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Fourteenth sitting, 8 June 2024, 12.30 p.m. (cont.)**Quatorzième séance, 8 juin 2024, 12 h 30 (suite)****Decimocuarta sesión, 8 de junio de 2024, 12.30 horas (cont.)**

Chairperson: Mr Różycki

Président: M. Różycki

Presidente: Sr. Różycki

Discussion of individual cases (cont.)**Discussion des cas individuels (suite)****Discusión de los casos individuales (cont.)****Australia (ratification: 1969)**

Employment Policy Convention, 1964 (No. 122)

Convention (nº 122) sur la politique de l'emploi, 1964

Convenio sobre la política del empleo, 1964 (núm. 122)

Chairperson – The next case on our agenda is Australia on the application of the Convention.

I invite the Government representative of Australia, Ms Jennifer Wettinger, Assistant Secretary, Economics and International Labour, Department of Employment and Workplace Relations, to take the floor.

Government representative (Ms WETTINGER) – I am pleased to present this statement on behalf of the Australian Government concerning the application of the Convention.

Australia acknowledges the important role of the Committee of Experts and this Committee within the International Labour Organization (ILO) supervisory system. Ensuring the effective application of international labour standards is critical to achieving our shared objective of sustained and inclusive economic growth, full and productive employment and decent work for all.

The Australian Government remains committed to meeting our obligations under the Convention and to working with social partners to ensure that employment policy in Australia supports a dynamic and inclusive labour market in which people have the opportunity for secure, well-paid jobs and where workers, employers and communities can thrive and adapt.

The information presented today, and the written information submitted to the Office on 20 May 2024, responds directly to the observations made by the Committee of Experts to Australia. The Australian Government looks forward with interest to receiving the Committee's conclusions.

Since 2021, the Australian Government has implemented significant new reforms to enhance employment policy, as our nation recovers from the impacts of the COVID-19 pandemic and adjusts to structural changes in our labour market.

In September 2023, the Government released its Working Future: the Australian Government's White Paper on Jobs and Opportunities. The White Paper articulates the

Government's vision for a strong and inclusive economy and serves as a road map to meeting future labour market needs in Australia.

It draws on extensive stakeholder and community consultation, including outcomes from the tripartite Jobs and Skills Summit held in 2022, and among its objectives is a focus on delivering sustained and inclusive full employment.

To achieve this, the White Paper identifies strategic priorities for employment services reform in Australia, to support people into decent and secure work, and to overcome the complex barriers to workforce participation, particularly for those who have experienced entrenched disadvantage.

Turning now to the specific matters raised by the Committee or Experts and others, we will share some key developments since the last reporting period.

The Committee sought clarification as to how various issues including unemployment, underemployment and insecure work are considered and implemented in Australia's policymaking and implementation settings.

In 2022, the new employment service – Workforce Australia – commenced. It includes a digital service to support job-ready jobseekers, and an intensive case management service for jobseekers who require more tailored support to enter the labour market. This includes mechanisms designed to assist the long-term unemployed such as progress payments to incentivise providers to improve job seekers' employability, and a bonus payment for providers when they assist a very long-term unemployed job seeker into work.

Enhancements to these settings were recently announced in the 2024–25 budget, reflecting further commitment and investment by the Government to creating meaningful and sustainable paid employment pathways.

The Australian Government has also made significant amendments to our labour laws to strengthen workplace protections, job security and access to fairly paid work.

This includes the Fair Work Legislation Amendment (Closing Loopholes) Act 2023 aimed at strengthening a person's job security, pay and conditions, regardless of their employment status. Amendments relating to casual workers were enacted, introducing a fair and objective definition of casual workers in the Fair Work Act, and providing a clearer pathway for casuals to move to permanent employment should they choose to do so.

A further measure designed to address insecure work will commence on 26 August 2024, at which time the Fair Work Commission – Australia's national workplace tribunal – will be able to set minimum standards for employee-like workers and provide protection from unfair dismissal from a digital labour platform. Additionally, under the Secure Jobs, Better Pay Act 2022, the Fair Work Commission must now consider job security and secure work in its decisions.

The Committee also made observations in the context of the Convention with respect to population groups in Australia, including youth, women and Indigenous Australians. Since this time, measures to enhance Australia's youth employment programs have been introduced.

In 2022, the Australian Government strengthened the Transition to Work service (TtW), the targeted service to support disadvantaged young people at risk of an unsuccessful transition from school to work. This included expanding the eligibility criteria for the program to target young people with more complex barriers to education and employment, as well as increases to the maximum time participants can receive assistance through the TtW program from 18 to 24 months. Likewise, stronger engagement mechanisms were introduced to increase participation, and changes to the performance frameworks implemented for the contracted providers.

In response to stakeholder feedback and reflecting the Government's own expectations around providing fair and equitable pay and conditions for interns, the Youth Jobs PaTH (Prepare, Trial, Hire) programme was abolished in October 2022. Increasing women's economic security has remained a national focus in Australia. Recent legislative and policy developments are aimed at ensuring women have access to safe, secure and fairly paid employment and centre gender equality in workplace relations systems. For instance, the Fair Work Act 2009 was amended to embed the principles of job security and gender equality in the Fair Work Commission's decision-making processes and ensuring they are given appropriate weight alongside other objectives, such as productivity and economic growth, throughout the workplace relations framework.

Gender equality has also been included in the minimum wages objective to ensure that equal remuneration, gender-based undervaluation, and gender pay gaps are considered in wage-related matters, including the Annual Wage Review. Other reforms include, but are not limited to, banning pay secrecy clauses, prohibiting sexual harassment in connection with work, and strengthening access to unpaid parental leave and flexible work helping parents to balance work and care.

