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# Part One

## What is ILO Convention 190?

In June 2019, the International Labour Organization (ILO) hosted a centenary conference in Geneva, to which approximately 6,300 delegates representing governments, employers and workers from the member states attended. On the agenda for the event would be the vote for Convention 190; a comprehensive initiative tackling the issue of violence and harassment in the workplace. Its adoption was quickly affirmed by 439 out of 476 votes going in favour of the standard, with just seven votes against and 30 abstentions. The core of this Convention is founded on a broad definition of ‘violence and harassment’ that must be considered comprehensively in the implementation and monitoring of non-discriminative workplace policy. Rather than viewing violence and harassment as two separate issues, the Convention places them on a spectrum as:[[1]](#footnote-1)

A range of unacceptable behaviours and practices … that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.

More than this, a zero-tolerance policy of violence and harassment under the Convention is to be applied not only in the workplace, but in the ‘world of work.’ This includes public places, private spaces, work-related events and activities, commuting to and from work, employer-provided accommodation and places where the worker may take a rest break or use sanitary facilities.[[2]](#footnote-2)

Expanding the Convention’s jurisdiction in this way provides an inclusive framework for domestic labour policy that establishes workplace anti-discrimination as a societal movement rather than legal obligation. This is reflected in the Convention’s acknowledgement of domestic violence and gender-based discrimination as issues fundamentally influencing workplace harassment.[[3]](#footnote-3) As such, victims of abuse in the world of work will have access to reporting and dispute resolution processes that expose violence and harassment and improve societal working conditions. This is a global issue that calls for a progression in labour standards and makes clear the intolerance every state must have towards abusive behaviour in the world of work.

## Why is it so Ground-Breaking?

Convention 190 provides the first internationally agreed, single definition of violence and harassment in the context of work and employment. More than this, it is a definition of wide jurisdiction that may adapt to the changing nature of the labour sector. In its recognition of informal or non-standard employment agreements, the Convention looks to protect those unaware of how to fight workplace mistreatment. Amanda Brown of the National Education Union (NEU) in the United Kingdom explains:[[4]](#footnote-4)

The truly ground-breaking thing about Convention 190 is that, for the first time ever, it recognises the right of everyone to have a working life free from violence and harassment … it covers workers who are often left outside the basic protections, like those in the informal economy, or in precarious or insecure jobs. Those who often feel forced to keep silent, or face losing work if they speak out. And those joining the workforce: apprentices and interns. We know that they are particularly vulnerable ... It is not just about things that are committed in the actual workplace, but also harassment that happens on the way to work or electronically. And sometimes outside working hours.

In New Zealand, it is arguable that such a wide jurisdiction may face practical difficulties should compensatory remedies be provided through the Accident Compensation Corporation. Requirements will need to be explored in more depth to establish where thresholds lie for work-related violence and harassment. Given ACC’s provision of compensation for work-related personal injury,[[5]](#footnote-5) employees in New Zealand may already make a claim for events occurring at ‘any place [they are in] for the purposes of their employment’,[[6]](#footnote-6) whilst on break from work or during travel to and from work.[[7]](#footnote-7) This is consistent with the wide scope given to the workplace in the Convention’s definition of the ‘world of work’. ACC may therefore build on current provisions to include, for example, mental injury relating from violence and harassment in the world of work, or injury suffered at work resulting from domestic violence. Alternatively, the legislation may be amended to include new and informed requirements specific to a Convention 190 claim. Illustrating the way in which Convention 190 may be incorporated into New Zealand’s current ACC framework demonstrates the adaptability of the Convention to current regulation, particularly due to the identification of workplace harassment as an issue of national significance. Convention 190 does not require domestic implementation of new international obligations, rather, it builds on current policy to improve labour welfare. Under a clear and cohesive framework for anti-discriminative policy, the Convention addresses underlying societal tensions that fuel workplace violence and harassment, such as inequal power relations, domestic violence, and informal employment.[[8]](#footnote-8) This opens the space for discourse relating to a range of employment-related issues that, when addressed collectively, will promote higher labour standards, and prohibit toxic workplace behaviour rooted in gender and race relations. It was only in June of this year that the New Zealand Lawyers and Conveyancers Disciplinary Tribunal decided on a case of six incidents relating to charges of professional misconduct, performed by a Russel McVeagh law firm partner at two work parties.[[9]](#footnote-9) In a landmark decision for workplace harassment, the Tribunal found the partner guilty on all six charges, assessing the behaviour to “clearly [reach a] standard of disgraceful or dishonourable conduct.”[[10]](#footnote-10) However, the case also exposed an abusive workplace culture that despite being more prominent in certain industries, reflects the vulnerability of employees, particularly where gender and power imbalances are present. The Tribunal noted that in five out of the six incidents, the conduct occurred in a public space, which somewhat normalises this unacceptable behaviour. It was further branded a “mark of shame for the profession” that the claimants involved had to bring these events to light. In accordance with Convention 190, this case undoubtedly demonstrated a need for more effective access to remedial services in instances of workplace violence and harassment. This includes services that are not only easier to access, but quicker as well. Though almost three years passed before the details of this case became public, societal discourse invoked a movement known as ‘Me Too’, which culminated with an independent review of Russel McVeagh. The Tribunal noted that these events and their public outcomes “called out unacceptable behaviours and have led to significant changes in many work places in the legal profession.”[[11]](#footnote-11) Convention 190 both guides and induces such public involvement and accountability, to effect a framework of transparency that will enhance labour relations in New Zealand and beyond.

