

**INTERNATIONAL LABOUR ORGANIZATION CONVENTION NO. 155:
OCCUPATIONAL SAFETY AND HEALTH, 1981
[1981] ATSD 2903**

Documents tabled on 9 September 2003:

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International Labour Organization Convention No. 155: Occupational Safety and Health, 1981 [1981] ATSD 2903

Date of Tabling of Proposed Treaty Action

1. ____ 9 September 2003.

Nature and Timing of Proposed Treaty Action

2. ____ The proposed binding treaty action is ratification of International Labour Organization (ILO) Convention No. 155 (the Convention).
3. ____ The Convention was adopted by the International Labour Conference on 22 June 1981. Article 24(2) of the Convention provided for the entry into force of the Convention generally 12 months after the registration of the ratifications of two member States of the International Labour Organization. The Convention entered into force generally on 11 August 1983.
4. ____ Article 24 of the Convention provides that it shall be binding upon only those member States of the ILO that ratify the Convention. The Convention would enter into force for Australia 12 months after the date on which Australia's instrument of ratification is registered with the Director-General of the International Labour Office.

Overview and National Interest Summary

5. ____ The Convention provides that each member State shall formulate, implement and periodically review a coherent national policy on occupational safety and health in the working environment. It provides that such a policy shall be formulated after consultation with the most representative organisations of employers and workers. The objective of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work by minimising, as far as possible, the causes of hazards inherent in the working environment.
6. ____ Ratification of the Convention would demonstrate to Australian employers and employees (as well as the international community) that Australian governments are concerned to ensure the safety of people at work, and to maintain proper laws and practices for achieving such safety. State and Territory governments strongly support ratification of the Convention.

Reasons for Australia to take the proposed treaty action

7. The ILO is a specialised agency of the United Nations with 176 member States. The ILO establishes and monitors the international labour standards, which are embodied in Conventions, Protocols or Recommendations (the latter are not treaties and therefore cannot be legally binding). The ILO supervises the implementation of Conventions and Protocols by member States who are parties to those instruments. Australia has been a Member of the ILO since its establishment in 1919 and has ratified 57 out of the ILO's 184 Conventions. Forty-eight of these Conventions remain in force for Australia.

8. The Convention has been ratified by 40 countries (see list at Annexure 2). The Convention adopts the same approach as has been adopted in health and safety legislation since the early 1980s by all Australian jurisdictions. This involves moving from prescriptive, industry-specific regulation to a legislative framework which covers all employers, employees and workplaces, imposes general duties on employers, employees and others to ensure workplace safety and establishes workplace arrangements for employee participation in safety issues.

9. Ratification of the Convention at this time demonstrates Australia's commitment to occupational health and safety in international forums. Even without ratification Australia is still one of the leaders in occupational health and safety performance as compared with other countries that have ratified the Convention. Ratification of the Convention evidences acknowledgement at the highest levels of government Australia's commitment to the workplace health and safety of Australians. Ratification further indicates Australia's determination to improve occupational health and safety outcomes and achieve the targets set, with the agreement of the States and Territories, business and unions, in the National Occupational Health and Safety Strategy 2002-2012.

Obligations

10. The Convention provides that each member State shall formulate, implement and periodically review a coherent national policy on occupational safety and health in the working environment (Article 4). The aim of the national policy is to prevent accidents and injury to health by minimising so far as is reasonably practicable, the causes of hazards inherent in the workplace.

11. The Convention defines the main spheres of action of such a policy (Articles 4-7). It lays down a series of quite detailed provisions concerning action at the national level, and at the level of the workplace. Article 11 of the Convention requires the progressive implementation of certain functions as part of the national policy. These functions include: the determination of conditions governing the design, construction, layout and safety of workplaces; the determination of prohibited work processes and substances; the establishment of procedures for the notification of industrial accidents and diseases by employers and insurers and the production of annual statistics; the holding of inquiries into serious occupational accidents; and the annual publication of information on measures taken in pursuance of the national policy.

12. The Convention also requires a process of review of occupational health and safety and the working environment to be carried out at appropriate intervals, with a view to identifying problems and devising effective methods to address any such problems (Article 7).