We now turn to the Committee of Experts' comments regarding employment policies to support Australia's First Nations peoples. The Australian Government is striving to ensure that First Nations peoples have the opportunity to fully participate in employment and training and benefit from areas of economic growth and development across Australia, fostering self-determination and economic empowerment. The Australian Government is committed to working in genuine partnership with First Nations peoples to ensure they have safe, ongoing and well-paid work with the skills needed for a sustainable future and full engagement in economic opportunities, fostering self-determination and economic empowerment. We will continue to implement the Closing the Gap Priority Reforms, including those that contribute

to the economic empowerment of First Nations peoples in Australia. To stay on track in meeting this objective, the Government is implementing key employment reforms supporting First Nations Australians. Strengthening partnerships with First Nations peoples in policy development and the design of programs which will enable employment and training policies to be effective in supporting the aspirations, needs and self-determination of First Nations peoples in Australia. Through Workforce Australia, employment services are delivered to First Nations participants across all non-remote areas of Australia.

First Nations consultation and collaboration is being strengthened by the National Indigenous Employment and Training Alliance (NIETA), a group of First Nations organisations delivering employment and training services across Australia. The new Indigenous Skills and Employment Program (ISEP) is a First Nations-specific employment program that aims to connect First Nations people to jobs, career advancement opportunities, new training and job-ready activities. Projects are developed with the local community before implementing them, leveraging the strengths, interests and needs of local First Nations community. A new Remote Jobs and Economic Development Program will be implemented later this year. Developed in partnership with First Nations peoples, this program will support people in remote communities to move into employment by funding meaningful jobs, with proper wages and decent conditions.

Finally, we note the reflections of the Committee of Experts on the Australian Government's consultation with social partners in the development of employment policy. The Australian Government continues to meaningfully engage with a broad range of stakeholders and social partners on employment and workplace relations issues and policies. The outcomes of the 2022 Jobs and Skills Summit highlighted the value of tripartite collaboration at the national level. Regular sectoral and industry forums also enable consultation with social partners.

The recent design of the new voluntary pre-employment service for parents, the policy development of the WorkFoundations initiative, and the design of the new employment program to improve the transition for First Nations peoples from prison to work, further illustrate our commitment to ensuring that the views of social partners are taken into account in the formulation of employment policy in Australia.

To conclude, Australia reiterates the view that we comply with our obligations under the Convention. We are confident that the combination of employment service programs, labour laws and policies outlined today and developed in consultation with social partners and civil society, illustrate full compliance with the articles of the Convention and its objectives. We look forward to hearing views shared during this discussion and the Committee's conclusions.

Chairperson – Now I give the floor to the Mr Michael Congiu, Employer spokesperson.

Employer members – Thank you to the Government of Australia for your oral and written information on the case which has been taken with good note. The Employer members stressed the importance of States' compliance with the Convention, a so-called governance or priority Convention. The Employer members firmly believe that compliance with the Convention is critical to ensuring meaningful opportunities for both workers and business, and also to ensuring the broader effectiveness of the ten core ILO Conventions.

Australia ratified the Convention in 1969. This is the first time that this case has been heard at the Committee but 15 observations have been issued in the case, though I am not going to spend time going through each year. In addition, 11 direct requests have also been issued on this case but again I am not going to spend time identifying each year. This case also quite critically exists within the broader context of fundamental and extensive changes to Australia's governing labour and employment legislative scheme, which the Australian Government has taken note of in its observations. It is often instructive to review the text of the applicable

Convention. Here, Article 1 of the Convention states, in the relevant part, that, and I am quoting here: “each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment” and that this policy “shall aim at ensuring that – (a) there is work for all who are available for and seeking work; (b) such work is as productive as possible; (c) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited ”.

The text and import of the Convention are fundamental to any meaningful analysis of this case. The text and import of the Convention highlight that we must assess here, first: whether and to what extent certain Australians are, or were, “available for and seeking work”?

Second, what it means to have such work be “as productive as possible,” who should make that value judgement, whether so-called “non-standard” or “casual” work can legitimately be claimed to be insufficiently “unproductive” to run afoul of the Convention?

Third, whether “casual” or “non-standard work” actually reflects workers’ free choice to employment in a job for which they are “well suited”?

And fourth, whether Australia has genuinely endeavoured to fulfil its obligations under the Convention, particularly as the impact of fresh and transformative laws and initiatives remain very much in flux?

These are complex and subjective questions that require and deserve a diversity of perspectives to meaningfully resolve.

Turning to the issues. The Committee of Experts has identified the following issues which I will address in turn.

First, the Australian Council of Trade Unions (ACTU) has observed that the Australian legal framework encourages the use of non-standard work arrangements.

Although the ACTU also rightly acknowledges that these forms of employment can have legitimate purposes, it nonetheless avers that employers use these structures “to avoid the responsibilities associated with a permanent ongoing employment relationship” – I am quoting from the ACTU’s observations.

Again, and there is more to say here, the Employer members believe that individuals’ decisions to choose to be employed in so-called “casual” arrangements deserve significantly more credence. There are any number of legitimate and appropriate reasons for making these choices that do not provoke any concern under the Convention.

Moreover, we note that the Government has reported that, through its Closing Loopholes Act of 2024, it is endeavouring to interpret the terms “employee” and “employer” through the practical realities of an applicable working relationship, and to define the term “casual employee” to focus on practical realities in lieu of applicable contractual language.

Next, the ACTU claims that the Youth Jobs PaTH programme fails to provide meaningful qualifications to participants, while also excluding them from protection under the occupational health and safety (OSH) legislation.