## What Obligations does it Create?

Alongside the adoption of Convention 190, the ILO released a toolkit to educate and guide governments and union or employment bodies on the obligations created under the Convention and its implementation. This toolkit is comprised of an easily accessible Facilitator’s Guide and Activities Workbook, that aims to encourage discussion and awareness around violence and harassment in the world of work and promote union campaigning for the ratification of Convention 190, in order to enhance bargaining agendas and assert workers’ rights. New Zealand has already ratified fundamental ILO Convention 111 in accordance with Recommendation 206, which until recently has acted as a key provider of international obligations on workplace anti-discrimination.[[12]](#footnote-12) Ratification of Convention 190 will create a more cohesive and contemporary set of obligations that at their centre, provide a checks and balances framework for national employment regulation. The Convention states that each Member state shall adopt “laws, regulations and policies ensuring the right to equality and non-discrimination in employment and occupation,” including for groups more vulnerable to disproportionate levels of violence and harassment such as women workers and migrants.[[13]](#footnote-13) This is the most clear obligation created under the Convention and involves the integration of workplace policy, occupational safety and health management systems, information and training and gender-based discrimination into current labour legislation.

A workplace policy as outlined in national labour standards should include a zero-tolerance statement and prevention policy on violence and harassment in the world of work, with the rights of both employer and worker explained and corresponding complaint and investigation procedures.[[14]](#footnote-14) Safety and health systems require an assessment of hazards and psychosocial risks to establish preventative measures in relation to violence and harassment that are specific to the type of work involved. In order to ensure consistency, a Convention 190 Committee on Health and Safety or a similar body comprised of specialists in this field may be employed to generate a baseline policy for application in different industry sectors. A health and safety workplace policy should take into account factors such as working conditions, human resource management, risks involving third parties power relations and cultural norms that support or influence violence and harassment.[[15]](#footnote-15) In addition, gender-based violence and harassment shall be identified as an issue to be mainstreamed into health and safety at work. This coincides largely with a national policy on information and training, that informs workers of hazards, rights and responsibilities in their world of work and conducts mandatory training on sexual harassment and domestic violence. All workers should be familiar with their workplace code of conduct, which will underline a clear prohibition of sexual harassment. Convention 190 includes, for the first time, domestic violence as an element affecting employment, so it is crucial that workplace risk assessments and the information and training above are instilled in workplace attitudes to create a secure working environment. It is important to note that although these requirements are largely provided for in existing legislation, such as the workplace rights and responsibilities outlined in the Domestic Violence – Victims Protection Act 2018,[[16]](#footnote-16) Convention 190 emphasises the root causes of violence and harassment at work as a guide for amendment. For example, integrating domestic violence into workplace assessments and employee training.

Supplementary to the legislative requirements of employers are the obligations the Convention places on union groups. Unions form an integral part of Convention 190 implementation, given their intermediary position between the worker and the employer. They represent the vast protective branch of the Convention in this way, as they advocate for groups rendered more vulnerable to abusive workplace behaviours. Unions have an obligation not only to create awareness for Convention 190 and its ratification, but to use the Convention’s provisions and guiding materials in bargaining and resource distribution. They must work in consultation with employers and the state, who are obliged to develop workplace policy and provide resources and training in partnership with trade unions.[[17]](#footnote-17)

Finally, Convention 190 demands an effective framework of enforcement mechanisms to provide remedy and support to those suffering violence and harassment in the world of work. This involves a strengthening of monitoring systems to ensure access to remedial services are able to provide enforcement in relation to the experience of the worker. In regard to gender-based incidents, there must be a gender responsive body that facilitates effective complaints and dispute resolutions processes, with the authority to remove workers from dangerous work situations. This involves an institutional amendment to current workplace support systems to provide enforcement for harassment violations that occur under the widened scope of Convention 190.[[18]](#footnote-18) Checklists on workplace policy[[19]](#footnote-19) and domestic violence[[20]](#footnote-20) outlined in the Facilitator Guide in accordance with Recommendation 206 provide a useful foundation for inserting information on enforcement mechanisms in workplace code of conducts. Once remedy and support systems are institutionally enhanced, workers must be made aware of remedial options and know they have support from their employer should they choose to pursue one.

