ASIAN WOMEN AT WORK INC
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PHỤ NỮ Á CHÂU NƠI LÀM VIỆC

14th January 2009

John Carter
Committee Secretary
Senate Education, Employment and Workplace Relations Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Carter,

Please find attached our Asian Women at Work submission to the Senate Inquiry into the Fair Work Bill 2008. Also attached is our booklet "Cries from the Workplace".

If you have any questions regarding our submission please feel free to contact me on dcarstens@awatw.org.au or 0437 879 442.

Yours sincerely,

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Asian Women at Work Inc

Submission to Senate Education, Employment and Workplace Relations Committee Inquiry into the Fair Work Bill 2008

January 2009

1. Asian Women at Work is a Sydney community organisation of low paid Asian migrant women workers which empowers, resources and assists women to stand up, speak out and take collective action to advocate for their rights and develop strategies that improve women's lives, end exploitation in the workplace and home, obtain secure employment and enable them to understand and contribute to Australian society. We have a membership of over 1300 women working in the clothing, restaurant, cleaning, metalwork, meatwork, food and other industries.

2. Asian Women at Work has established an Action Group from our membership which has been raising the concerns for Asian women workers in the discussions and debates about industrial relations law in Australia, seeking changes to the legislation which will improve our daily lives in the workplace.

3. We are skilled and dedicated workers. We work very hard but we are not treated as we deserve. Our hard working efforts are not recognised. Our limited English and limited understanding of the Australian system makes us more vulnerable.

4. Our experiences in the workplace include bullying and harassment and verbal abuse, threats of dismissal if we complain, a stressful environment where we are pushed to work fast, not receiving legal minimum wages and conditions, not receiving overtime pay or shift allowances we are entitled to, and workplace injuries from repetitive work in a stressful environment.

5. In 2008 we published a booklet of our stories called "Cries from the Workplace" to raise the profile of our workplace realities. These stories are repeated across Sydney and across Australia on a daily basis. A copy of "Cries from the Workplace" is included as an attachment to this submission.

6. The WorkChoices legislation led to increased hardship for many of our members. The removal of unfair dismissal laws, the reduction of union access to the

workplace, the capacity of employers to reduce wages and conditions and the overall message that employers had unmitigated power, led to the development of a workplace culture where our employers acted like they could do what they wanted.

7. Migrant workers were constantly fearful of being sacked, with this threat being directly made to some workers who attempted to speak up about genuine workplace concerns. Pressure to work faster increased and bullying and harassment increased. In some workplaces wage rates were reduced and penalty rates were removed by the employer without any negotiation with the workers.

8. We have therefore been very keen to see the shape of the new industrial relations laws and whether or not they will contain the protections we need as vulnerable workers.

9. Having now been briefed on the legislation, and discussed the issues in our Asian women workers Action Group, we understand there are some elements we greatly welcome and there are some areas where the Fair Work Bill does not go far enough to provide vital protections for migrant women workers.

10. The areas we want to comment on are the following -

- Unfair Dismissal Laws
- Award Modernisation
- Individual Flexibility arrangements
- Union Right of Entry
- Outworkers
- Specific Textile Clothing and Footwear Union Right of Entry
- National Employment Standard
- Redundancy for Small Business Workers
- Protecting entitlements for vulnerable workers
- Enterprise Agreements
- Good Faith Bargaining
- Low Paid Determinations
- Arbitration

Unfair Dismissal Laws

11. We welcome whole-heartedly the return to unfair dismissal protection for the majority of workers. As indicated in our introduction, the absence of unfair dismissal laws under WorkChoices was a source of significant stress for migrant women workers and deterioration of many workplace environments for our members.

12. There are some elements of the new system, however, which must be improved if the laws are to adequately protect vulnerable workers like migrant women.

13. We are very concerned about the waiting period identified before the unfair

dismissal protections are available. We are very worried when we don't know when we might be sacked and we feel insecure. The longer the time before unfair dismissal protections are available the longer the stress. **We argue for a 3 month or 6 month waiting period**, but 12 months is too long to live with the stress of not knowing if our job is secure and to be "on probation".

14. Only seven days to lodge an unfair dismissal claim is very short. For many migrant women, who know very little about the Australian industrial relations system, it may take several weeks of complaining to friends and family about their circumstances before they find someone who is able to advise them what their rights are and where they go to for help to make such a claim. **We should have 21 days to lodge a claim for unfair dismissal to give us adequate time to find out our rights and access assistance.**

15. While it has been the general community perception that the law requires three warnings for a dismissal to be fair, the previous legislation and now again this Fair Work Bill do not spell out such a requirement. Advanced notification of the reasons for a potential dismissal and the three warnings process should be spelt out in the Fair Work Bill.

Fair Dismissal Code for Small Business

16. Our greatest concerns are in relation to the Fair Dismissal Code for Small Business. While the Code is not in the legislation, it is referred to in Section 388, and we understand it will be made as a regulation under the legislation. The draft of the Fair Dismissal Code released in September causes us great alarm.

17. It is legitimate under this Code to dismiss a worker after only one warning, and that warning does not even need to be in writing. The informality of this process leaves migrant women workers very vulnerable. Our members regard this minimal protection as discrimination against workers in workplaces of less than 15 workers.

18. A verbal warning could be given without a migrant woman worker clearly recognising it, and/or when the supervisor or employer is in a fit of anger. Some employers could claim in retrospect that an episode when they were verbally abusing a worker was actually a warning. But an abusive episode is not a context in which a worker has an opportunity to explain the situation and consequently avoid such a warning.