The Committee of Experts has, in its comment, done a good job of recounting the far more complex picture relating to youth unemployment in Australia, including certain other programmes that are directed at supporting young Australians. More broadly, and I think this is critical, the problem of youth unemployment is not specific to Australia, and it remains a complex problem in many other States.

Moreover, the Government has reported to this Committee that the Youth Jobs PaTH internship programme was abolished in September 2022 because, per the Government: the

programme “did not meet the Government’s expectations around fair and equitable pay for interns”. It would also appear, from the Government’s submission and its comments today, that other youth employment programmes have been implemented after due consultation with the social partners.

Next, the ACTU has claimed that women are over-represented in insecure and low-paid jobs. We note here with interest that the Australian Government has published *Working for Women: A Strategy for Gender Equality*, in March 2024, which outlines certain budgetary measures designed to facilitate women’s economic equality and security, along with outlining certain relevant legislative measures and, in particular, the Paid Family and Domestic Violence Leave Act.

We further note the Government’s submission describing its new expert panels in its Fair Work Commission for pay equity and modern award matters in the care and community sector, and other efforts to better ensure gender pay equity like amendments to the Workplace Gender Equality Act that have empowered the Workplace Gender Equality Agency to publish a gender pay gap of employers with 100 or more employees.

We welcome these developments as Employer members, but we, nonetheless, request that the Government continue providing information on policy and technical measures that are aimed at increasing both the employment quality and quantity of work for women at the national level.

With respect to First Nations peoples, the ACTU has also criticized the Community Development Programmes (CDP) for providing low-quality jobs.

For its part, both today and in its written submission, the Government has indicated an intention to replace the CDP with “real jobs, proper wages and decent conditions – developed in partnership with First Nations People” and to begin a new Remote Jobs and Economic

Development Program (RJED) to start later this year and the Indigenous Skills and Employment Program (ISEP).

The Government has also pledged to invest \$76.2 million over five years to improve the transition from prison to work for First Nations peoples.

Again, we again welcome these developments but the Employer members, nonetheless, request that Australia provide further detail on these issues.

Finally, the ACTU contends that the Government failed to consult it regarding employment policies. We note here, again, the Government's substantial efforts to consult with a wide array of stakeholders, including an expert advisory panel comprised of employer, provider, and welfare group representatives. We further take note of the Government's submission that, in March 2024, it announced a Ministerial Advisory Board for Jobs and Skills Australia, which has committed to operate in a tripartite fashion.

To the extent that the Committee here, nonetheless, believes that social partners have not been sufficiently consulted, we would align with a recommendation for the Government to better ensure that this specific consultation be conducted. We look forward to hearing the views of our groups on this case.

Chairperson – Now I give the floor to the Worker spokesperson to make her statement.

Worker members – This is the first time we are discussing this case regarding Australia's application of the Convention.

In the observations of the Committee of Experts, the Government is requested to provide information on the following:

- On employment trends and active labour market trends, the use of non-standard work arrangements with no pathways to higher-quality jobs.

- On youth employment, the exclusion of youth employment programs from the protection of OSH legislation, the failure of Youth Jobs PaTH programme to provide meaningful qualification to participants, and potentially displacing wage-paying jobs.
- On the employment of women, the over-representation of women in insecure, low-paid jobs and the lack of adequate paid parental leave and affordable childcare options forcing women into part-time jobs.
- On indigenous peoples, the CDP and its provision of low-quality jobs to participants who identify as indigenous. The CDP workers are not classified as workers, receive wages well below the minimum wage and are not protected under OSH protections, annual leave and sick leave.
- The failure of the Government to consult the ACTU on matters of employment policies.

We thank the Government for providing additional information after the publication of the longlist which highlights the progress that has been made to addressing the issues raised by the ACTU in 2021, in line with the Convention.

We take note that, according to the Government, it published the Australian Government's White Paper on Jobs and Opportunities, published on 25 September 2023, which took into account information received from over 400 stakeholder submissions.

The White Paper also builds on the outcomes from the September 2022 Jobs and Skills Summit. The Summit brought together unions, employers, civil society and governments to strengthen tripartism and constructive social dialogue.

According to the Government, the White Paper sets five ambitious objectives to achieve the Australian Government's vision:

1. delivering sustained and inclusive full employment;

2. promoting job security and strong, sustainable wage growth;
3. reigniting productivity growth;
4. filling skills needs and building our future workforce;
5. overcoming barriers to employment and broadening opportunity.

According to the Government they have delivered significant employment and workplace relations policy reforms to address issues including insecure work, unemployment and underemployment.

Australia's employment service, Workforce Australia, commenced in July 2022. They provide people that are further from the labour market, including the long-term unemployed, with intensive case management delivered by employment service providers.

The White Paper also contains principles for reforming employment services, so they support individuals, including First Nations peoples, to meet employment goals and provide pathways towards decent and secure work.

Regarding challenges faced by the long-term unemployed including skill atrophy, loss of motivation and marginalization from the labour market, the Government indicated that it is providing funding for improving employment services to better support the long-term unemployed and those with complex personal circumstances.

The recent amendments to the national industrial relations legislation are also aimed at addressing the challenges posed by insecure work. Under the Secure Jobs, Better Pay Act, 2022, job security was added to the objectives of the Fair Work Act, 2009 and the modern awards system, meaning Australia's workplace tribunal, the Fair Work Commission, must consider these matters when performing its functions. The Closing Loopholes No. 2 Act, 2024 is also aimed at providing necessary safeguards to deal with insecure and precarious employment.

The ILO's Employment Relationship Recommendation, 2006 (No. 198), provides useful guidance in this regard.

On Youth employment, according to the Government, they continue to support youth to gain work experience including through wage subsidies, observational work experience, and volunteer work. In 2022, the Government strengthened the TtW – a targeted service to support disadvantaged young people at risk of an unsuccessful transition from school to work.

