UN chief calls for domestic violence 'ceasefire' amid 'horrifying global surge' | UN News](#)

¹³ [Coronavirus Australia: New reports of family violence spike in COVID-19 lockdown, study finds \(theage.com.au\)](#)

¹⁴ Boxall H, Morgan A & Brown R (2020), The prevalence of domestic violence among women during the COVID-19 pandemic. Statistical Bulletin no. 28. Canberra: Australian Institute of Criminology
<https://www.aic.gov.au/publications/sb/sb28>

- Recognise the link between family and domestic violence and the world of work and sets out specific measures that can be taken to protect workers;
- Recognise that some sectors, occupations and work arrangements, such as health, transport, education, or working at night or in isolated areas, may be more exposed to violence and harassment;
- Call for the adoption of workplace policies on violence and harassment, offer clear guidance to help employers and workers identify hazards and assess the risks of violence and harassment, and take effective measures to assess their safety, health and well-being, including in the COVID-19 context.

Recent legislative reforms addressing violence and harassment

Ratification of C.190 is itself a recommendation of the Respect@Work Report¹⁵, and would build on a range of significant law and policy reforms made this year which aim to prevent and eliminate violence and harassment in the workplace. In addition to existing legislation and previous reforms (such as those introduced by the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (Cth)), these recent reforms mean that law, policy and practice in Australia is consistent with the provisions of C.190, enabling Australia's ratification.

Paid family and domestic violence leave

After a decade long campaign by the union movement to win paid family and domestic violence leave (**FDV leave**) for all workers, the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022* (Cth) was passed on 27 October 2022, providing access to 10 days paid FDV leave to employees covered by the National Employment Standards (**NES**) (approximately 11 million national system employees). Significantly, the full 10 day entitlement is available upfront to full-time, part-time and casual workers, and is paid at an employee's full rate of pay. This new entitlement is consistent with R.206 which sets out specific measures that can be taken, such as the provision of domestic violence leave.

If C.190 is ratified, Schedule 2 to the Bill, and in particular new section 757B, provides that the NES entitlement to paid family and domestic violence leave would apply in full to state referral employees, and be extended to non-national system employees, thereby ensuring all employees in Australia have access to the leave entitlement. This extended coverage is consistent with Article 10(f) of C.190, which requires member states to take appropriate measures to 'recognize the

¹⁵ Australian Human Rights Commission (2020) Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces (Recommendation 15)

effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work'. Therefore ratification of C.190 will make paid FDV leave a truly universal entitlement by making it available to all workers in Australia.

Paid FDV leave, and its extension to all workers in Australia, will undoubtedly save lives, and ensure that workers impacted by family and domestic violence, including those escaping a violent relationship – nearly always women – don't have to choose between their safety and their livelihood.

Respect@Work reforms

Two pieces of legislation have recently passed the Parliament that implement key legislative reforms recommended by the Respect@Work Report.

Respect@Work Bill – reforms to anti-discrimination legislation

The *Anti-Discrimination and Human Rights Legislation Amendment (Respect@Work) Bill 2022* (Cth) introduced key reforms to the *Sex Discrimination Act 1984* (Cth) and other legislation that address violence and harassment at work, including:

- prohibiting conduct that subjects another person to a workplace environment that is hostile on the grounds of sex;
- the introduction of a positive duty on all employers and persons conducting a business or undertaking to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and sex based harassment, hostile environments and victimisation at work;
- the ability for the Australian Human Rights Commission (**AHRC**) to monitor and assess compliance with the positive duty, and to inquire into into systemic or suspected systemic unlawful discrimination;
- the ability for representative bodies such as unions to make representative applications on behalf of people who have experienced unlawful discrimination in the federal courts.

These reforms, and in particular the introduction of a positive duty to prevent sexual harassment, are crucial in addressing violence and harassment at work, and should finally start to see the burden of sexual harassment shift from individuals to employers and duty holders.

The Secure Jobs, Better Pay Bill – reforms to the Fair Work Act

The Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (Cth) (**SJBP Bill**) introduced a prohibition on sexual harassment in the *Fair Work Act 2009* (Cth) (**FW Act**), increasing protections against workplace sexual harassment and giving workers, including prospective workers, a new way to deal with sexual harassment complaints in the Fair Work Commission (**FWC**). The SJBP Bill also amends the FW Act to include gender identity, intersex status and breastfeeding in the list of protected attributes, meaning workers cannot be discriminated against because they have those attributes, and allowing workers who experience workplace discrimination on the basis of those attributes to pursue discrimination complaints through the FWC. These are significant reforms that address violence and harassment at work and afford increased protections to workers, and are consistent with Articles 7 and 10 (b) and (e) of C.190, and the measures in R.206.

Conclusion

The ratification of C.190 is an opportunity to build on the significant reforms made this year and for Australia to reflect its commitment to addressing violence and harassment in the workplace and ensuring women's safety, and the need for ongoing work to address these issues in an inclusive, integrated and gender-responsive way. Ratification would also enhance Australia's standing in the international community and allow it to more fully engage with other countries on this crucial issue, particularly within the Asia-Pacific region. We urge the Parliament to ratify C.190 as a matter of priority.

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