19. And all this goes back to our original concerns about a fearful, and consequently dangerous, workplace culture where workers do not speak up about health and safety issues and other genuine workplace concerns because of fear they can be easily dismissed. Workers need to be able to raise issues in the workplace without fear of losing their jobs.

20. The overall message with this proposed new unfair dismissal regmine for small business is still that the employers have enormous power over us and we have little recourse for defending ourselves.

21. Here are some stories which illustrate the kind of concerns we are talking about. (Extracts from Cries from the Workplace, April 2008, and other documents

written by Asian Women Workers Action Group)

Our employers acted as if they could now do what they liked. They pushed workers to work harder. They threatened us with dismissal if we spoke up about issues in the workplace. The overall atmosphere in our workplaces deteriorated and stress increased. The day after WorkChoices commenced operation one of our more outspoken members was told by her boss "I can sack you any time I want now, and I don't care if you are in the union".

While threats of dismissal for speaking out might have remained illegal, the reality is that proving this is difficult in a context when workers are more fearful and therefore unlikely to speak out in support of the dismissed worker.

Name: *Lily*
Age*: 50s*
Family Status: *Married with adult children*
Ethnic Background: *Chinese*
Industry: *Furniture*

The Nasty Boss

If you ask Lily to use three words to describe her feelings about her workplace she would say: scared, hate and powerless.

Why? Because her boss can never control her temper and always gets angry at the employees. Everyday when the boss comes past, all the workers are scared because wherever the boss goes in the workplace she gets angry at the nearest employee.

Recently the boss came to Lily and very angrily said, "Why didn't you follow orders? Why did you do it your own way!" For fifteen minutes, the boss shouted at her. There was not any chance for Lily to tell her side of the story. Finally Lily had a chance to say that the customer was very happy with her work and liked it that way. After Lily finished explaining the boss said, "okay, okay" and left. After five minutes, she heard the boss getting angry with another employee.

Some workers even cry after the boss has shouted at them. Every worker is under pressure in the workplace. The only way to escape is to put on earphones and listen to soft music to get rid of the boss's noise. The boss even rings them at home on Saturday and Sunday and continues to get angry at the employees.

"Name": *May*
Age: *30s*
Family Status: *Single mother, victim of domestic violence*
Ethnic Background: *Chinese*
Industry: *Meatwork*

Using the Threat of the Sack

There are 40 to 50 people in the wholesale meat factory where I work. I am a salesperson to customers in the retail room. We have a lot of bad experiences with our Manager and supervisor. They don't know how to manage and organise the work in the workplace very well. Their treatment of their workers is extremely erratic. They often abuse and swear at people without any reason.

I am very unhappy with the work environment but I have a good relationship with my workmates. I don't receive any of my entitlements from work including no overtime pay, no sick pay, no holiday pay. I do receive award wages for this industry at an hourly rate.

There are a lot of heavy items we have to carry, move and work on. Some items are over 30 kgs. It is beyond my work duties and my capability to carry that much weight. I am very worried I will develop an injury from this work. My arms, hands and back are very sore.

... our manager often threatens people by using the word "sacking" to push workers to work harder. We always wish that the Manager and Supervisors would change their working attitude.

The overwhelming feeling from my work place is: my physical strength is consumed all the time, we have huge pressure on us from the workload, and my mind and body are constantly stressed and tight at work as I don't know when the supervisor will pick on me in front of many clients without any reason.

22. These kind of experiences are repeated again and again by many of our members.

23. In this kind of context our members are concerned that an employer could issue a verbal warning in the midst of erratic and unwarranted abuse and bullying, without any possibilty of the worker making a serious response in their defense, and leaving the worker fearful that the follow up step of dismissal might occur at any time.

24. Migrant women workers also have concerns around their limited English ability. They are concerned that a verbal warning could be issued to them in English and they might not understand that a warning had been given at all. If they do understand that a warning is given they are concerned they might not understand the content of the warning and what is required of them to improve their performance, and they might not have sufficient understanding of the concerns being raised to allow them to make a response to the accusations being made

about which they may wish to defend themselves.

25. It is also possible that without a formal written warning an employer could claim to have given a warning when they had not. Such misrepresentations of reality are inside the experiences of our members.

26. Asian Women at Work pleads with the Government to bring greater formality into the unfair dismissal processes for small businesses in order to protect workers.

27. We believe small business workers should have the same protections as large business workers. If that will not be considered then **a greater degree of formality in the Fair Dismissal Code process is absolutely necessary. This formality can be achieved by -**

- **All warnings should be provided in writing. This makes it a clear communication to the worker involved. It provides something concrete the worker can respond to, in either explaining themselves and requesting a withdrawal of the warning, or in knowing clearly what needs to be improved. It cannot be done impulsively by an employer as part of an episode of bullying or harassment. And fourthly, it provides a concrete paper trail for the process.**

- **The warning should be given in a meeting with the employer or supervisor.**

- **Workers should be given notice that the warning meeting is to take place.**

- **Workers should be given the opportunity to have a support person there for the meeting, as a witness and support in the discussions.**

- **Workers should have the opportunity to respond to the accusations in the warning.**

- **The onus should be on the employer to ensure the worker has understood the warning.**

- **In the case of migrant women, this may include finding an interpreter for the meeting, and/or having the warning letter translated.**

- **Employees should be asked to sign the warning letter to show they have received it.**

28. Our Asian Women at Work members are also adamant that a single warning is not sufficient to protect them in the workplace. **A second and third opportunity should be given to workers to understand there are problems and improve their performance.**

29. This increased formality is fairer and clearer for the employer as well as the employee. Safeguards are necessary to ensure that the Fair Dismissal Code is

not going to be abused and small business workers are not going to be highly disadvantaged.

