
UNTOLD DAMAGE

Why women need new IR laws



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Introduction

Women workers are being hit hard by WorkChoices but many of their stories and the damage done has not been told.

Women working for smaller companies or in part-time and casual positions are being affected by WorkChoices and for women in lower paid industries, the laws further entrench their disadvantage.

WorkChoices reduces wages, creates a climate of fear, increases women workers' vulnerability and reduces their ability to have a say in their workplaces.

The laws take away protections from unfair dismissal, remove decent standards, reduce the ability to collectively bargain and decrease access to union support and representation.

Although the Rudd Government has taken initial steps to dismantle some aspects of WorkChoices, women workers in Australia continue to suffer from unfair laws in the workplace.

Women workers have an important role to play in the growth of Australia's workforce and economic prosperity.

New laws – beyond the scrapping of WorkChoices – are needed to protect the most affected and vulnerable in Australia's workforce. The Rudd Government's proposed laws do not go far enough and leave many of the worst elements of WorkChoices in place.

Ministers, Members of Parliament and Senators now have the opportunity to create a better working future for these women.

The Right to Collectively Bargain

Case study I Qantas Valet Parking

Former Qantas Valet Parking worker Michelle Girdler became a WorkChoices casualty in early 2008.

Michelle, along with about 30 other ASU members at Melbourne's airport were offered Australian Workplace Agreements (AWAs) on a 'take it or leave it' basis when a new contractor took over the valet service.

Most of the ASU members were women who found the customer service roles and shift work suited their home and family life. They were loyal employees who had worked at Qantas Valet Parking for an average of ten years.

The workers asked the new company, Equity Valet Parking, for a union negotiated collective agreement – just as they had before under the previous contractor. Instead they were offered AWAs that would last five years and take away conditions such as overtime and shift loading and paid meal breaks.

Because of the WorkChoices laws the company did not have to listen to the request for a union collective agreement by the workers. It only had to "recognise" the ASU as a bargaining agent and was not required to genuinely negotiate or act on any of the union's concerns about pay and conditions.

As a result, Michelle and most of her colleagues refused to sign the AWA and were forced to look for a new job.

"Equity Valet Parking did not have to act on our repeated calls for a collective agreement. We were not asking for anything new, just the same collective agreement that we had enjoyed under the previous operator. But in the end only AWAs were offered and after 18 years I finished working at the airport. I did not want to send a message to my children that it's ok to accept poorer working conditions," said Michelle Girdler.

The Right to Collectively Bargain



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We were not asking for anything new, just the same collective agreement that we had enjoyed under the previous operator.”

— Michelle Girdler

The Right to Collectively Bargain



The laws have to change. We're not asking for much. We just want a fair go and for management to treat us as they would like to be treated themselves."

— Irene Lewis

The Right to Collectively Bargain

Case study II Cash's Australia

Irene Lewis, 48, started working for textile company, Cash's Australia, in regional Victoria when she was in her 20s. She's a leading hand and makes woven name tags for uniforms and other clothing products.

When time came for the company and workers to renegotiate their collective union agreement (EBA) back in November 2007, Irene didn't think it would be any different from previous years when there had never been any problems.

"The company sometimes dawdled a bit, but they always did it, we always negotiated a collective union agreement with them that had fair conditions and decent wages. But this time they had different ideas," said Irene Lewis.

Under WorkChoices laws, companies are not required to enter negotiations for collective union agreements in good faith even when the majority of workers want a union agreement – as was the case at Cash's. So, in October 2007, the company introduced a non-union agreement that would strip workers of a number of their rights and entitlements. This non-union agreement was introduced even before the existing union collective agreement expired.

The workers at Cash's voted down the agreement and asked the company to negotiate a new collective union agreement with the TCFUA Victorian Branch. However, the company is still stalling all attempts to negotiate which has resulted in the workers not having received a pay increase since November 2006.

"I've never known the morale in the company to be so low", says Irene Lewis. "I'm angry that John Howard made these laws to encourage companies to do this sort of thing. The laws have to change. We're not asking for much. We just want a fair go and for management to treat us as they would like to be treated themselves."

The Right to Collectively Bargain

To protect women workers under the new laws:

- Employers must be required to start negotiating with a union that represents the workers as soon as the employees and the union have notified the employer.
- Employers must be required to negotiate with a union in good faith.
- Where an employer refuses to negotiate with a union or does not do so in good faith, the union must be able to take the dispute to Fair Work Australia.
- Fair Work Australia must have power to settle the dispute quickly and must have the power to arbitrate disputes.
- Penalties must apply if an employer is not bargaining in good faith.
- Legislation must be changed so there are no limits to what matters the parties can negotiate.
- Workers in all sectors must have the right to take protected industrial action in support of their claims. This must include the low paid sector where women predominate.
- Collective agreements must not provide for individual agreements to be entered into. These will undermine the terms of the collective agreement and can be used to disadvantage women.

