

Will the *Fair Work Act* Bring Improvements for Migrant Women Workers?

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Abstract

This non-refereed article is adapted from the paper presented on 21 August 2009 by Ms Angela Zhang, to the symposium, The Fair Work Act: Promises, Potential, Protections and Pitfalls. This symposium was designed to bring academic analysis together with voices representing low-paid workers. The community organisation Asian Women at Work, based in western and south western Sydney, believes that legislative reform will bring greater fairness at work only if it is accompanied by a concerted multilingual campaign to educate women of their legal rights at work, and their sources of redress. Employer education, union right of workplace entry, and an effective inspection regime are also crucial. The legislated minimum conditions in the National Employment Standards are seen as being set too low to offer real protection. Even if low-paid workers could access the new collective bargaining stream, the Individual Flexibility Arrangements that are mandatory in every collective agreement are likely simply to continue employers' power to dictate working arrangements. Whilst the Act improves the regulation of unfair dismissal, many migrant women will remain unprotected, because of small business exemptions. Nevertheless, in coming together to lobby and campaign, the women have found a source of strength and power.

Keywords

Community organisations; discrimination; economics of gender; economics of minorities; Fair Work Act, Australia; labour law; labour rights; migrant workers.

Introduction

Asian Women at Work is a Sydney-based community organisation with a membership of over 1300 migrant women workers, mostly from Chinese and Vietnamese backgrounds. We are best known for representing outworkers in the clothing industry, but our members also work in food, metals, packing, aged care, nails and beauty, hospitality and retail. Our work includes education and outreach, English classes and support groups, social activities and seminars, an evening information and referral service, as well as action groups that take up issues of common concern to our members. Any woman from our target group can access our services and activities, not just our members.

* Asian Women at Work

Since 2006 we have had an Action Group working on rights at work, which has been raising the voice of migrant women workers in the face of *WorkChoices* and during the development of the *Fair Work Act*. The Action Group has raised the issues in their communities, educated other members of Asian Women at Work, met with politicians, written letters and submissions and spoken to the Senate Inquiry (Senate 2009). We also put together a booklet of stories called 'Cries from the Workplace'. The highlights have been our trips to Canberra to meet politicians. Our women said, 'We thought we were not important, third class citizens in this society, but we went to Canberra and met with the decision makers of this country, and they listened to us. And then the politicians talked about us in Parliament. When we work together like this we are powerful'.

Who Are the Women We Work With?

Let me tell you a bit more about 'our women'. Our women are low paid. Some of them receive award wages, some of them receive below the award — for example, restaurant workers being paid \$8 an hour. Many of our women do not receive their full entitlements such as superannuation and overtime pay. Our women experience difficult working conditions — in workplaces that are very cold, or not properly ventilated; where they are pushed to work fast without breaks; where they are bullied and harassed by bosses and supervisors. Many of our women live in constant fear that they may be sacked, a situation that was worse under *WorkChoices*, as the message that came through strongly in the media was that employers could now do what they like. These are our women. They are women you would describe as being in 'precarious employment'.

Has Anything Changed Under the New Law?

So what does the *Fair Work Act* have to offer our women? We have had a big increase in phone calls from our members and others in our target group since the Global Financial Crisis, and even more since the new law started.

Bosses are using the financial crisis as an excuse to not pay people properly. One woman is doing administration and accounting work, but is being paid as a process worker. At the beginning the boss said that after three months he would pay her the right money. But after three months, he said he couldn't give her the right money because of the financial crisis. He said she should just keep her job and feel lucky. Her question is — do we have to accept this or should we stand up for our rights?

Lots of women have lost their jobs but their boss didn't pay their entitlements. Seven Vietnamese women were working in a Nails shop. They complained to us that the boss always asked them to do the housework at her home, and to look after her kids. The boss was not paying them the correct rate of pay either. Five of the women wrote to the boss then confronted her about the money she owed them. An argument broke out and the boss went to the police accusing one of the women of hitting her. The worker now has a temporary Apprehended Violence Order against her and is terrified.

In one sports clothing factory the workers were always paid correctly. But the company was sold and conditions have deteriorated. The new boss is employing

overseas students and women who are on Centrelink benefits. Five or six workers have been sacked. Only three of the original staff remain, and they feel they are only there to train the new people, who will replace them. We have informed the Textiles, Clothing and Footwear Union and they are already assisting the workers in this factory.

Many of our women work in small factories and small businesses, where the boss does not follow the law. What the boss says *is* the law.

What We Asked For In Our Campaign

A question asked over and over again by our women is 'How do we force the boss to follow the law?' To protect our women, we need three things: education; enforcement; and strong legal protections.

Education

Education is vital. It doesn't matter if the laws are better or not, if our women don't know or understand what is in the laws, or where to go to ask for help, then the *Fair Work Act* is not much use to our women.

The 2007 media campaign opposing *WorkChoices* was very successful. Now we need a campaign that highlights the things that *have* changed, the protections that *are* there, and who to contact for help. We have to be sure the quality of the help and information provided actually makes a difference in the working lives of these women. The Government's commitment to providing resources translated into community languages is a good start. But we are looking for much more in this area.

The improvements to union right of entry are welcome, as one of the most likely ways a migrant woman worker is going to learn about her rights at work is when a union organiser visits the workplace and talks to the workers. Our women, though, remain confused about where they can go for help. Many of our women are not in unions, although we encourage them to join. There was lots of talk about Fair Work Australia being a 'one stop shop' for everything, but only later we heard about the Office of the Fair Work Ombudsman. So they are not clear who they should be going to. More effective education about the role of the Office of the Fair Work Ombudsman is needed.