30. In conversations prior to the tabling of the legislation it was suggested to us that some small business employers do not have the skills or resources to write an adequate warning letter. We would be very concerned that their inability to write a warning letter would also suggest limitations in their ability to deliver a verbal warning in a fair and clear manner, and would also call into question their capacity to negotiate and write an Individual Flexibility Agreement, and their ability to understand a whole range of elements of these new industrial relations laws.

31. The reality is that all employers and workers will be needing education and support for them to adequately understand and adhere to their responsibilities under this new law. It is appropriate for the Government to be preparing information and resources to promote the content of the new legislation and the system it describes, as well as create the regulations and tools to make it work.

32. **In this context we believe the Government can prepare pro forma letters and letter writing guidelines to assist employers to prepare written warnings.** In addition, a small business employers hotline could be established to provide accessible advice on how to go about dismissing an under-performing worker in a fair and appropriate manner. This would adequately address the Government's concerns about small business employers' capacity, and would not leave migrant women workers, and other workers in small businesses, in a highly vulnerable state.

Award Modernisation

33. The Government has chosen to continue the process of reducing the number of awards, which was first introduced under WorkChoices. This is an administrative process that is desired by some as part of a notion that a simpler system automatically means a better system. There may well be some merits in the process, but the result will be a loss of wages and conditions for many workers. This is especially concerning for our members as they are already in low paid employment and almost completely reliant on awards as the measure of legal minimum wages and conditions. For most of them there will be no enterprise agreement to lift their wages and conditions above these minimums.

34. We have been involved in representing our Asian women worker members in the award modernisation process during the consideration of the first 14 priority awards. We have observed that while the principles of no worker being worse off and no employer having greater costs are attractive ones, they cannot work in reality. Instead what we seem to have is a process of trying to find middle ground as huge numbers of awards are combined into one.

35. Some workers are gaining and some workers are losing. One example is casual loading. For some workers it has gone up to 25% from 20%, while for other workers it has gone down to 25% from 33%. That is a significant difference in take home pay for those workers. Asian Women at Work was pleased to see that this issue has been recognised, and that the Transition Bill will address it to some

extent. The understand that no workers pay is to be be reduced even if the award minimums drop to lower than their current pay levels. This is commendable in the short term.

36. The longer term continues to concern us. While their pay will not decrease in the short term, its real value may do so as those workers must wait several years for the award rates to "catch up" before gaining any annual increases.

37. Also the announcement only guarantees retention of existing wages but not of existing conditions. There will be valued workplace conditions lost by workers as this "middle ground" is sought in this award combining process.

38. **Asian Women at Work recommends the Government re-consider the guidelines for award modernisation to allow for greater variations and broader scope in modern awards to reduce the impact of this massive combining process.** We have no answers as to how it might be done, but imagine the Industrial Relations Commissioners responsible for the modernisation process would have considerable wisdom to contribute as they have debated the issues involved in their mammoth task.

39. Ultimately, workers should not suffer because of an administrative process the Government wants to undertake.

Individual Flexibility Agreements

40. We commend the Government for introducing the concept of individual flexibility for men and women who want to adjust their working lives around their family commitments.

41. However Asian women workers are anxious that these same flexibility agreements could be used to disadvantage vulnerable migrant women workers, wittingly or unwittingly.

Flexibility Agreements should be Checked

42. Our primary concern is that no one is checking these Individual Flexibility Agreements. **Some form of systematic program must be put in place for checking Individual Flexibility Agreements to ensure they meet the standards required by the award or enterprise agreement and the legislation.**

43. Our members have told us time and time again of working in situations they thought were unfair but didn't know they could do anything about it. They have also told us of signing agreements which they didn't understand because they believed they had to, and were fearful of losing their job or not getting a job.

44. Our women are very scared if they are ever called to go to the boss's office. They don't know what will happen, what it will be about, what the boss will say. If the boss asks them to say something or do something they are more scared. They don't know if they can say "no" to the boss, so they usually say "yes" even if they don't understand what they are being asked. They are worried that if they say "no" they will lose their job.

45. One of our more confident members recently got a job in a nursing home. She went for an interview and the boss decided to give her a job straight away. At the interview he gave her a bunch of papers and asked her to sign. She didn't have time to read and understand the documents. She was told to just sign them. She felt that if she said no, or asked for time to take away and read them, she might miss the opportunity to get the job.

46. These are just some stories that help explain why we think someone external should be checking Flexibility Agreements that workers have signed, to be sure they are fair and fit the standard expected of them.

47. While the minimum standards for these agreements are superior to AWAs, if no one is checking them then migrant women with limited English will be vulnerable to signing away a range of penalty rates, allowances and conditions which may not fit this standard because they do not understand their rights.

48. While the worker can exit the agreement by giving a period of notice, if they do not understand their rights under their award, and they do not have knowledge of where to go for help, and they don't understand the Australian system, and they are fearful of their boss then they will not be aware that the agreement is sub-standard and they will not seek to terminate it.

49. As stated earlier, it was suggested to us that some small business employers might not have the capacity to write a warning letter. Those same employers will also struggle to negotiate and correctly write an individual flexibility agreement. The example of AWAs showed that even with the very minimum requirements of those agreements, thousands of them were checked and rejected as failing to comply with the law.

50. So we are concerned that under this new legislation employers, wittingly or unwittingly, may ask workers to sign an Individual Flexibility Agreement which does not meet the “better off over all” test and which removes wages and conditions.

