



4<sup>th</sup> June, 2024

## Submission to the Joint Standing Committee on Treaties

[International Labour Organization Convention No. 187: Promotional Framework for Occupational Safety and Health Convention adopted at Geneva on 15 June 2006](#)

[International Labour Organization Convention No. 191: Safe and Healthy Working Environment \(Consequential Amendments\) Convention](#)

Thank you for the opportunity to comment on Australia's potential ratification of two International Labour Organization ("ILO") Conventions: the Promotional Framework for Occupational Safety and Health Convention (Convention No. 187) and the Safe and Healthy Working Environment (Consequential Amendments) Convention (Convention No. 191).

**I strongly support Australia's ratification of these very important Conventions.**

### *Explanation of relevant expertise*

By way of introduction, I am a Professor at Melbourne Law School, University of Melbourne and a member of that University's Centre for Employment and Labour Relations Law. I have particular expertise in international and comparative labour law. I was a Legal Specialist at the ILO between 2014 and 2016, working in the Labour Law and Reform Unit in Geneva. I continue to work for the ILO as a consultant, including on matters pertaining to work safety and health. I was lead author on the regulatory chapter of the ILO's 2023 flagship report<sup>1</sup> into protecting

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<sup>1</sup> World Employment and Social Outlook 2023: The value of essential work, Chapter 5, available at [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_871016.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_871016.pdf). See also the related report: [OSH and the COVID-19 pandemic: A legal analysis](#)

essential workers and also a contributing author to the ILOs Support Kit for Developing Occupational Safety and Health Legislation.<sup>2</sup>

I have worked on several ILO law reform projects, including in relation to work safety and health, in several jurisdictions in Asia, including India, Vietnam, Malaysia and most recently Pakistan.

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

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I note at this point that, while Australia (apart from Victoria), uses the modern language of “work health and safety”, the ILO mostly uses the expression “occupational safety and health” (or “OSH”). This later expression is used in Conventions Nos 187 and 191. I will use the terms interchangeably.

### *Convention No 187 is a fundamental ILO Convention*

While the ILO has adopted almost 200 Conventions, ten have been singled out for particular importance.<sup>3</sup> In its Declaration of Fundamental Rights and Principles at Work, adopted in 1998,<sup>4</sup> the International Labour Conference eight fundamental Conventions. These concerned freedom of association and collective bargaining, the elimination of forced labour, the elimination of child labour and antidiscrimination and equal pay for work of equal value. The relevant Conventions have all been ratified by Australia.

Work health and safety was a notable omission in that original Declaration. This was remedied in 2022 with the inclusion of two more Conventions: Convention No.155 and Convention No.187.<sup>5</sup> Australia has already ratified Convention No 155. This means that Convention No.187 is the only fundamental ILO Convention that has not been ratified by Australia.

The description of these Conventions as “fundamental” has proved to be highly significant in a number of ways. For example:

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<sup>2</sup> <https://www.ilo.org/publications/support-kit-developing-occupational-safety-and-health-legislation>.

<sup>3</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>4</sup> Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998

<sup>5</sup> Resolution on the inclusion of a safe and healthy working environment in the ILO’s framework of fundamental principles and rights at work, adopted by the International Labour Conference at its One Hundred and Tenth Session, Geneva, 10 June, 2022.

- they enjoy very widespread ratification internationally;<sup>6</sup>
- they are closely related to fundamental human rights;
- they attract particularly attention in the supervisory processes of the ILO;
- they are central to labour law reform work of the ILO;<sup>7</sup>
- they are expressly referenced in many international trade agreements (for example, those involving the European Union and the United States which require their trading partners to adhere to them); and
- they are often cited in national court systems.

Given the significance of the fundamental Conventions, it would be anomalous for Australia to ratify all but one, especially since, as I explain below, ratification presents no difficulty.