13. At the national level it provides in particular for the adoption of laws or regulations (Article 8) or any other appropriate method for the operation of a system of inspection (Article 9) and for measures to be taken from the design stage onwards, i.e. even prior to the introduction into occupational use of machinery, substances, and so on (Articles 10-12).

14. At the workplace level the Convention provides, among other things, that employers are required to supply adequate protective clothing and equipment and to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control, as well as chemical, physical and biological agents and substances used in the workplace, are safe and without risk to health (Article 16).

15. Furthermore, the Convention provides that workers and their representatives in workplaces shall co-operate in the fulfilment by employers of their obligations (Articles 19 and 20). It also provides that workers who report hazardous working conditions or cease work when they believe the situation presents an imminent and serious danger to life or health are to be protected from undue consequences (Article 13). The Convention requires that occupational health and safety measures not involve any expenditure for workers (Article 21).

Implementation

16. Implementation of the Convention's obligations falls partly within the jurisdiction of the Australian Government, and primarily within the jurisdictions of the State and Territory governments. Law and practice at the federal, State and Territory levels of government are consistent with Australia's obligations under the Convention.

17. As a matter of policy the Government will not normally ratify an ILO Convention unless and until all legislation necessary for compliance is in place and appropriate consultations have been completed. The federal, State and Territory Workplace Relations portfolios have a further treaty-making pre-requisite in that ratification of ILO Conventions is not considered until all relevant governments have formally agreed to ratification.

18. Between 1989 and 2001, all State and Territory Governments formally agreed to ratification of the Convention. In 2001 New South Wales amended its occupational health and safety legislation in order to comply with the Convention, and as a consequence was able to agree formally to its ratification. Australian federal law and practice complies with the Convention.

Costs

19. There are no costs associated with the ratification of the Convention, as Australian law and practice already complies with the provisions of the Convention.

Consultation

20. This proposed treaty action will have an impact on the States and Territories in that they will be bound to continue to apply the provisions of the Convention. All State and Territory governments have been consulted about the proposed treaty action, which they all support. The Australian Council of Trade Unions and the Australian Chamber of Commerce and Industry, who are Australia's most representative organisations of employers and workers for ILO

purposes, have also been consulted in detail about the ratification of the Convention. Both organisations support ratification. The consultation process is documented in Annexure 1.

Regulation Impact Statement

21. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future Treaty Action

22. No future treaty action is expected to arise out of the ratification process. Any future revision of the Convention would require a decision of the Governing Body of the ILO to place such revision on the agenda of the annual International Labour Conference. In this regard, Article 28 of the Convention provides that, at such times as it may consider necessary, the Governing Body shall present to the International Labour Conference a report on the working of the Convention and shall examine the desirability of placing on the Conference agenda the question of its revision in whole or in part. There are presently no proposals to revise or amend the Convention before the Governing Body of the ILO.

23. Any proposal to take binding treaty-action in respect of an instrument arising out of a revision of the Convention would be subject to Australia's treaty-making procedures. This includes any action with respect to the Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (the Protocol) adopted on 20 June 2002. The Protocol is intended to supplement Articles 4 and 11 of the Convention and is open to ratification only by Member States of the ILO that have ratified the Convention. The Government is consulting with the States, Territories, representative bodies and other relevant stakeholders regarding Australia's attitude to the Protocol.

Withdrawal or denunciation

24. Article 25 (1) provides for the denunciation of the Convention by a member State within a twelve month period following the expiration of ten years from the date of the entry into force of the Convention generally. In respect of a member State that has not exercised the right to denounce the Convention provided under Article 25(1), the Convention may be denounced only at the expiration of a further ten-years and thereafter at ten-yearly intervals (Article 25(2)). Such denunciation would take effect one-year after the registration of the act of denunciation with the Director-General of the ILO (Article 25(1)).

25. The next opportunity to denounce the Convention would be in the 12 months following 11 August 2013. Any action to denounce the Convention would be subject to Australia's domestic treaty making process.