More Protections in Flexibility Clauses

51. In addition, Asian women workers ask for more protections built into the Flexibility Clauses.

52. There are two kinds of flexibility clauses to address - those in awards (Section 144 of the Bill) and those to be placed in enterprise agreements (Section 202, 203). For awards, the Australian Industrial Relations Commission has drafted a model clause which can be adapted. For enterprise agreements the Fair Work Bill simply contains a few requirements for what a flexibility clause must do, and the capacity to create a default flexibility clause for agreements which do not contain a flexibility clause.

53. The model flexibility clause for awards (as finalised in the first 14 priority awards on 19th December) includes a range of important terms that go beyond the minimal requirements in the legislation. The latest version from December includes a requirement for employers who initiate Individual Flexibility Agreements to provide a proposal to the worker, and the onus is on employers to

ensure the worker understand the content of the proposal, including translation to the workers first language if necessary.

54. The flexibility clause in the Textile Clothing and Footwear Award goes one step further and requires the employer to give a worker 7 days to consider an agreement offered, during which time they can seek information and advice from others, including their union.

55. Section 202 (4) of the Bill allows for a flexibilty clause in an enterprise agreement to be devised by the negotiating parties, with the default of a "model flexibility clause" if no clause is negotiated and included. Asian women workers want to see a greater degree of protection, with the model flexibility clause being the starting point for negotiations, which can improve on the model clause. We are concerned that negotiating parties may not include enough safeguards for vulnerable workers like us unless required.

56. Asian Women at Work welcomes the requirements placed on a flexibility clause for an enterprise agreement in Section 203, including the requirement for the agreement to be in writing and signed, a copy must be given to the worker, the worker must be "better off over all" than under the enterprise agreement, the agreement can be terminated by one or both parties within a month, agreement must be "genuine", and it must state what terms of the enterprise agreement may be varied by an individual flexibility agreement.

57. However Asian women workers want to see those requirements extended to include those things in the award model flexibility clause, the TCF Award clause and some additional terms to ensure the protection of vulnerable workers like us.

58. **The additional terms (beyond what is currently in the Fair Work Bill) which should be required in flexibility clauses in awards and enterprise agreements are -**

- **Translation of Flexibility Agreements for NESB workers**
- **workers given time to consider agreements before signing (7 days in TCF award. We note here that even AWAs allowed time for them to be considered. Some period of time to consider an agreement should be standard for all individual flexibility agreements!)**
- **A Copy of any agreement to be kept as part of time and wages records (this would place them among the records for inspection by the Government inspectorate and unions, providing one checking mechanism.)**
- **The agreement should include what award or enterprise agreement conditions the worker is forfeiting as well as outlining the new arrangement.**
- **Stipulate a limitation on what matters or terms can be the subject of an Individual Flexibility Agreement.**

- **The onus on the employer to ensure the worker understand any agreement the employer has proposed.**

- **Employers required to certify that any Individual Flexibility Agreement is better over all for the employee, as an extension of requirements under Section 144 4) and Section 203 4).**

- **some limits on hours that can be worked under a flexibility agreement (our members often experience a requirement to work very long hours, and stronger legal protections around this)**

- **Individual Flexibility Agreements reviewed after six months to ensure they are in reality meeting the better off overall test.**

Migrant Women have Limited Capacity to Negotiate

59. Migrant women workers have a limited capacity to negotiate with their boss about the contents of a Flexibility Agreement that may be offered. While the agreement may satisfy the legal requirements, the women may not be happy with the content.

60. **Asian Women at Work argues that any process of checking agreements involve talking to the worker involved to ensure they understand the agreement and genuinely agreed to sign it.**

Extra Safeguards

61. Questions our members have asked which we have not been able to answer when we read this Bill are "Can I say no to a Flexibility Agreement that a boss might give me to sign? What are the consequences of saying no? Are their laws to protect us if we want to say no to an agreement the boss offers us?"

62. T**he Fair Work Bill needs to clearly state that a worker cannot be dismissed for refusing to sign a Flexibility Agreement.** For all the reasons stated above, the absence of such a protection may leave some workers signing unsatisfactory agreements for fear of losing their job. Our members are very anxious that such a specific protection should be in place, and should be well advertised and promoted to ensure migrant women are aware of this right.

63. The Bill says that an agreement has no effect if it fails to meet the minimum requirements. Does that mean workers can make a claim for pay they did not receive because of the agreement, but which they were entitled to if the agreement had not been in place? **The Bill should be clear that workers can claim unpaid entitlements if they have been employed under an Independent Flexibility Agreement which does not meet the "better off overall" test.**

64. **The Bill must ensure a whole workforce, or a significant section of a workforce, cannot be offered the same Individual Flexibility Agreement as a deliberate attempt to undermine a collective agreement.**

65. Pre-Workchoices, in one workplace where we had a lot of members, the employer went to great lengths to try to frustrate the process of negotiating an

enterprise agreement. They deliberately brought in competing unions, and harassed the migrant workers. There were several nationalities present in the workplace and they promoted differences in cultural groups as a way of dividing the workforce. In this workplace in future we would be very concerned that the employer could try to use Individual Flexibility Agreements to place the NESB workers on a different footing to others in the workplace.

66. This one workplace is not the only concern. In many workplaces non-English speaking background women are pushed to work faster than others. For example, in one workplace, the supervisor goes around to the Chinese workers and says quietly “you will be in trouble if you don't work fast”, while the English speaking background workers are allowed to chat to each other and work at their own slow pace.

67. In another workplace, the Chinese women are even paid at a lower rate of pay than their English speaking colleagues. There was a group of migrant workers employed at the same time. The Indian and Filipino women who had good English are paid at a higher rate than the Chinese women and other non-English speaking background women.

68. These examples illustrate why we are concerned that migrant women workers from some ethnic groups may be offered Individual Flexibility Agreements in order to deliberately divide the workforce. The legislation should specifically state that this is unacceptable, and carry penalties for doing so.