Intensive education for small business bosses is also very important, especially for those from a non-English speaking background who may be doing things they did in their country of origin instead of following the Australian system. The misuse of information about changes in workplace laws is common. Getting education programs to these employers is a challenge. We believe education for these bosses has to happen in the workplace, that education and enforcement need to be combined.

Enforcement

Throughout our campaign we consistently argued that we need proactive inspectors, as well as freedom for union officers to go into the workplace. We understand the *Fair Work Act* has given the government inspectorate a clear role in proactive

inspections, but we are not yet clear on how many inspectors there are and wait to see how effective they are in both responding to complaints and getting out into workplaces. We are starting to hear some good stories at least about the Ombudsman's Office being much faster in dealing with complaints, and better at chasing bosses who are doing the wrong thing.

In discussions about the new laws, our women made it clear that the regular visits of a union to their workplace have a significant positive impact on the workplace atmosphere and increase their likelihood of receiving their full entitlements. The improvements to union right of entry under the *Fair Work Act* are good but do not go far enough. We wanted unions to be able to inspect the work records of everyone in the workplace, regardless of union membership.

All the reasons that lead to the exploitation of migrant women also make them scared of joining a union. 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. Some have seen others bullied for being union members. 'If those English speakers are treated that way, what will the boss do to us?', they say.

We also wanted union inspection of records to be possible even when a breach was not reported. This would have helped 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 there to be a reported breach before records are investigated assumes that the workers have enough knowledge to understand what is a legal breach, and have enough confidence to report the breach and ask for help. This is not always the case with migrant women workers.

In addition we lobbied for unions to be able to visit workplaces without having to give notice. Our members' experience is that bosses use the notice period to hide problems, fabricate information about wages and conditions, and move workers to different jobs when the union visits. We were successful only in relation to the Textile, Clothing and Footwear union, because of the extensive documentation of long term exploitation of workers in these industries. This was a great win, along with several other special provisions for right of entry for the TCF industries.

Strong Legal Protections

Our women have minimal ability to negotiate improvements to wages and conditions for themselves. So the minimum protections in the National Employment Standards and awards are very important. We were very disappointed to see the way the NES was set up. It seems they researched what is the lowest minimum standard across Australia in all laws and awards, and that became the minimum in the NES. So rather than setting a positive standard, it lowered the minima for most workers.

Individual Flexibility Agreements concern us greatly. While they can only be about a small range of working conditions, and they have to be better than the award or workplace agreement, and they can be terminated with four weeks notice, there is no-one checking that the agreements are actually meeting these standards.

Some members have told us stories about being given a bunch of materials in English and being asked to sign them immediately, which they did. But they had very little idea of the content of all those papers. We are very concerned about what will happen when bosses ask migrant women workers to sign an individual flexibility agreement. They may say 'Yes' and sign the agreement, without really understanding or wanting to change their working arrangements.

After our submissions to the Industrial Relations Commission, extra requirements were included regarding Flexibility Agreements. We were not able to win the argument for some form of checking of individual flexibility agreements, but the Act does now require Fair Work Australia to do some research into these agreements. Asian Women at Work is asking our members to let us know if they are asked to sign an individual agreement, so we can contribute to any research work that is done.

In relation to Unfair Dismissal, it is good news that all permanent workers who have been in a job more than 12 months will now have some protection from unfair dismissal. This message needs to get out loud and clear to vulnerable workers, so they know that bosses can no longer sack them without any warning and without giving them a chance to improve.

However most of our women work for companies that fit the definition of 'small business', and they will continue to have limited protection. They only have to be given one warning, and it can simply be a verbal warning. In workplaces where women are threatened with dismissal for speaking up for themselves or as a means of pushing them to work faster, the employer can claim that any such threat is a 'warning'. Also, unless a warning is put in writing, some of our non-English speaking background women may not understand that they have been warned. Even if they understand the warning, they may not understand the reason or what is needed for them to improve. Written warnings are a minimum for all workers, and they should preferably be delivered in a formal meeting with a witness present, and an interpreter if necessary.

Finally, it is disappointing that redundancy pay has not been extended to all small business workers who lose their jobs because of changes in their workplace, particularly in manufacturing where many of our members are losing their jobs. Our members say, 'We pay the same tax as large business workers, we work very hard. Why should we not receive the same entitlements? It is not our fault we work in a small company. Why should we be punished? Our pay levels are very low. When we lose our job there is a huge financial impact, and we do not have lots of savings to fall back on. As non-English speaking workers, and in the financial crisis, it can take us a while to find a new job'. We want the Government to support a small business redundancy scheme to stop this discrimination against small business workers.

We were pleased, however, to see new laws put in place to stop tricky bosses from splitting up their businesses or closing down and re-opening to avoid paying redundancy pay and long service leave entitlements. A number of our women have been victims of such tricky arrangements in the past, and are glad others will have some protection.

Conclusion

In conclusion, our experience of lobbying and raising the voice of our women to those making the law has been very empowering for everyone in Asian Women at Work. Those directly involved have had their lives changed, and even those on the fringes who have heard the stories feel more powerful than ever before.

We are ordinary women, migrant women. We thought we were powerless, but we are not... and we will continue to work hard to improve our working lives.

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Authorial Details

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