Contact details

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Canberra

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CONSULTATIONS

1. The status of Australia's compliance with the Convention and prospects for ratification has regularly been considered at the annual meetings of Australian, State and Territory officials responsible for ILO matters. Most recently, the Convention was considered at meetings held in Perth on 20 October 2000, Melbourne on 23 April 2002, and Sydney on 28 February 2003.
2. Between 1989 and 2001, all State and Territory Governments provided formal agreement to ratification of the Convention. Governments' agreements were provided on the following dates:
 - New South Wales – 15 October 2001
 - Victoria – 8 July 1992 (compliance confirmed 26 May 2003)
 - Queensland – 26 April 1991 (compliance confirmed 30 April 2003)
 - Western Australia – 27 September 1989 (compliance confirmed 12 December 2002)
 - South Australia – 3 September 1991 (compliance confirmed 26 June 2003)
 - Tasmania – 22 May 1997 (compliance confirmed 6 March 2003)
 - Northern Territory – 2 May 1995 (compliance confirmed 11 March 2003)
 - Australian Capital Territory – 8 September 1992 (compliance confirmed 17 April 2003).
3. At a meeting of the Workplace Relations Ministers' Council (WRMC) held on 8 November 2002, the Australian, State and Territory Ministers all expressed their support for ratification of the Convention. At a subsequent WRMC meeting held on 28 March 2003, Ministers from all governments agreed to support the ratification of the Convention, subject to the International Labour Conference in June 2003 re-confirming the Convention in substantially the same terms. The Conference Committee on Occupational Safety and Health endorsed the up-to-date status of the Convention, and there is no reason to delay consideration of ratification.
4. The proposed treaty action has been discussed at meetings of the International Labour Affairs Committee (ILAC) of the National Workplace Relations Consultative Council (previously the National Labour Consultative Council) on a regular basis since the Convention was adopted by the ILO in 1981. The ILAC comprises the Commonwealth Department of Employment and Workplace Relations, the Australian Chamber of Commerce and Industry (ACCI) and the Australian Council of Trade Unions (ACTU). The ACCI and the ACTU are, respectively, the employer and worker organisations which represent Australia in the ILO. At ILAC's meeting on 10 April 2003, the ACCI and ACTU confirmed their previously expressed support for ratification of the Convention.
5. On 25 July 2003 the Office of International Law in the Commonwealth Attorney-General's Department formally confirmed by letter that Commonwealth law and practice is consistent with the obligations under the Convention.

**CURRENT STATUS LIST OF RATIFICATIONS OF
INTERNATIONAL LABOUR ORGANIZATION CONVENTION NO. 155:
OCCUPATIONAL SAFETY AND HEALTH, 1981**

Country	Ratification date
1. Antigua and Barbuda	16:09:2002
2. Belarus	30:05:2000
3. Belize	22:06:1999
4. Bosnia and Herzegovina	02:06:1993
5. Brazil	18:05:1992
6. Cape Verde	09:08:2000
7. Croatia	08:10:1991
8. Cuba	07:09:1982
9. Cyprus	16:01:1989
10. Czech Republic	01:01:1993
11. Denmark	10:07:1995
12. El Salvador	12:10:2000
13. Ethiopia	28:01:1991
14. Finland	24:04:1985
15. Hungary	04:01:1994
16. Iceland	21:06:1991
17. Ireland	04:04:1995
18. Kazakhstan	30:07:1996
19. Latvia	25:08:1994
20. Lesotho	01:11:2001
21. Luxembourg	21:03:2001
22. The former Yugoslav Republic of Macedonia	17:11:1991
23. Mexico	01:02:1984
24. Republic of Moldova	28:04:2000
25. Mongolia	03:02:1998
26. Netherlands	22:05:1991
27. Nigeria	03:05:1994
28. Norway	22:06:1982
29. Portugal	28:05:1985
30. Russian Federation	02:07:1998
31. Serbia and Montenegro	24:11:2000
32. Slovakia	01:01:1993
33. Slovenia	29:05:1992
34. South Africa	18:02:2003
35. Spain	11:09:1985
36. Sweden	11:08:1982
37. Uruguay	05:09:1988
38. Venezuela	25:06:1984
39. Viet Nam	03:10:1994
40. Zimbabwe	09:04:2003