Education

69. Finally, another important protection for migrants women workers in relation to Individual Flexibility Agreements is extensive and ongoing education for migrant workers about Flexibility Agreements and their rights as workers.

Union Right of Entry and Union representation

Importance to migrant women workers

70. Our members and other migrant women we have contact with through our various community programs all confirm that the regular presence of a union in their workplace has a significant positive impact on the workplace atmosphere and their likelihood of receiving their full entitlements.

71. Our members see the unions' role in Australia as very important to protect them and support them. They are very concerned at the reduced role of unions in recent years, and many have directly felt the consequences in their workplaces through reduced pay, reduced conditions, an increase in bullying and intimidation and a deterioration of the atmosphere in their workplaces. Bosses feel they don't have to answer to anyone, and are not being checked by anyone, and they can do what they like.

72. Union right of entry and union access to the workforce has three important purposes for vulnerable migrant women workers. Firstly, unions have a monitoring role to ensure employers are complying with the law. Secondly, unions have an education role, informing migrant women workers about their

rights in Australia and what they should expect from their Australian workplace. Thirdly, unions have a representation role as they assist migrant women workers to speak up about concerns in the workplace and in negotiation processes around a range of issues.

Monitoring and Compliance

73. A common call from our members is "we need someone to make our boss follow the law". Winnie's story from *Cries from the Workplace* is one example -

"Name": *Winnie*
Age: *40s*
Family Status: *Married with adult children*
Ethnic Background: *Chinese*
Industry: *Electrical Goods*

Make the Boss Follow the Law

I work at Campsie and I am a factory hand. My manager is kind but does not pay enough money. I'm comfortable with my workmates but my working environment is very hot in summer and cold in winter.

I am paid $10 per hour and I receive no other entitlements. I am paid for overtime but we almost never have overtime. I know my wages are not in accordance with the law. I am not worried about my work tasks but I am not happy about my wages. I just want the government to change the law to make the wages higher and make the boss follow the law, because I am happy with my job but it is hard and heavy.

74. Our members see extended union right of entry to workplace and access to information about pay and conditions as the most effective way for monitoring and compliance activity to occur.

75. Before the election in 2007 our Asian women workers Action Group met with one of Joe Hockey's advisors to talk about WorkChoices and how it had caused so much hardship for migrant women workers. The advisor proudly talked of having increased the number of industrial relations inspectors to 300 to cover the whole of Australia. Our Action Group members almost laughed at him. How can 300 inspectors cover all the workplaces in Australia? How can they possibly replace the enormous role that thousands of union organisers undertake checking up on workplaces across Australia on a regular basis?

Ms H tells the story of when she started working in a factory many years ago she was disheartened by the dirtiness and untidiness of the factory, the lack of facilities in the lunch room, and the poor maintenance of toilets and general basic hygeine. She

complained to a friend, who reported it to the union. Several days later they were told to stop their regular work and spend 2 hours cleaning up the factory. New equipment for the kitchen was purchased. And the overall atmosphere in the workplace improved.

76. Migrant women workers want the union to be checking up on their workplaces and making sure the boss follows the law. They don't want unions and the government waiting for workers to complain before they do anything. They want proactive support because they are fearful and uncertain.

Education

77. Union visits to the workplace are often the only way that migrant workers get any information about their rights in the workplace and where to go for help when they have a workplace problem. For many migrant women such visits are the only way they know about unions in Australia, and how they work.

78. If the boss does the right thing then there is nothing to hide and no problem for the union to visit. One of our members said her boss always lets the union come to their factory to check. “Everything is by the law, everything is good”. She said “the union helps us to negotiate with the boss. When the factory decreased in size the union helped us understand what was going on, and helped us with the negotiations with the boss. The union talk to the boss for us. They made sure we were protected.” This woman feels lucky in this factory, because she knows what others experience. “I have heard many stories but I am the lucky one,” she says.

Representation

79. Education and representation go together as unions explain workers rights in a given situation to migrant women workers, then support them in negotiations with the employers about that situation or issue.

80. Migrant women workers don't fully understand the current award provisions, they don't fully understand their rights in the workplace. They don't understand how the industrial relations system works in Australia. This is on top of their limited English language skills and low confidence. So they don't know how to negotiate something better, or how to negotiate to even maintain award standards in any alternative arrangement.

81. That doesn't mean they don't have a sense of what is fair and right. Some workers have said to us “I would never accept these conditions back home in China”. But they do not have a measure of what they should expect from a work environment in Australia, and many have had such poor experiences their expectations are low.

82. Union right of entry to workplaces is an essential element of being able to represent workers.

83. In one of the stories in our booklet Cries from the Workplace, a migrant woman metalworker talks of the good conditions they have because of the collective agreement the AMWU negotiated for/with them, but she worries about what will

happen when the agreement ends (in the context of WorkChoices legislation).

84. Migrant women workers want support and advice of unions as they deal with issues in their workplace. Migrant women workers want the union involved in consultations, dispute resolution and other issues. The unions are the experts who understand the law and how to protect workers. They want these experts on their side.

85. But they don't usually don't want to admit openly that they are a union member or that they are the ones who called the union to help them. They are fearful of being singled out by the boss as a trouble maker, and they may experience an increase in bullying and harassment if they known to be involved in the union.

86. We have had migrant women say to us "the union is not allowed to contact us. If I join I will be picked on." They are scared to associate with the union for fear of losing their job. This fear of losing their job paralyses people, and stops them acting. And the bullying, harassment and discrimination they often experiences makes this fear even stronger.