Regarding the Youth Jobs PaTH Internship programme, the Government indicated that it was paused in July 2022 and that the programme was abolished in September 2022, as the programme settings did not meet the Government's expectations around fair and equitable pay for interns. The National Work Experience Programme (NWEPP), which had similar programme settings, was also abolished.

According to the Government, it has announced the establishment of a "Commonwealth Prac Payment" to support eligible teaching, nursing and midwifery, and social work students in higher education and vocational education and training (VET), complete their placements which among others will also help ease the cost-of-living pressures experienced by many students when undertaking mandatory practicum placements as part of their degrees.

On the issue raised regarding working women, the Government stated that in March this year it released a Strategy for Gender Equality, which outlines the vision for gender equality, with women's economic equality and security as a priority area of the Strategy. The Government has also introduced new protected attributes in the Fair Work Act, 2009, including breastfeeding, gender identity, subjection to family and domestic violence, and intersex status. In 2023, the Paid Family and Domestic Violence Leave Act, 2022, which provides an entitlement to ten days paid family and domestic violence leave, was created. This entitlement is applicable to all Australian employees including casual workers, recognizing that women experiencing

family and domestic violence are more likely to be employed in casual and insecure work. According to the Government, the measure followed Australia's ratification of the ILO's Violence and Harassment Convention, 2019 (No. 190).

In Australia there are various mechanisms which can result in wage increases, including work value cases, equal remuneration orders and the Annual Wage Review. The Government has established new expert panels in the Fair Work Commission to hear applications for pay equity and modern award matters in the care and community sector. The addition of gender equality to the minimum wages and modern awards objectives in the Fair Work Act, 2009, significantly influenced the wage rise in the 2022–23 Annual Wage Review. Australia's aged care workers have also been awarded increases of up to 28.5 per cent through a work value case. A key determinant in awarding this increase was the historical undervaluation of care work because of gender-based assumptions.

There have also been amendments to the Workplace Gender Equality Act, 2012, which has enabled the Workplace Gender Equality Agency to drive transparency and action by publishing the gender pay gap of employers with 100 or more employees. This took place for the first time in February 2024.

Regarding indigenous peoples, the Government has expressed its commitment to realizing the Closing the Gap targets, designed to reduce disparities between First Nations peoples and the rest of the population in fundamental areas of life. The Government's White Paper contains measures to ensure services are designed and delivered in a culturally responsive and inclusive way that meets First Nations communities' needs and boosting the participation of Aboriginal and Torres Strait Islander community-controlled organizations, and community-based organizations, in the delivery of employment services.

We urge the Government to, as it has indicated, replace the CDP with real jobs, proper wages and decent conditions – developed in partnership with First Nations peoples.

Finally, we note that the Government has committed to continue to meaningfully consult and ensure the participation of the social partners in the formulation and implementation of employment policies.

The Convention is aimed at stimulating economic growth and development, raising levels of living, meeting workforce requirements and overcoming unemployment and underemployment, obliging each Member State to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.

In applying the Convention, representatives of the persons affected by the measures to be taken, and in particular representatives of employers and workers, are to be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full co-operation in formulating and enlisting support for such policies. We appreciate that the Government is taking steps in this direction and welcome the efforts.

(The sitting adjourned at 1 p.m. and resumed at 3.05 p.m.)

Chairperson – Before resuming our discussion on the case of Australia, I would like to inform you that the verbatim PV: Tunisia – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87), and PV: Turkmenistan – Abolition of Forced Labour Convention, 1957 (No. 105), are now available on the Committee’s web page.

The Committee members may submit amendments to their own statements appearing in these verbatim PVs to the Committee secretariat by Monday, 10 June at 6.30 p.m.

Also, I would like to inform the Committee that the period for the reception of amendments for verbatim PV: Cambodia – Convention No. 87 and PV: Colombia – Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), is now over. These PVs are adopted as amended.

(PVs 4 and 6 are adopted, as amended.)

Chairperson – Now we come back to the discussion of the case of Australia, and I am honoured to give the floor to Ms Jessica Tinsley, Employers' delegate from Australia.

Employer member, Australia (Ms TINSLEY) – It is the view of Australian employers that Australia complies with the Convention. I am surprised that Australia has been selected among the cases to be examined by the Committee of Experts, considering our view of compliance is shared by Australian workers and, of course, by the Australian Government.

A key point of difference we have with our Worker friends, however, is our view that Australia has consistently complied with the Convention. We did not share the views of the ACTU in 2021. My surprise that Australia is being examined today is not based solely on the shared view of compliance. The Committee need only look at Australia's recent employment trends and labour market measures. Unemployment in my country remains at around 4 per cent. Job vacancies remain high, almost double their pre-COVID levels, with employers struggling to find people with the right skills for unfilled positions. In trend terms, we are also seeing strong growth in full-time employment.

Employers are responding to labour and skills shortages by retaining workers where they can and offering more full-time employment to those with the right skills. While more can always be done, Australian employers appreciate measures implemented by consecutive governments to boost the workforce participation of women, young jobseekers, the long-term unemployed, those living in regional communities, those with a disability and First Nations

peoples. These policies help to promote full, productive and freely chosen employment, as required by Article 1 of the Convention.

I thank the Australian Government for the information it has provided to the Committee on recent actions it has taken in furtherance of the principles of the Convention. We are particularly encouraged by the establishment of Jobs and Skills Australia to provide independent advice on current, emerging, and future workforce, skills and training needs. Operating as a tripartite partnership, both my organization, the Australian Chamber of Commerce and Industry (ACCI), and the ACTU hold key positions on the Jobs and Skills Australia Ministerial Advisory Board. This body is evidence that tripartism is alive and well in Australia, in compliance with Article 3 of the Convention, and is only just one such an example.