# Part Two

## New Zealand’s Lack of Ratification

It is surprising that New Zealand has not elected to ratify Convention 190. As previously mentioned, New Zealand ratified Convention 111 on 3 June 1983. This agreement constitutes one of eight fundamental ILO Conventions addressing core labour rights, all of which must be upheld and reported on by Member states regardless of ratification status. The obligations outlined in Article 3 of Convention 111 provide for the enactment of legislation and education programmes, workers’ organisation outreach and national authoritative training to effect anti-discriminative employment policy.[[21]](#footnote-21) This would promote the underlying aspirations of the Convention; namely to create equality of opportunity and treatment in respect of employment and occupation.[[22]](#footnote-22) Arguably the most blatant overlap between these obligations and those under Convention 190 is the emphasis placed on neutralising gender as a driver for workplace discrimination and harassment. In 2020, the New Zealand government reported to the ILO Committee of Experts on the Application of Conventions and Recommendations (the Committee) measures taken for the application of implementation of Convention 111 in national policy. This involved the development of a government-union coordinated ‘Standard Policy for the Prevention and Response to Sexual Harassment in the Public Service’ and annual collection of sexual harassment data as a part of the Human Resource Capability Survey.[[23]](#footnote-23) However, with lacking information on exactly how the policy was to be applied and no follow-up mechanism to address sexual harassment complaints collected in the survey, subsequent reports criticised national efforts to eradicate workplace discrimination. The Committee noted expressions of concern made by the Committee on the Elimination of Discrimination against Women (Committee on the EDAW) in 2018 about “the high number of cases of sexual harassment in the workplace, in particular within the police, the defence force, the legal professions and the health sector” as well as the underreporting of such incidents.[[24]](#footnote-24) CEDAW made further comments on the “alarmingly high level” of gender-based violence against women, with disproportionate impacts found against Māori women, women belonging to ethnic minority groups, transgender women and women with disabilities.[[25]](#footnote-25) In accordance with international obligations under the CEDAW Convention, New Zealand must work to remedy these issues by taking “all appropriate measures to eliminate discrimination against women in the field of employment” to ensure equal rights between men and women.[[26]](#footnote-26) Article 23 of the UN Universal Declaration of Human Rights, home to numerous principles considered international customary law, demonstrates further the importance of eliminating occupational discrimination. There, it is stated everyone has the right to free choice of employment, just and favourable conditions of work and equal pay for equal work, without discrimination.[[27]](#footnote-27)

Undoubtedly, New Zealand has ratified, and legally bound itself to, the observance of anti-discrimination obligations in the labour sector.[[28]](#footnote-28) However, Convention 190 reflects an anti-discrimination movement that has already been advocated by the public, in civil society campaigns such as the ‘Me Too’ movement. Gaining international traction in 2018, ‘#MeToo’ has transformed into a slogan of empowerment for victims of sexual harassment and abuse. As mentioned previously, a case exposing the misconduct of a senior partner towards female interns[[29]](#footnote-29) not only discredited the ethical work processes of Russell McVeagh, but of the entire legal profession. These events have an overwhelming impact on the engagement of the public because they embody widespread and deeply-embedded societal issues that people want to eradicate. Convention 190 provides a framework under international law that protects people from violence in the workplace. If the law is to adapt to developing societal values, Convention 190 provides a pivotal example of the union between state decision-making and the people it governs. National Secretary of the Public Service Association (PSA), Erin Polaczuk, explains:[[30]](#footnote-30)

We tend to think of violence as something that happens to women at home, behind closed doors, but workplaces are not always safe either. Too many New Zealanders face violence, harassment or intimidation at work, whether from abusive partners, clients or colleagues.