What Right of Entry Provisions Migrant Women Want

87. **For all the reasons outlined above migrant women workers**

- **Welcome the ability for unions to now enter workplace more freely for discussions with both union members and non-union members**
- **Welcome the capacity of unions to view non-union member records in the process of investigating a reported breach**
- **Want unions to be able to access all employment related records of all workers in a workplace as a way of checking up that employers are following the law. This will help protect vulnerable workers who do not understand their rights or who are too scared to stand up for their rights in the workplace. The requirement for their to be a reported breach to investigate records assumes that the workers have enough knowledge to understand what is a legal breach, and have a enough confidence to report the breach and seek a remedy. This is not always the case with migrant women workers.**
- **Want unions to be able to access workplaces without having to give notice, because bosses use the notice period to hide problems, fabricate information about wages and conditions, and to move workers to different jobs when the union is present. (All these are circumstances described by our members at some time.) We note that the Fair Work Bill specifically overrides the Right of Entry without notice provisions of the NSW Occupational Health and Safety Act, limiting the activity of NSW unions even more than WorkChoices did. We call for this overriding to be retracted.**
- **Want unions to be able to enter workplaces without giving the name of a union member in that workplace, as vulnerable workers like us fear being targeted for inviting the union into the workplace.**

- **Want unions to be able to enter workplaces without having to provide evidence of a suspected breach, as this can be used to deliberately frustrate the union's legitimate right of entry.**

88. Asian Women at Work is also concerned that the capacity to revoke the right of entry permits for a whole union is a most severe punishment and we are not clear how it can be justified.

89. Finally, **we believe union right of entry to workplaces should be an eligible matter in awards.** The prohibition on this matter should be lifted. This right of entry is to facilitate all three roles outlined above – monitoring, education and representation.

90. It is important that modern awards are clear that unions can represent workers in consultation processes and dispute resolution processes. Unions should be informed of changes in the workplace, and changes to employment arrangements in the workplace, so that they can be involved in representing workers. Unions should be clearly allowed to take disputes on behalf of workers without having to name the workers who have requested intervention.

Outworkers

91. Asian Women at Work has many members who are currently outworkers and many more who have been outworkers in the past. Over the 15 years of our existance outworkers have been active in our organisation, and we have been active in taking up outworkers issues.

92. Outworkers in our networks currently report receiving between $3 an hour and $8 an hour for their work, with a small number receiving higher rates of pay as a result of the various interventions to address the exploitation they experience. Progress is being made, but the various tools to address the issues need to be preserved and improved upon in order to bring more significant change to these women's lives.

93. Asian Women at Work endorses the submissions of FairWear , FairWear Queensland and the Textile Clothing and Footwear Union in relation to outworkers. We appreciate the Government's commitment to providing a framework for the protection of outworkers, but highlight where this has fallen short in the drafting process with this new Bill.

Definition of Outworkers and related entities

94. **The problems with definitions and inclusion of all outworkers in the processes intended to protect them could be largely solved by deeming outworkers to be employees.** With such low rates of pay, and other poor conditions documented extensively elsewhere, it is clear that whatever the employment arrangement, outworkers have limited control over their wages and conditions. Deeming is therefore used to ensure that all outworkers are covered by the range of specific protections which have been put in place in various instruments and laws.

95. This is the way the issue has been addressed in the State jurisdictions of NSW, Victoria, Queensland, South Australia and Tasmania. In many of these State jurisdictions the deeming of outworkers gained cross party support. The Federal ALP have made a pre-election commitment to follow this precedent, and this could be undertaken at this time in order to deal with a number of problems raised by the current wording of the Bill.

96. **If deeming is not undertaken then the the definition of outworker in Section 12 of the Bill needs to be amended clarification that the definition of outworker includes outworkers in all types of employment arrangements for all purposes; Section 46 (2) of the Bill needs to be amended as it says a person can only received entitlements under a modern award if the award applies to that person; and the NES should specifically cover non-employee outworkers beyond the current definition of coverage.** It is important that the coverage of all outworkers in all kinds of employment arrangements is ensured.

Maintaining protections for Non-TCF Outworkers

97. The outworker protections in South Australia and Queensland go further than in other states, and include non-TCF outworkers. Asian Women at Work is aware of many Asian women engaged in outwork in non-TCF industries in NSW and would love to see the national protections lead to coverage of those women. The kind of work they are doing includes preparing dim sims, folding boxes for packaging companies, making ribbons and bows for chocolate boxes, and sewing cushions and other furnishings not covered by TCF awards. Certainly these non-TCF outworkers in Queensland and South Australia who already have some protections should not have those protections removed!

98. Consequently, **the definition of outworker in Section 12 of the Act needs to be broadened from those who work in the textile, clothing and footwear industries, or other wording must be found to protect the specific protections for our non-TCF outworker sisters in the Queensland and South Australian jurisdictions.**

Access to Information and Obligations throughout the Supply Chain

99. Further areas where the Fair Work Bill undermines the existing outworker protections are where the Bill does not accommodate the issues associated with the long supply chains in which outworkers are employed. An illustration of such a supply chain will help explain the problem.

100. For example (a real supply chain, without giving names) Fashion House A gives work out to Ms B, who gives out the work again to Maker C and several other makers. Maker C employs several workers in his garage at the back of his house but also gives out work to outworkers D, E and F and Maker G. The workers employed in the garage are being paid $4-5 an hour in piece rates, in breach of their current minimum award entitlements. The outworkers employed by Maker C are also receiving a similar rate of pay. Fashion House A does not employ outworkers, and may not seek to find out if Maker C is using outworkers to make their product. Fashion House A and Ms B both carry records that help to track and understand the volume, nature and price of work given to Maker C. Without

this information from Fashion House A and Ms B, Maker C was originally lying about the number of workers involved in carrying out the work he received from Ms B, but once the additional information was available he was forced to reveal his additional workforce. In this case, even Fashion House A was reluctant to co-operate with provision of information until Retailer Z, who retails his garments nationally, became involved and insisted on his co-operation.