It is through such forums which we continue to push for greater support to be provided to the long-term unemployed and young jobseekers, particularly through investment in apprenticeships and other training programmes.

While we are broadly supportive of the efforts of the Government to boost workforce participation, Australian employers have significant concerns about the impact of its recent industrial relations changes. Recent changes to casual employment, to labour hire and to independent contracting make it harder for business to source the labour they need.

We urge the Australian Government to take note of Article 2 of the Convention which refers to freedom of choice of employment and to recognize that diverse forms of work are desired by many workers for the flexibility they provide. In fact, flexibility is essential to boosting the workforce participation of many of the categories I have already listed, including women and young jobseekers in particular.

Chairperson –Now I give the floor to Ms Clare Middlemas, Workers' delegate from Australia.

Worker member, Australia (Ms MIDDLEMAS) – I thank you for the opportunity to make an intervention on behalf of the ACTU. The ACTU is the sole peak trade union body in Australia, representing over 1.7 million workers. In 2021 we made a submission to the Committee of Experts highlighting our concerns that the Australian Government was not fulfilling its obligations under the Convention to pursue an active policy to promote full, productive, and freely chosen employment, including in consultation with the social partners. We raised the prevalence of insecure work, underemployment, and unemployment, and the lack of active labour market policies to address these problems, as a key reason Australia was failing to meet its obligations under the Convention.

Since we made our submission to the Committee of Experts, however, the previous coalition Government was defeated at a general election and the Australian Labour Party Albanese Government took office in May 2022. The new Government has undertaken a range of significant reforms in consultation with the social partners that have closed the loopholes that existed in Australia's industrial relations framework and in our view are in line with the Convention.

Secure jobs are critical to realizing decent work – workers need to have secure, predictable income and hours of work in order to plan and enjoy a good quality of life and eliminate the vulnerabilities that create conditions for forced labour and the slippery slope of labour becoming a commodity – contrary to the Constitution of the ILO. The cost-of-living crisis makes addressing the rise of insecure work even more urgent – workers need reliable jobs so that they can have reliable incomes and prevent a situation of highly unequal society that threatens social cohesion and harmony.

Work has become increasingly more precarious. New forms of work have emerged where millions of workers are now engaged outside of the protections that are meant to be afforded

under the Fair Work Act – Australia’s principal industrial relations law. Our laws have not kept pace with the changing nature of work, and employers were increasingly restructuring, reorganizing, or using technicalities to avoid the responsibilities of a permanent employment relationship – and shift the costs and risks onto the worker.

The most prevalent form of insecure work in Australia is what is known as “casual employment” – a worker engaged on a casual basis is supposed to be someone who works irregular or unpredictable hours and with no firm commitment of future work. They have no paid leave entitlements and limited job security, and in return, a casual employee is supposed to receive a loading – usually 25 per cent extra pay – on top of their base rate of pay, and a partial right to decline requests by their employer to work. But even with the 25 per cent loading, permanent workers still earn 11 per cent more than casuals.

More than 2.7 million workers in Australia are engaged in casual work arrangements – or a little under one in four employees. Casual work is highly concentrated in lower paid, feminised industries – for instance in care and support work. Most casual workers are women, and 40 per cent of casual workers are between the ages of 15–24.

There is nothing casual about casual work, however, as the majority of casual employees work every week and have been in their job for over one year. The continual use of casual employment, where ongoing, regular work occurs, is a major contributor to the rising lack of secure employment in Australia. The former Government introduced a loophole that enabled an employer to call any worker a casual, even if they worked ongoing, regular hours.

The current Government, however, has recently undertaken a number of reforms to address the crisis of insecure work. These changes include:

- Adding “job security” as a central objective of the Fair Work Act, meaning that Australia’s workplace tribunal, the Fair Work Commission, must consider the objective of job security when performing its functions.
- Restricting the use of fixed-term contracts to two years or two consecutive contracts (whichever is shorter).
- Legislating a definition of ‘casual employee’ that takes into account the reality of the employment relationship and providing a pathway for a casual worker to convert to permanency.
- Ensuring that labour hire workers receive the same pay as directly employed workers on agreements doing the same work.
- Enabling “employee-like” workers engaged by a digital labour platform to be covered by minimum standards and allowing workers to challenge “unfair deactivations”.

There are a number of other reforms the Australian Government has recently undertaken that are in line with the Convention, including measures to improve women’s workforce participation, such as:

- Adding “gender equality” as a central objective of the Fair Work Act.
- Strengthening the right to request flexible working arrangements and giving the Fair Work Commission additional powers to arbitrate over flexible work requests – which will enable women and parents to better balance work and care and improve their workforce participation.
- Addressing women’s safety at work by introducing a prohibition on sexual harassment in the Fair Work Act and strengthened protections against discrimination.

- Measures to close the gender pay gap, including:
 - introducing multi-employer bargaining in female-dominated industries, such as aged care and early childhood education and care;
 - pay increases for aged care workers to account for the historic undervaluation of care work;
 - introducing superannuation on paid parental leave; and
 - prohibiting pay secrecy clauses in employment contracts that hide pay discrimination against women and giving workers the right to disclose their remuneration.

The Australian Government has also taken action to address two other key issues we raised in our comments to the Committee of Experts regarding two exploitative employment programmes:

- They have abolished the Youth Jobs PaTH internship programme which exploited young workers and displaced wage-paying jobs.
- They have committed to replacing the exploitative CDP, which was primarily targeted at Aboriginal and Torres Strait Islander peoples in remote areas, with a programme developed in consultation with First Nations peoples.