It is therefore crucial, particularly for industries that experience higher levels of workplace discrimination, that a journey towards ratifying Convention 190 becomes present in both public and governmental discourse. In a 2018 report conducted by Stats NZ on discrimination rates by occupation, the largest discrepancies between men and women were observed by machinery operators, professionals including school teachers and nurses, and clerical or administrative workers.[[31]](#footnote-31)

[Stats NZ - One in 10 Workers Feel Discriminated Against, Harassed or Bulled at Work](https://www.stats.govt.nz/news/one-in-10-workers-feels-discriminated-against-harassed-or-bullied-at-work)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Occupation** | **Women** | **Women error (' low ')** | **Women error (' high ')** | **Men** | **Men error (' low ')** | **Men error (' high ')** |
| **Managers** | 11.6 | 9.1 | 14.1 | 8 | 6.4 | 9.5 |
| **Professionals** | 16.9 | 14.7 | 19 | 8.1 | 6.4 | 9.8 |
| **Technicians and trades workers** | 15 | 9.4 | 20.5 | 7.1 | 5 | 9.3 |
| **Community and personal service workers** | 16.2 | 13.2 | 19.2 | 17.8 | 12.5 | 23.1 |
| **Clerical and administrative workers** | 12.5 | 10.1 | 15 | 4.5 | 2.2 | 6.9 |
| **Sales workers** | 15.2 | 11.3 | 19.2 | 10.2 | 6.2 | 14.2 |
| **Machinery operators and drivers** | 19.5 | 11.1 | 28 | 7.9 | 5.2 | 10.7 |
| **Labourers** | 11.8 | 7.5 | 16.2 | 10.7 | 7.3 | 14.2 |

In these occupations, women experienced workplace discrimination, harassment or bullying at rates two to three times higher than their male counterparts. As the accompanying recommendation instrument to Convention 190, Recommendation 206 also recognises that particular sectors and work arrangements may expose workers to a higher risk of violence and harassment. These include the health, hospitality and education industries, alongside occupational arrangements for domestic or night work.[[32]](#footnote-32) As such, these environments may be placed at the forefront of inspections in to the world of work, to determine workplace factors that more highly influence discriminative behaviour.

## Benefits of Ratifying

There is a clear objective of improving labour welfare embodied in Convention 190. Many of the obligations outlined by the Convention provide a means of benefiting national employment through the development of more inclusive and protective workplaces. In the multilateral forum, the Convention outlines various international principles that align with fundamental human and labour rights and progresses the observance of a global sustainable development agenda. Sustainable Development Goal (SDG) 8 calls for the promotion of “sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.”[[33]](#footnote-33) The economic productivity of the state is largely determined by labour performance, therefore the Convention facilitates both a social and economic advancement of the current domestic market to create a safer and more equitable world of work. This may be further monitored by the checks and balances framework that Convention 190 provides. Obligations transcend government action to call for an increased awareness of social issues in work operations by employers, as well as the engagement of workers in learning their rights and promoting the objectives of the Convention. Namely, an aim to put an end to violence and harassment in the world of work. Thus, every level of authority is recognised as playing a crucial role in providing and sustaining a work culture based on mutual respect and dignity. In New Zealand, upholding a framework that attributes liability for harassment and violence in the world of work is consistent with a democratic constitution, alongside the rule of law as an underlying principle of the legal system.

Convention 190’s assisting Facilitator Guide also outlines the importance of considering factors such as gender, culture and social norms in the mitigation of work-based discrimination.[[34]](#footnote-34) Not only does this generate a shift in attitude when it comes to speaking out about instances of violence and harassment, it encourages greater compliance with employment obligations. Despite being incidental issues, employers often face long-term consequences where violence and harassment occur at work, including legal costs, high staff turnover, use of sick leave and long-term disability costs and reputation costs often effecting lower quality service. These consequences may be prevented under an integrated approach to employment-related violence and harassment that fuses gaps in existing legislation with a confrontation of discriminative societal influences. The future of international employment regulation relies on such cohesiveness and the inclusion of wider circumstances to rectify the uncertainty of COVID-19 and strengthen multilateral relations. New Zealand’s position of guidance in COVID-19 recovery and regional leadership and development in the Pacific may consequently be enhanced through an effective implementation of the Convention’s unquestionably significant objectives. The positive impacts of Convention 190 on New Zealand’s international standing and COVID-19 mitigation strategy will be discussed further in Part Three of this report.