101. The original investigation of this supply chain began when an outworker reported poor occupational health and safety conditions in her workplace and requested union intervention. Under NSW OH&S laws the union was able to conduct the initial investigations without notice and were consequently able to gather substantial evidence about a wide range of problems in the Maker C's garage workplace.

102. As this example starts to illustrate, it is important for the union and inspectors to have access to information and records at all levels of the supply chain in order to address the exploitation of the workers involved.

103. The use of the term “outworker entity” in Section 12 of the Bill is misleading as all the entities giving out work in this supply chain need to be involved, not just those which might be more directly described as an “outworker entity”. A better term needs to be found. Asian Women at Work support the suggestion of FairWear Queensland of “an entity giving out work”.

104. Section 57 says a modern award does not apply when an enterprise agreement is in place. This means on the face of it, that the outworker provisions in the award would cease to exist in a supply chain from such an enterprise agreement down through the supply chain. Section 200 attempts to deal with this by saying that outworkers under that agreement should not lose their protections, but it is more likely that the outworkers effected will be those further down the supply chain who are not covered by the enterprise agreement but whose protections will be removed by the making of the enterprise agreement.

105. New wording must be found for Section 200 that allow the retention of protections and monitoring provisions throughout the supply chain. As was done with WorkChoices, amendments are needed to the Fair Work Bill which prevent the contracting out of the outworker protections in the modern TCF Award.

106. Section 140 of the Bill needs to have a broader definition of what is allowable in an award in order to protect outworkers. The “outworker protections” include terms for wages and conditions for outworkers, as well as terms for monitoring the contractual arrangements that give rise to outworkers wages and conditions. Again an understanding of the nature of the supply chain and contractual arrangements need to be incorporated into the wording of the Bill.

107. Further in Section 140 the concept of an entity being “reasonably likely” to employ outworkers is problematic. In a context where Fashion House directors and union organisers have both been surprised at the extent of outworker engagement in some supply chains once detailed investigations were undertaken, then no-one can be the judge of who is “reasonably likely” to be employing outworkers. All entities in supply chains need to be covered by the

obligations.

108. Finally, the establishment of Boards of Reference or equivalent, where the giving out of work and the employment of outworkers are to be registered should be clearly included as terms allowed in modern awards.

Right of Entry in Textile Clothing and Footwear Industries

109. Asian Women at Work welcomes the Minister for Workplace Relations's indication that she is willing to consider additional rights of entry provisions for the TCF industries because of the extensive exploitation occurring in those industries.

110. We again support the submissions of FairWear and the TCF Union in relation to this matter.

111. Asian Women at Work have already outlined the extension of general Right of Entry provisions which we believe are important to protect migrant women workers under our point 87.

112. We believe the need for such extension of union right of entry terms is typically illustrated by the extensive exploitation and non-compliance with basic entitlements in the TCF industries.

113. In addition to what has already been said, we argue that the restriction of union entry in relation a residential premises be modified in the TCF case, as the sheer mobility of industrial sewing machines means sweatshops can readily be (and are regularly) established in garages and other parts of residential properties. Where the TCF union has formed a reasonable suspicion of TCF work being undertaken in a residential premises then right of entry should be allowed.

114. For the supply chain investigation reasons above, the requirement to have a worker covered by the TCF award on the premises where records are to be accessed should be modified to allow records to be accessed throughout the supply chain. This allows the union to gain a fuller picture of the volumes of work and where the work is going, and consequently uncover the existence of outworkers in order to protect them.

115. Right of entry without notice is particularly important for the TCF industry as providing notice has led in the past to the complete removal of a factory, or the absense of any workers on the day of the inspection, and/or the provision of falsified employment records.

National Employment Standards

116. Our employers rarely provide anything more than the minimum required of them, with many migrant women suffering wages and conditions below the legal minimums. We therefore seek a strong and extensive regime of minimum standards.

117. We welcome the improvements to the National Employment Standards (NES) which now have limitations on the amount of Annual Leave and Personal Leave that can be cashed out, always retaining a significant amount for the worker to access if they are ill and in order to take a genuine break. Without these limitations migrant women workers would have been left vulnerable to pressure to cash our entitlements at a danger to their health.

118. We also welcome the limit on the period of time for averaging of hours, although we continue to argue this should be averaged over one month rather than averaged over six months. We also welcome the qualification that a worker cannot be asked to work unreasonable hours in any one week, and that there is a good definition of how to determine what is reasonable and unreasonable.

119. **We believe the NES should be more extensive in its provision of minimum standards, including**

- **a national standard for dispute resolution, which includes access to arbitration from Fair Work Australia**
- **17½% leave loading for annual leave should be guaranteed**
- **Parental leave provisions should require employers to put reasons in writing if they are going to refuse part time work to a mother returning to work, and the NES should be clear that pregnant women can ask for light duties.**

Redundancy for Small Business Workers

120. Many of our members work in workplaces of less than 15 people. And many of our members work in manufacturing, which is generally in decline. Everyone knows someone who has been made redundant because their factory is reducing its size or closing all together.

121. Our members pay levels are very low. When they lose their job there is a huge financial burden, and they do not have significant savings to fall back on. As non-English speaking workers it can take them a while to find alternative employment.

122. Consequently, they are very concerned about the lack of redundancy pay for small business workers. Our members feel this is discrimination against them. Workers in small businesses work just as hard, and it could be argued work harder, than workers in larger businesses. Our members are highly dedicated to the companies they work for, and they have often been prepared to work beyond regular expectations for the sake of the business.