Finally, to note the actions the Australian Government has taken in line with Article 3 of the Convention, which requires Member States to consult with employers' and workers' representatives regarding employment policies. The Australian Government undertook an extensive consultation process with the development of its employment White Paper which outlines a comprehensive employment strategy, building on the outcomes of the Jobs and Skills Summit held in 2022 that brought together the social partners and other stakeholders to discuss employment policy. A key reform in this area is the establishment of the tripartite,

statutory body Jobs and Skills Australia to provide advice on workforce, skills and training needs, with a Ministerial Advisory Board with representation from the social partners. We welcome this inclusive and consultative approach by the Government of Australia in this regard.

All of these measures will strengthen protections for workers and promote job security, but the full benefit of these reforms will take time. While noting the enormous progress made under this new Government, there is still more that must be done to progress towards the goal of full, productive and freely chosen employment for all, including:

- Further action to eliminate the pay gap between Aboriginal and Torres Strait Islander workers and non-indigenous workers, and improve job security and employment rates for indigenous workers.
- Further expanding and improving paid parental leave, and further steps to close the gender pay gap and remove barriers to women's workforce participation.
- Abolishing youth wages and unpaid internships.
- Increasing social security payments to ensure that jobseekers and others receiving social security are able to keep up with the rising cost of living and live in dignity.

Chairperson – Now I give the floor to Mr Stephen Russell, Workers' delegate from the United Kingdom.

Worker member, United Kingdom of Great Britain and Northern Ireland (Mr RUSSELL) – Despite the vast geographical distance that lies between us, the world of work in the UK and Australia has many similarities. The Committee of Experts' notes aspects of the 2021 ACTU observations that are familiar to workers in the UK: problems of insecure work, inequality, youth unemployment and the lack of meaningful consultation with social partners,

are all issues my organization, the Trade Union Congress (TUC), has often raised. So, we have looked into this particular case with great interest.

We recognize the ACTU's concerns that, in 2021, insecurity was a growing problem, leading to lower pay, underemployment and the lack of access to workers' rights available to those with more secure employment. Insecure work affected 24 per cent of Australia's workers. At the same time, youth unemployment was at a 30-year high, suggesting that casualization of work was having a deleterious effect on potential new workers attempting to enter the labour market. Access to the full range of rights was restricted for many women, with only 43 per cent of women in a full-time permanent job, with entitlements such as paid sick leave, which many workers in the group of industrialized market economy countries (IMEC) nations might take for granted.

Our own experience of insecure work shows that casualization – and in our context particularly zero-hours contracts, through which workers risk missing out on access to key rights and protections at work, lack income security and face lower rates of pay – often disproportionately effects women and minority groups and, especially, women from minority groups. It is therefore encouraging to see the range of initiatives brought in by the Australian Government since 2022 aimed at eradicating barriers to full time, permanent work for women, such as the right to request flexible working, introducing better protections against sexual harassment and increasing pay transparency. The TUC is a strong advocate of pay transparency, including pay gap reporting not only on gender, but also race and disability, as a driver towards equitable pay.

Similar to Australia in 2021, the UK currently has a high persistent youth unemployment rate at around 15 per cent. Therefore, we will watch with interest to see if recent Australian Government policy reforms continue to drive lower rates in Australia, with rates having fallen

from 13 per cent at the time of the ACTU report to under 10 per cent now. Young workers in the UK are also far more likely than other workers to be on zero-hours contracts, so Australian-style restrictions on casualization would also be of benefit at home.

As always, the presence of trade unions mitigates against inequality and exploitation, so we welcome the Australian Government's moves to allow increased union access to unorganized workplaces and the right to represent the interests of potential members, allowing a huge increase in the number of workers who can benefit from unions' proven track record of improving conditions.

Article 3 of the Convention states that "In the application of this Convention, representatives of the persons affected by the measures to be taken, and in particular representatives of employers and workers, shall be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full co-operation in formulating and enlisting support for such policies."

It is heartening, therefore, to see Australian initiatives like Jobs and Skills Australia, which are an excellent reflection of the Convention, as it does in the Government's words take "a tripartite approach with state and territory governments, industry, employers, unions and training providers, promoting a training system that meets the needs of employees, employers and the economy".

Structured tripartite consultative mechanisms, which can make social partnership tangible and are fully able to positively impact conditions and ensure decent work, are always to be welcomed.

We live in a crisis of insecurity on both sides of our planet, and many places besides. Without the values enshrined in the Convention, including the preamble's objective of "just and favourable conditions of work", the world of work may continue to fragment and deliver poor

outcomes for working people. The principles of social dialogue (underpinned, of course, by the freedom of association and the right to collective bargaining), can, through structured tripartite consultation and sectoral agreement, begin the process of addressing and reversing this trend. Efforts to end gender, race and disability-based pay disparities, and to equalize rights and conditions for workers on different types of contracts, will erode inequalities. And addressing youth unemployment and insecurity through serious efforts to boost skills and create decent jobs, rather than through schemes which rely on making young people work for nothing, would be welcome in both hemispheres.

The workers of the UK will continue to watch Australia with interest, and not a little hope for the future.

Chairperson – I give the floor to Ms Jocelyne Dubois, Workers' delegate from Canada.

Worker member, Canada (Ms DUBOIS) – Canada's workers welcome the Australian Government's updated information regarding recent steps taken to promote full employment and address insecure work, youth, women's and indigenous employment and consultation with social partners on employment policy.

The Convention requires Member States to declare and pursue an active employment policy designed to promote full, productive and freely chosen employment, where each worker has the fullest possible opportunity to participate in the workforce, irrespective of sex.