## Call for the New Zealand Government

### Decision Makers and Employment Bodies

What must be envisioned for Convention 190 in New Zealand is a ‘Journey to Ratification.’ This journey involves a series of actions that work towards an observance and ultimately ratification of Convention 190 obligations in national employment regimes and practice. Political strategy begins with dialogue uniting labour sector decision-makers with employment organisations. For example, as acting Minister of Workplace Relations and Safety, Hon Michael Wood is responsible for both WorkSafe New Zealand and the functioning of the state’s relationship with the ILO.[[35]](#footnote-35) Given the ILO’s mandate includes the promotion of fundamental labour rights, employment opportunities and social dialogue on work-related issues, formal partnerships such as this provide an entry point for collaboration between governmental and non-governmental bodies. This allows for inclusive consultation that facilitates information sharing. Particularly, the provision of expertise on workplace experience and the increased presence of violence and harassment in certain industries. The next step would involve an amalgamation of this discourse with the obligations outlined under Convention 190, to develop legislative reform that best responds to New Zealand circumstances. The ILO has stated that action against sexual harassment in the world of work requires a gender-responsive approach and a closure of legislative gaps for the effective prevention of, and protection against, sexual harassment.[[36]](#footnote-36) As mentioned earlier, a complaints and disputes body that is gender responsive and upholds a degree of institutional authority would not only provide a means of holding employers accountable for complacent behaviour, but also a secure forum where victims may voice their experiences. It is through this platform that incidents of violence and harassment would be increasingly acknowledged and addressed, for enhanced transparency in the functioning of New Zealand workplaces.

### Legislative Reform

The most fundamental, and subsequently the most challenging action the government can pursue, is legislative reform. Enacting legal obligations that reflect the aims of the Convention demand a reformation of labour practices at their core, to more authoritatively guide ideological changes in workplace behaviour. Moreover, given many of Convention 190’s provisions are formatted to reflect specific obligations, the process of incorporating the instrument into national legislation would largely revolve around the adaptation of these obligations in New Zealand’s world of work. Three pieces of legislation in particular provide an effective basis for instituting Convention 190 reform: the Accident Compensation Act,[[37]](#footnote-37) the Health and Safety at Work Act[[38]](#footnote-38) and the Employment Relations Act.[[39]](#footnote-39) Current proposals by the Green Party for Accident Compensation Policy reform reflect several gaps in the existing legislation that may be enhanced by amendment analogous with Convention 190 objectives.[[40]](#footnote-40) For example, it is recommended that ACC law be broadened to restore cover to all people who suffer mental injury by accident, regardless of whether the injury occurred at work or whether there was physical injury as well.[[41]](#footnote-41) This offers potential for ACC cover where incidents of violence and harassment occur in the world of work, as targeted by Convention 190, and have traumatic effects on the victim. Expanding the scope for personal injury further aligns with the Convention’s aspirations to tackle social factors driving abusive behaviour in the workforce. Where ACC ideology focuses on financial outcome and “the rapid exit of clients,” rather than the restoration of a claimant’s health and participation in the world of work, there is a degree of trust and security lost in the workforce.[[42]](#footnote-42) This may result in public discontent and initiate wider social movements that have the potential to disrupt national employment flows. Even at an individual level, incidents of this nature have the potential to induce long-term trauma that will inevitably have negative impacts on both the individual and their employer.

In pursuit of establishing a body for complaints and dispute resolution under Convention 190, it has been further recommended that ACC create an independent Ombudsman for the investigation of present and past abuses.[[43]](#footnote-43) This reinforces the need for greater institutional oversight where incidents of violence and harassment occur in the world of work and provides an alternative complaints process in situations where judicial decision-making is less suitable. An ACC Ombudsman would operate under a mandate similar to that of the Labour Inspectorate. Where employers do not implement obligations in line with Convention 190, for example facilitating training on employee rights in regard to domestic violence, these figures must provide accessible support to employees to ensure compliance and accountability. This must also function to protect employees such as independent contractors, trainees and volunteers, who may not work under a strict employee-employer relationship, but are often excluded from labour law coverage.[[44]](#footnote-44) Inclusivity is an underpinning consideration in Convention 190 implementation, given its emphasis on improving behaviour in a widened ‘world of work’ setting. Thus, the development of policy must involve discussion that specifically addresses work arrangements outside the conventional settings for employment contracts and workplaces. This feeds into the collaborative role that WorkSafe must have in monitoring and enhancing regulatory operations of the Health and Safety at Work Act. There is a significant correlation between the hazardous work environments that this legislation regulates and the surveying of workplace harassment that WorkSafe conducts. The harsh difference between 19.5% of female machinery operators having experienced workplace discrimination versus 7.9% of their male counterparts in the previously discussed 2018 Stats NZ report reflects a culture of gender bias in physically dangerous industries.[[45]](#footnote-45) The Health and Safety at Work Act could be amended to outline PCBU (person conducting a business or undertaking) duties of care for monitoring and reporting processes that target discriminative workplace behaviour on the basis of gender.[[46]](#footnote-46) This would ensure that both mental and physical safety are prioritised in hazardous working environments.

