THE UNIVERSITY OF NEW SOUTH WALES

INDUSTRIAL RELATIONS
RESEARCH CENTRE

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Director

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27 January 2009

Mr 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,

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

The Industrial Relations Research Centre at the University of New South Wales strongly supports the points made in the Submission on the Fair Work Bill made by the Asian Women Workers Action Group. Research carried out by several Centre members indicates that specific protections are needed to reverse the erosion of workplace rights experienced by non-English speaking background migrant women since 1996. In particular we support the following arguments:

- *Unfair Dismissal Laws* – The need to be employed in a larger workplace for over 12 months, and the short time-frame for lodging a claim will disadvantage women from minority language backgrounds. Greater formalisation and transparency in the warning system are required;
- *Award Modernisation* – more explicit directions need to be issued to the AIRC about consideration of differential impacts based on gender and ethnicity in the process of rationalising awards – for example in reality many Asian women are unlikely to be in a position to gain offsets for the reduced TCF casual loading by seeking conversion to continuing status;

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- *Individual Flexibility Clauses* – there should be clearer limitations on what can be traded (particularly in terms of working hours), in line with the 'better off overall' principle. The translation of flexibility clauses into the languages of those to whom they apply must be mandated, together with a cooling-off period allowing a comparative analysis of what is being traded. A system of tight monitoring of the operation of award and agreement flexibility clauses should be mandated. Copies of agreements should be kept with time and wages records; the operation of the clauses should be reviewed after six months, and there should be a prohibition against offering broadly similar flexibility clauses to groups of workers as a way of undercutting a collective agreement.
- *Union Right of Entry* – The requirement that records can be investigated only if there is a reported breach will leave many migrant women workers without protection, and the need to give notice will allow cover-up measures . Right of entry without notice is particularly important in the TCF industry.
- *Outworkers* – The definition needs to be amended to cover the whole supply chain, by replacing the term 'outworker entity' by 'entity giving out work'. Either all outworkers should be deemed employees, or the definition of outworkers should be broadened in line with SA and Queensland legislation to cover all industries; and modern awards and the NES should explicitly cover this wider definition of outworkers. Modern awards should include provision for registering the giving out of work and the employment of outworkers.
- *National Employment Standards* – These should include a 17½% annual leave loading, a requirement that employers provide written reasons for refusal of part time work to a mother returning to work, and the entitlement of pregnant women to light duties.
- *Redundancy for Small Business Workers* – The NES should include universal redundancy pay for all workers, with assistance to small businesses in meeting this obligation. Other NES entitlements should include a requirement that small business employers consult with workers about approaches to avoiding potential redundancies; with advance notice and the provision of time off to seek alternative employment.
- *Bargaining, Enterprise Agreements and Access to Arbitration* - We believe that it is important to extend the approval period for enterprise agreements 21 days, in order to allow translation and consultation with workers of diverse langauge backgrounds. We welcome the inclusion of capacity for determination of multi-employer agreements where employers are resistant to settling in good faith, and believe that this capacity needs to be extended to single-employer agreement-making. Appeal to the Fair Work Australia umpire is vital key to the success of collective agreement-making when workers have limited bargaining power.

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- *Civil Remedies* – The retention of access to the informal arbitral processes of the Fair Work Australia Commission is vital for non-English speaking background women workers who have been exploited, or have endured significant unfairness or hardship in their workplaces, but who will be deterred from seeking redress through the Federal Court or the Federal Magistrates's Court. Nevertheless, we consider that the anti-discrimination provisions in the *Fair Work Bill* setting out workplace rights and adverse impact are valuable and deserve strong support as key elements of the legislation. We note that they are in line with the onus of proof provisions of the recent US Paycheck Fairness Act.

Yours sincerely,
(on behalf of Lucy Taksa and Anne Junor, Deputy Director)

Director

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