Member States need to ensure that the employment policy has measures to ensure women's workforce participation and economic equality. It is well understood that working women today, on average, earn less than men, have less job security and retire with less income. They are more likely to be doing more unpaid care and making sacrifices in their careers, to balance family and work. They are also more likely to be subject to sexual harassment, assault and violence, and treated less favourably on the basis of their gender.

We note the positive steps the Australian Government has taken to address women's economic inequality. In particular, I want to highlight the measures the Australian Government has taken regarding gender-based violence and harassment in the world of work, which can be a key barrier to workforce participation. As such, governments must give consideration to measures to address gender-based violence and harassment, in order to fulfil their obligations under the Convention. We can see the interrelationship here, between Convention No. 190, which I note Australia ratified in 2023.

Measures Australia has taken, include reforms to the Sex Discrimination Act in 2022, which means that employers now must take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and sex-based harassment, hostile environments and victimization at work.

The Paid Family and Domestic Violence Leave Act came into effect in 2023, providing an entitlement to ten days paid family and domestic violence leave for all workers, and protections against discrimination and increasing protections against workplace sexual harassment and giving workers a new way to deal with sexual harassment complaints, with the Fair Work Commission.

Workers in Canada, which also ratified Convention No. 190 last year, commend these initiatives as we also celebrate similar measures hard won to improve employment policy and protections for women in the workplace, including paid domestic violence leave.

We are currently urging government to address gaps in the protection against third-party harassment and violence, which is an escalating issue for women and gender-diverse workers in Canada. Journalists, hotel, restaurant and retail workers, nurses and other healthcare workers, teachers, education workers, public transportation workers and many others are impacted by third-party violence at work every day.

We urge both Governments to undertake robust consultation, with social partners, to identify and close gaps in existing legislation and regulation.

Chairperson – I give the floor to Mr Samuli Hiilesniemi, Workers' delegate from Finland.

Worker member, Finland (Mr HIILESNIEMI) – I am speaking on behalf of the Nordic trade unions. In pursuit of its objectives, the ILO has advocated for, adopted, and supervised international labour standards through a tripartite process for over a century. We note the good practice examples provided by Australia of a tripartite approach and consultation with the social partners since 2022 in the formulation and implementation of employment policies.

The principle of tripartism is the founding principle of this Organization. Yet, without actual realization of genuine tripartism in both law and in practice, the word has very little meaning. The concept also must have substantial, effective, and even actionable content. Excluding workers' organizations, that is, disregarding our views and not taking the obligation of social justice into account in economic or employment policymaking, is not only contrary to this Convention. It is contrary to the values of the ILO.

As expressed under the umbrella of the ILO supervisory mechanism in various occasions, tripartite consultations should, when these are adopted, not cover only questions on labour law in the strict sense of the term, but rather encompass general matters of public policy on labour, social and economic matters.

Reflecting these principles, and the Organization's own tripartite character, the effective recognition and promotion of tripartism is evident in all of the work of the Organization, including the Conventions. Without a question, this applies to the Convention as well. By virtue of Article 3 of the Convention, Member States are required to consult representatives of employers and workers concerning employment policies.

The principle of tripartism is fundamental and it is incumbent upon the Member States to enable and effectively ensure its realization. Genuine tripartism absolutely requires consultation to exist prior to establishing relevant policies. At the present moment, one could consider that circumstances in Australia have taken a turn for the better.

We note the good practice examples provided by Australia in the information they have provided to our Committee, of a tripartite approach and consultation with the social partners since 2022 in the formulation and implementation of employment policies. For example, the dialogue on employment policy at the Jobs and Skills Summit held in September 2022, and the subsequent White Paper on Jobs and Opportunities in September 2023, set out its employment policy, which we note has objectives in line with the Convention – in particular, are delivering sustained and inclusive full employment.

We welcome the Australian Government for consulting with social partners in the formulation and implementation of employment policies and encourage other governments to follow this example of good practice.

Tripartite consultations should, in all matters where applicable, such as those required by the Convention, form a part of the elements that are required for the Government to take its decision. This is only rational. Consultations beginning after a decision has already been taken cannot usefully involve any examination of conceivable alternatives that, in their very essence, could be characterized as being of tripartite nature. Sadly though, we still have to witness such practices on the global stage today, even in certain countries, where one might presume such issues to be long eradicated.

It is only when tripartism is not simply allowed, but promoted and encouraged, that it can truly flourish and to be utilized to the full extent. We welcome the inclusive and consultative

approach taken by the Government of Australia in this regard. Enabling, allowing, and encouraging genuine tripartism will lead to positive outcomes.

We call on the Government to continue to meaningfully consult and ensure the participation of the social partners in the formulation and implementation of employment policies.

Chairperson – I give the floor to the distinguished representative of New Zealand.

Government member, New Zealand (Ms ZODGEKAR) – The New Zealand Government notes the important obligation contained within the Convention for each State Member to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. New Zealand ratified this Convention in 1964. New Zealand acknowledges the Australian Government's awareness of previously raised issues relating to insecure work, underemployment, and unemployment. New Zealand supports Australia's objectives in implementing Workforce Australia in 2022, including settings to assist those further from the labour market, along with their legislative changes including to Secure Jobs, Better Pay Act 2022 and the new Closing Loopholes Act 2024. We also note their increased funding in their 2024–2025 budget for the Real Jobs, Real Wages and Work Foundations initiatives, to address these issues. Furthermore, New Zealand supports the Australian Government's intent in their strengthening and reprioritization of programmes to best address youth unemployment. We note their new Working for Women strategy for gender equality, and range of associated workplace relations reforms to achieve women's equality and security, including their ratification of the Convention No. 190. And we recognize their commitment to reducing disparities between First Nations peoples and the rest of the population in fundamental areas of life, and the substantial moves they have made toward realizing this commitment. Finally, we note the range of consultation the Australian Government has

undertaken with social partners in implementing employment-related initiatives. We have observed and commend Australia's positive working relationship with their employer and worker representative organizations in the ILO, in the spirit of tripartism.