In addition, prosecution processes under the Health and Safety at Work Act require WorkSafe to prove that incidents resulting in harm are the result of a failure to exercise due diligence beyond reasonable doubt and prosecution of the incident is a matter of public interest.[[47]](#footnote-47) These standards create procedural hurdles, that may further exaggerated where the harm is of a mental nature and rooted in gender inequalities. Thus, the establishment of a gender-considerate complaints body that is more accessible and can take action without the high thresholds required for WorkSafe prosecutions would help to remedy discriminative behaviour in hazardous working environments. The Minister for Workplace Relations and Safety may discuss these amendments in collaboration with WorkSafe, to produce a Health and Safety at Work Strategy that is more reflective of Convention 190’s objectives.[[48]](#footnote-48)

Finally, the Employment Relations Act may be amended to address the driving causes of violence and harassment in the workplace, in accordance with Convention 190.[[49]](#footnote-49) Pursuant to Part 6A of the legislation, vulnerable industry employees are entitled to transfer their contract terms and conditions to a new employer in cases where they are put out of work due to proposed restructuring.[[50]](#footnote-50) Currently, these industries include cleaning services, food catering services, caretaking, laundry services and certain services in the security sector.[[51]](#footnote-51) In accordance with the broader scope of Convention 190, this may be amended to additionally include immigrant workers and those with unconventional contractual status, such as volunteers, interns and apprentices. Identifying specific legislative provisions for amendment such as this forms a crucial aspect of implementing Convention 190, as it ensures widespread and enforceable change that targets toxic behaviour patterns in the word of work.

# Part Three

## The International Context

New Zealand stands as an international leader in the Pacific region, providing crucial advocacy and support to small island states. In this position, the nation has a platform on which to promote significant and progressive international obligations. However, since ILO Convention 190 was adopted in June 2019, New Zealand has failed to ratify the instrument and the fundamental objectives it envisions for labour welfare. Comparatively Fiji, a neighbouring state with whom New Zealand has a long and multifaceted partnership, ratified the Convention by unanimous vote on 25 June 2020. Being its second ratification, this affirmed the Convention’s official entry into force on 25 June 2021. It also represented an undertaking on the Pacific nation’s behalf to enhance welfare initiatives and support their global advancement. There, alliance-building was foundational to the Convention’s ratification. Solidifying the relationships between key stakeholders including trade unions, feminist movements, human rights organisations, and civil society organisations in connection with the government generated effective evidence-based lobbying that shaped implementation to address national circumstances. In New Zealand, similar relationships must be strengthened to adapt the Convention’s objectives to domestic areas of weakness, particularly regarding behaviours fuelling workplace violence and harassment such as domestic violence and gender discrimination. Nalini Singh of the Fiji Women’s Rights Movement states “… A strong collective voice from feminist and women’s movements is integral to demand space and promote positive change.”[[52]](#footnote-52) Increased consultations between these kinds of organisations and government will not only promote labour welfare but influence other countries to adopt transformative labour obligations and policy. If New Zealand wishes to uphold a position of leadership in the Pacific, it is integral to respond positively to neighbouring states, particularly where opportunities for definitive change arise. At the 328th Session of the ILO in Geneva 2016, it was reported that given:[[53]](#footnote-53)

Violence and harassment in the world of work [mirror] violence in society, governments should adopt or reinforce a policy or policies, in consultation with social partners and with other relevant and representative organizations of persons concerned, depending on national circumstances, which address work-related violence and harassment.

This very much reflects an observance of fundamental international obligations to progress human rights and labour welfare in the international community. As that session also recalled, the right to work in “conditions of freedom and dignity, of economic security and equal opportunity” is outlined in the Declaration of Philadelphia 1944.[[54]](#footnote-54) Attendees agreed that in light of such fundamental recognitions of labour welfare, “violence is incompatible with decent work, is unacceptable and must be addressed. It is a human rights issue … [and] may undermine democratic decision-making and the rule of law.”[[55]](#footnote-55) Respectively, ratification of Convention 190 transcends regional influence, to promote at a universal level policy that “eliminates all forms of discrimination, and violence and harassment, including gender-based violence, from the world of work.[[56]](#footnote-56) In Uruguay, the first country to ratify the Convention, campaigning was assisted by previously enacted policies that addressed some of the same issues as the Convention. This created an overlap between existing legislation and Convention 190 objectives, which made it easier to implement and disposed of arguments stating ratification would involve unmanageable amendments to pre-existing national legislation. In New Zealand, as identified in Part II(C) of this report, legislation including the Health and Safety at Work Act[[57]](#footnote-57) and Employment Relations Act[[58]](#footnote-58) provide appropriate backdrops against which the objectives of Convention 190 may be assessed. Though, it is not only national legislation that New Zealand must consider in its decision to ratify. There is a wider engagement with fundamental human rights and labour issues that New Zealand upholds as a member of the international community which must be accounted for when determining the endorsement of Convention 190.