### *The purpose of Convention No. 187*

Though the two Conventions overlap in part, a primary focus of Convention No 155 (already ratified by Australia in 2004) is to set out the core elements of an effective work health and safety system. It address matters such as the duties of employers and workers, consultation arrangements, the identification of hazards and so on. Convention No.187, on the other hand, is, as its title suggests, concerned with the overall framework of work health and safety policy. It has two main aims: (1) the “continuous promotion of a national preventative safety and health culture”<sup>8</sup> and (2) the application of a systems approach to managing OSH at the national level.<sup>9</sup> It is directed at overcoming the fragmented and incoherent approach to OSH found in many countries.<sup>10</sup> It promotes three key elements of a national framework: *a national policy, a national system, and a national program*.

The *national policy* relates to establishing and regularly reviewing the key principles of work health and safety, such as risk assessments, consultation between governments, employers, workers and their representatives, and inculcating a proactive approach to work health and safety.<sup>11</sup>

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<sup>6</sup> This is particularly true of the eight original fundamental Conventions. The two work health and safety Conventions have been less ratified although I anticipate the number of ratifications will rapidly rise. See [https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011\\_DISPLAY\\_BY,P10011\\_CONVENTION\\_TYPE\\_CODE:1,F](https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F).

<sup>7</sup> For example, they form a key pillar of the ILO-assisted current draft Labour Codes in the Pakistani provinces of Punjab and Sindh.

<sup>8</sup> Convention No. 187, Preamble

<sup>9</sup> General Survey on the occupational safety and health instruments concerning the promotional framework, construction, mines and agriculture, International Labour Conference, 106th Session, 2017, para 30.

<sup>10</sup> Ibid, para 28.

<sup>11</sup> Ibid, para 32 and

The *national system* relates to enacting a comprehensive regulatory framework, establishing compliance structures, promoting workplace collaboration as well as research, training and assistance to small and medium enterprises.

Whereas these first two elements are concerned with the overall architecture of work health and safety, the *national policy* concerns the setting of objectives and targets within a defined period on the basis of national data. This policy should be regularly reviewed and updated.

*Australia is very well placed to ratify Convention No. 187*

Australia has already implemented the key elements of Convention No. 187. It has a national policy maker, in the form of Safe Work Australia. It has an excellent national system, with model Work Health and Safety Acts and Regulations enacted throughout Australia (except Victoria<sup>12</sup>).<sup>13</sup> It has sound regulators at Commonwealth and state levels. I am less clear about the extent to which it can be said that there are national programs but, given the relatively high degree of national cooperation on safety and health matters, this would not seem to me to be a major obstacle.

*Convention No. 191*

This Convention is simply mechanical or consequential in nature. As explained above, the original Declaration of Fundamental Rights and Principles at Work did not include work health and safety Conventions. Convention No. 191 amends those instruments (Conventions and Declarations) which have been adopted between 1998 (the year of the original Declaration) and 2022 (the year work health and safety was added to the Declaration) so they all now refer to the work health and safety Conventions.

It therefore is appropriate for Australia to ratify this Convention in order to ensure that the ILO instruments it has previously ratified include reference to health and safety. This includes the important Maritime Labour Convention, 2006 (MLC, 2006).

*Australia as an international exemplar of work health and safety legislation*

Australia has been a world leader in work health and safety regulation and innovation. I say this having worked on several ILO comparative studies. In a region where health and safety practices are often poor, Australia, together with other countries with sophisticated systems such as Singapore, New Zealand (which has largely adopted Australia's framework), Japan and South Korea, is very well placed to assist other jurisdictions. For instance, reforms current underway in Pakistan draw heavily

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<sup>12</sup> It is regrettable that Victoria has not joined the national scheme, but its laws are not fundamentally different from the national scheme in effect.

<sup>13</sup> See Work Health and Safety Act 2011 (Cth); Richard Johnstone and Michael Tooma, *Work Health and Safety Regulation in Australia*. (Alexandria, NSW: Federation Press, 2022); 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.

on the Australian model. Ratifying Convention No. 187 will affirm Australia's beneficial role in this area which is crucial to the lives and well being of all people who work.

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

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