123. Redundancy pay gives them the greatest chance of some continuity of income.

124. **Asian Women at Work want the National Employment Standard to provide universal redundancy pay for all workers.**

125. If the Government want to protect small business then we believe the Government can look at some form of Redundancy Scheme to assist small businesses to manage this responsibility rather than removing this right from

workers.

126. **Additional measures that can be included to reduce the impact of redundancy on small business workers include**
    - **a requirement for consultation with workers in small business about potential redundancies and how they might be avoided**
    - **advanced notice of redundancy to allow workers to start seeking other employment**
    - **time off from employment allowed for workers to register with the Job Network and attend interviews for alternative employment.**

Protecting Entitlements of Vulnerable Workers

127. We are aware of a number of cases where companies under the current WorkChoices system have deliberately avoided their obligations to pay redundancy and other entitlements by re-structuring their businesses. We are very pleased to see the new laws around transfer or business and associated entities have gone a long way to address these problems.

Ms R worked for nearly nine years in a metalwork factory with 17 workers. Many of her colleagues had worked for more than nine years with this same small business. However the 17 workers in the one workplace were employed by two different "companies", one for the production and one for the ordering and finance. Both companies had the same boss and management.

When the boss closed down the two companies in mid 2008, none of the workers received redundancy pay nor the long service leave that they were almost due to receive. Before closing down the two companies, the boss opened a new company in his son's name on the same site and re-employed several of the workers. The business did not close its doors for one day in the transition of business from the two old companie to the new one. The workers who were retained did not have any of their years of service recognised by their "new employer".

128. Under the current industrial relations laws, Ms R and the other workers could do nothing about this situation. Ms R remains unemployed, having only been able to get some casual work from time to time since being made redundant.

129. Under the Fair Work Bill Ms R would be able to claim redundancy pay because of the associated entities employing more than 15 workers between them, because the definition of small business in Section 23 (3) includes associated entities as one entity when calculating the number of employees. Her colleagues would carry over their entitlements to long service leave (and possibly other entitlements also) with the transfer of business to a new employer, because of the transfer of business provisions in Section 22, and Part 2-8 of the Fair Work Bill.

130. These protections against sham arrangements aimed at avoiding responsibility

are very effective, and necessary to protect workers like Ms R and countless others who have been victims of such schemes.

Enterprise Agreements

131. The general framework for enterprise agreements is a good one, as are the consultation provisions. We have already addressed the issue of individual flexibility arrangements in agreements extensively elsewhere.

132. We remain concerned that in the dispute resolution procedures it should be that only Fair Work Australia can intervene and not other body, as we see this as a clear role for the expert industrial body rather than a proliferation of "players" who might seek to take this role.

133. **We believe some of the restrictions on the content of agreements are not necessary, and that employers and their workforce should be free to include other matters if they wish.** For example, the low paid clothing outworkers and sweatshop workers among our membership would appreciate it if enterprise agreements could include a commitment to sourcing uniform items from companies which are accredited under the Homeworkers Code of Practice to ensure clothing workers in their supply chains are being paid in accordance with the award minimums.

134. In addition we are most concerned that the period of only 7 days to approve a negotiated agreement is too short a time for a migrant woman workforce to understand the detail to the point of being confident to vote on that agreement. **We ask that this approval period for enterprise agreements be extended to 14 or 21 days.**

Good faith bargaining

135. These are excellent provisions. We have migrant women worker members in larger workplaces where unions have been actively supporting workers in their efforts to negotiate new enterprise agreements, but employers have refused to engage in the negotiating process. We have been astounded as several votes by the majority of the workers in favour of the union involvement in negotiations have been ignored by employers.

136. These good faith bargaining provisions will confirm and operationalise the democratic right of workers to request union involvement in their agreement making processes.

Low paid bargaining determination

137. The ability to negotiate a multi-employer agreement seemed like an attractive option until we discussed the notion with our members. Our members are adamant that their employers would refuse to participate in a multi-employer negotiating process.

138. If that is the case, then any assistance from Fair Work Australia with a low paid bargaining determination seems to be inaccessible, as the only references to such determinations we could find in the Bill were for multi-employer agreements.

139. If this is the case, **Asian Women at Work would argue that the low paid**

determinations should be extended to be accessible for single enterprise agreement making processes. If they are valuable and workable for multi-employer agreements, then they should also be for single employer agreements.

140. We are concerned as well, that there is a limit to a single intervention for a low paid determination. This assumes that the workers would have gained enough from the first experience to be able to then negotiate independently, however many of the factors which lead to migrant women workers being in low paid, vulnerable employment would continue to impact on their capacity to bargain in future negotiations as well.

Arbitration

141. **Arbitration from Fair Work Australia should be accessible for a range of issues and disputes, and not only as the absolute last resort for a small number of situations.**

142. The basic premise seems to be that employers and workers can resolve all issues for themselves, but this has not been the workplace experience of our members. The "resolution" is usually that migrant women workers are exploited, or treated unfairly, or have endured significant hardship in their workplaces.

143. Asian women workers are higly unlikely to go to a court to seek a remedy, for a whole range of cultural and socio-political reasons. However they can be sometimes convinced to take a case to a more informal Commission process in order to seek justice for themselves.

Conclusion

144. We commend these many issues to the Senate Committee and request that consideration for the protection of migrant women workers as some of the most vulnerable workers in Australia be in the forefront of your minds as you consider and develop the amendments to be made to the Fair Work Bill in order to ensure that the Bill lives up to its name.

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Attached – Cries from the Workplace