## COVID-19 and Violence Against Women

Finally, it is important to note that the current international climate, largely revolving around the COVID-19 pandemic, has ramifications for labour welfare rendering it more susceptible to the issues addressed by Convention 190. The World Health Organization’s 2020 Report stated that violence against women remains a major threat to global public health and women’s health particularly during emergencies.[[59]](#footnote-59) It further stated that globally, one in three women worldwide have experiences sexual violence in their lifetime, most of this is intimate partner violence.[[60]](#footnote-60) Though data was scarce at this point in the pandemic’s timeline, reports from China, the United Kingdom and the United States suggested an increase in domestic violence cases since the COVID-19 outbreak.[[61]](#footnote-61) Stress, the disruption of social and protective networks, and decreased access to services all have the potential to exacerbate the risk of violence against women.[[62]](#footnote-62) In addition, increased pressure to work from home and pressure on health workers, where women comprise the majority of the workforce, is more likely to subject women to violence and discrimination.[[63]](#footnote-63) This report outlines a number of measures that may be taken to address violence against women during the COVID-19 response, including the promotion of awareness and services by governments and policy makers, health facilities and providers and community members.[[64]](#footnote-64)

[World Health Organization Report - COVID-19 and Violence Against Women 7 April 2020](https://apps.who.int/iris/bitstream/handle/10665/331699/WHO-SRH-20.04-eng.pdf?sequence=1&isAllowed=y)

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Convention 190 therefore encapsulates obligations that are not only crucial for the improvement of global labour welfare, but are extremely relevant to way the international community responds to the hardships inflicted by COVID-19. Where societal conditions invoke violence and harassment in the world of work, Convention 190 is the solution to protecting vulnerable individuals and holding accountable those who perpetrate such unjustifiable behaviour.

# Conclusion

ILO Convention 190 takes a multifaceted approach to global labour welfare, seeking to enhance working experience through the eradication of issues that fuel violence and harassment in the world of work. It outlines a broad and cohesive framework under which gaps in national legislation and awareness amongst labour and human rights organisations are addressed. In doing so, Convention 190 facilitates collaboration between government and public and private entities, to improve domestic labour standards in consideration of local circumstances. There is an overlap between the objectives of Convention 190 and pre-existing policy in New Zealand that upholds both national and international obligations. In light of the current international climate and where New Zealand stands in it, particularly as a leader in the Pacific region, it is integral that the state endorses Convention 190 and begins on a path of ratification. Unions, social movements, employers, and employees must come together and work with government to set an example of the labour sector that New Zealand wishes to see in the future.