Chairperson – There are no more requests for the floor, so I now invite the Government representative of Australia, Ms Jennifer Wettinger, to make her concluding remarks.

Government representative (Ms WETTINGER) – The Australian Government has listened carefully to the interventions made today and welcomes the constructive comments.

I have outlined in my opening statement the range of measures that the Australian Government has already taken to address some of the matters that have been previously raised. These include in summary: reforming employment services, support to long-term unemployed people and young people, substantive reforms to Australian workplace relation system to strengthen protections for workers and deliver secure jobs and better pay, and implementing the closing-the-gap reforms to support the economic empowerment of First Nations peoples in Australia.

I have also mentioned the 2022 Employment White Paper, which the Government identifies as a road map for ensuring that Australians are the beneficiaries of the shifts under way in the economy and in our society over the coming decades. The White Paper builds on the Jobs and Skills Summit held in 2022 which brought together worker and employer representatives, civil society and governments to address shared economic challenges. It crystalizes the ambition for a dynamic and inclusive labour market in which Australians have the opportunity for secure, well-paid jobs in a country where workers, employers and communities can thrive and adapt.

I have also provided many examples of the Government's commitment to social dialogue and tripartite engagement. Today, we are particularly pleased to hear from our tripartite social

partners, the ACTU and the ACCI. Constructive collaboration with our social partners has helped to make the reforms I have outlined today better and more sustainable. Their interventions reinforce, from an Australian worker and employer perspective, first-hand experience that the Government is firmly committed to the enduring principles and objectives that underpin the Convention.

To one specific point raised by the spokesperson of the Employer members, I would like to clarify the Government's legislative reforms to the definition of "casual employment". The core definition of "casual employment" remains unchanged: the absence of a firm advanced commitment to continuing and indefinite work. What has changed is an assessment of the practical reality of the relationship, not just the contract. Some workers are stuck in casual employment, without access to leave and entitlements, despite the way their work is becoming similar to permanent employees. Therefore, if after 6 months, or 12 months for an employee of a small business, the worker does not believe they meet the definition of a casual employee, they can request to move to permanent employment if they wish. Employers can still refuse an employee conversion notification, if there are fair and reasonable grounds. For example, when the conversion would require a substantial change to the organization of work.

The amendments provide choice for the 32 per cent of casual workers in Australia who have regular working arrangements, mostly in female dominated sectors, including healthcare and social assistance, accommodation and food services and retail trade. I reiterate, however, that under these arrangements, no-one will be forced to convert from casual to permanent employment.

We are hopeful that the information provided by the Government ahead of today's hearing and during our opening statement, avails the Committee of any concerns present in the 2021, article 22, Reporting Cycle, noting the extensive reforms and policies implemented

since this time. We remain at the disposal of the Committee for any further information that may be required.

Chairperson – Thank you very much Madam for your participation in the work of this Committee and the information you provided. And now I give the floor to Ms Mikyung Ryu, Worker spokesperson, to make her final statement.

Worker members – We thank the Australian Government and all of those who took the floor.

In this era of multiple crisis including global economic and climate crisis triggered in no small part by the adoption of economic policies which produce outcomes contrary to the objectives of the Convention, including widening inequalities and associated social tension, the effort by the Government of Australia to respect the Convention in law and practice is well noted.

Work has become increasingly more precarious. New forms of work have emerged where millions of workers are now engaged outside of the protection of labour law, with all the dangers and vulnerabilities that come in its wake.

In this regard, we agree with the Committee of Experts, as they stated in the 2020 General Survey on Employment Protection, that, “the principle of substantive equality includes the requirement that, over time, or after a certain period of time, all workers have access to more permanent and stable employment relationships”.

We note that the Government has taken a number of steps to address insecure work. Also, there have been measures adopted to improve women’s workforce participation. The Government is also going ahead with measures on youth employment and that for First Nations.

In line with the Convention, the Australian Government should continue to develop and implement these measures, in consultation with social partners. This is central to ensuring that there continues to be an inclusive approach to economic and employment policymaking, and to sharing the positive results together.

Chairperson – I give the floor to Mr Michael Congiu, Employer spokesperson.

Employer members – The Employer members wish to thank the various speakers who took the floor, and in particular the Government of Australia, for its interventions and information it provided.

We reiterate the importance of States' compliance with the Convention, and our belief that compliance with the Convention is critical to ensuring meaningful opportunities for both workers and business, and also to ensuring the broader effectiveness of the ten core ILO Conventions.

The Employer members recommend the Government of Australia to do the three following things: (i) continue providing information on policy and technical measures aimed at increasing both the employment quality and the quantity of jobs for women at the national level; (ii) continue providing detail about the nature of its efforts to support First Nations peoples in Australia's world of work; and (iii) to the extent that the Committee nonetheless believes that social partners have not been sufficiently consulted, the Government should better ensure that this specific consultation be conducted.

We count on the Government to timely provide the requested information and to adopt the measures.

Chairperson – We have now concluded the discussion of this case. The conclusions will be adopted on Thursday, 13 June in the morning.

Following our discussion of this case, I can confirm that we have 12 cases remaining, which means that we are halfway through our task.

Before starting the discussion on the next case which is Netherlands – Sint Maarten. I announce a three-minute technical break.

The sitting closed at 3.40 p.m.

La séance est levée à 15 h 40.

Se levantó la sesión a las 15.40 horas.