1. International Labour Organization Violence and Harassment Convention, 2019 (No. 190), art 1. [↑](#footnote-ref-1)
2. *Facilitator Guide on the ILO Violence and Harassment Convention (No. 190) and Recommendation (No. 206)* (Mondiaal FNV, 2021) at 8. [↑](#footnote-ref-2)
3. Convention No. 190, arts 1, 10. [↑](#footnote-ref-3)
4. *Facilitator Guide* at 41. [↑](#footnote-ref-4)
5. Accident Compensation Act 2001, s 28. [↑](#footnote-ref-5)
6. Section 28(1)(a). [↑](#footnote-ref-6)
7. Section 28. [↑](#footnote-ref-7)
8. Accident Compensation Act, preamble. [↑](#footnote-ref-8)
9. *National Standards Committee v Gardner-Hopkins* [2021] NZLCDT 21. [↑](#footnote-ref-9)
10. At [183]. [↑](#footnote-ref-10)
11. At [6]. [↑](#footnote-ref-11)
12. International Labour Organization Discrimination (Employment and Occupation) Convention, 1958 (No. 111). [↑](#footnote-ref-12)
13. Convention No. 190, art 6. [↑](#footnote-ref-13)
14. Violence and Harassment Recommendation (No. 206), art 7. [↑](#footnote-ref-14)
15. Recommendation No. 206, para 8. [↑](#footnote-ref-15)
16. Domestic Violence – Victims Protection Act 2018. [↑](#footnote-ref-16)
17. *Facilitator Guide* at 42. [↑](#footnote-ref-17)
18. Recommendation No. 206, para 16. [↑](#footnote-ref-18)
19. *Facilitator Guide* at 43. [↑](#footnote-ref-19)
20. *Facilitator Guide* at 52. [↑](#footnote-ref-20)
21. Convention No. 111, art 3. [↑](#footnote-ref-21)
22. Convention No. 111, art 2. [↑](#footnote-ref-22)
23. *ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) Direct Request* [2020] published at 109th ILC Session 2021. [↑](#footnote-ref-23)
24. *Committee on the Elimination of Discrimination against Women Concluding Observations on the Eighth Periodic Report of New Zealand* UN Doc CEDAW/C/NZL/CO/8 (25 July 2018) at [35]. [↑](#footnote-ref-24)
25. At [25(a)]. [↑](#footnote-ref-25)
26. Convention on the Elimination of All Forms of Discrimination against Women (signed 18 December 1979, entered into force 3 September 1981), art 11(1). [↑](#footnote-ref-26)
27. Universal Declaration of Human Rights (signed 10 December 1948), art 23. [↑](#footnote-ref-27)
28. See Human Rights Act 1993, s 22, and International Labour Organization Discrimination (Employment and Occupation) Convention, 1958 (No. 111), art 1. [↑](#footnote-ref-28)
29. *National Standards Committee v Gardner-Hopkins* [2021] NZLCDT 21. [↑](#footnote-ref-29)
30. PSA “At home or at work, violence is never OK - Ratify ILO Convention 190” (25 November 2020) New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi <<https://www.psa.org.nz/media/releases/at-home-or-at-work-violence-is-never-ok-ratify-ilo-convention-190/>>. [↑](#footnote-ref-30)
31. Stats NZ “One in 10 workers feels discriminated against, harassed, or bullied at work” (21 June 2019) Stats NZ <<https://www.stats.govt.nz/news/one-in-10-workers-feels-discriminated-against-harassed-or-bullied-at-work>>. [↑](#footnote-ref-31)
32. Recommendation No. 206, para 9. [↑](#footnote-ref-32)
33. *Transforming our world: the 2030 Agenda for Sustainable Development* A/RES/70/1 (2015), at 19-20. [↑](#footnote-ref-33)
34. *Facilitator Guide* at 69. [↑](#footnote-ref-34)
35. *Briefing for the Incoming Minister for Workplace Relations and Safety* (Ministry of Business, Innovation & Employment, November 2020) at [23], [28]. [↑](#footnote-ref-35)
36. ILO Gender, Equality and Diversity and ILOAIDS Branch, Conditions of Work and Equality Department “Sexual Harassment in the World of Work” (information brief) at 4. [↑](#footnote-ref-36)
37. Accident Compensation Act 2001. [↑](#footnote-ref-37)
38. Health and Safety at Work Act 2015. [↑](#footnote-ref-38)
39. Employment Relations Act 2000. [↑](#footnote-ref-39)
40. Green Party “Accident Compensation Policy” (electoral policy, 29 June 2020). [↑](#footnote-ref-40)
41. At [2.4]. [↑](#footnote-ref-41)
42. At [6]. [↑](#footnote-ref-42)
43. At [7.1]. [↑](#footnote-ref-43)
44. See, for example, Health and Safety at Work Act, s 14. [↑](#footnote-ref-44)
45. Stats NZ, above n 30. [↑](#footnote-ref-45)
46. Health and Safety at Work Act, s 36. [↑](#footnote-ref-46)
47. WorkSafe “Prosecution Regulatory Function Policy” (enforcement policy, August 2020) at [7.1-7.2]. [↑](#footnote-ref-47)
48. Health and Safety at Work Act, s 195. [↑](#footnote-ref-48)
49. Employment Relations Act, above n 40. [↑](#footnote-ref-49)
50. Section 69A. [↑](#footnote-ref-50)
51. Schedule 1A. [↑](#footnote-ref-51)
52. *Facilitator Guide* at 67. [↑](#footnote-ref-52)
53. *ILO Report of the Director-General Fifth Supplementary Report: Outcome of the Meeting of Experts on Violence against Women and Men in the World of Work* GB.328/INS/17/15 (328th Session, 27 October-10 November 2016) at 8. [↑](#footnote-ref-53)
54. Declaration of Philadelphia (signed 10 May 1944), art II(a). [↑](#footnote-ref-54)
55. *ILO Report of the Director-General,* above n 54, at 5. [↑](#footnote-ref-55)
56. At 8. [↑](#footnote-ref-56)
57. Health and Safety at Work Act, above n 39. [↑](#footnote-ref-57)
58. Employment Relations Act, above n 40. [↑](#footnote-ref-58)
59. World Health Organization “COVID-19 and Violence against Women; what the Health Sector/System can do” (report, 7 April 2020) at 1. [↑](#footnote-ref-59)
60. At 1. [↑](#footnote-ref-60)
61. At 1. [↑](#footnote-ref-61)
62. At 2. [↑](#footnote-ref-62)
63. At 3. [↑](#footnote-ref-63)
64. At 3. [↑](#footnote-ref-64)