Freedom of Association

Case study III Call centre workers



The company only consulted with the employees whose AWAs had expired, even though the new agreement was going to impact on everyone.

— Anonymous female call centre worker.

In May 2008 the ASU was contacted by call centre workers concerned about a new collective agreement being imposed by management at three offices in Melbourne.

The ASU found staff were being moved onto three-year agreements that only guaranteed a pay-rise in the first year and slashed Award penalty rates and conditions.

Shortly after the union's intervention, employees reported acts of intimidation and duress from company management. Some workers reported having their jobs threatened, while others witnessed acts such as the tearing down of union material in staff common areas.

The ASU took a number of duress allegations to the Workplace Ombudsman, but this was of little assistance during the short negotiating period for the new agreement. During the brief negotiating period the company continually tried to undermine the union's legitimacy and discredit its role as a bargaining agent and advocate.

Freedom of Association

The ASU assessed the collective agreement offer and determined that it would not pass the 'No Disadvantage Test', but because of the WorkChoices laws, the call centre company was not required to act on any of the union's concerns. The company was only required to 'meet and confer' with the ASU, a mere seven days before the agreement went to a vote.

As a final stalling tactic, the company requested formal 'proof' that the ASU was the bargaining agent – a process that can only be undertaken through the Workplace Authority Director. This caused further delays.

As a result, staff are being forced to await the assessment by the Workplace Authority to see if any improvements will be made to their agreement. It also means that some call centre staff have started looking for new jobs after being with the company for years.

Without adequate laws supporting their right to union membership and representation, more women workers will be forced to take poor conditions or look for a new job.

In mid September this year, the ASU was informed that the agreement has failed its assessment by the Workplace Authority. Staff are now waiting for improvements to be made to their agreement – improvements that were already identified by the ASU.

"The company only consulted with the employees whose AWAs had expired, even though the new agreement was going to impact on everyone. When we found out that the new agreement didn't give us paid holiday or sick leave, because all payments were being rolled into an hourly rate a number of us were really concerned and contacted the union. As soon as management found out that a group of us had joined the union, you could tell they were really annoyed about it. It made the whole period leading up to the vote even more intense." Anonymous female call centre worker.

Freedom of Association

To protect workers under the new laws:

- Fair Work Australia must be able to hear freedom of association allegations involving threats, pressure, discrimination or victimisation, that are made during the bargaining period of an agreement.
- Fair Work Australia must hear the matter within a 24 hour period and have the power to fully determine the matter, issue orders (including interim orders) and impose penalties. A party must be able to appeal any finding.
- Fair Work Australia must be able to fine an employer who recklessly fails to act when a union raises a genuine concern that the agreement is unlikely to pass the 'No Disadvantage Test' and a loss in pay and/or conditions is proven.
- Rights for union delegates must be protected by law.

Right of Entry

Case study IV Feltex



We need new laws that guarantee that workers can freely meet and speak with their union.”

— Milka Marinovic

Right of Entry

When workers at Feltex textile mill in the western suburbs of Melbourne requested a representative from the TCFUA Victorian Branch to come and speak to them about workplace issues they never imagined the meeting with their union organiser would have to take place in the women's toilet area.

Under the 'right of entry' regulations of WorkChoices, which are still in effect, companies have the sole discretion to allocate the meeting spaces that workers can use to meet with their union.

Milka Marinovic, 52, a carpet inspector at Feltex for over 20 years, said she was shocked and embarrassed that the company insisted that the meeting take place in the toilet area.

"When I saw the organiser waiting in the toilet doorway, I thought to myself, what is she doing in there and then when I found out I couldn't believe it. It's wrong for a company to do that," said Milka.

It is not the first time the workers and the union have had trouble with right of entry issues at Feltex. On numerous occasions the union has been denied access to the site and workers have had to meet union organisers outside the company gates on the side of the road.

"The union needs to have access to the site. When a worker calls the union and needs them, they should be able to come and speak with them at any time. We need new laws that guarantee that workers can freely meet and speak with their union," says Milka.

Right of Entry

To protect women workers under the new laws

- Legislation must be changed to remove the right of an employer to select the room the union can meet in.
- An employer must not be able to change the venue that the union normally meets in, without the consent of the union.
- Fair Work Australia must have the power to quickly settle all disputes about right of entry and any member of Fair Work Australia must be able to hear the dispute.
- Penalties must apply to employers who deny workers the right to meet with their union.
- Where a dispute is ongoing, the union must still be allowed right of entry.
- Unions must have the right to check time and wages records of all workers without being required to have union members and without having to disclose union membership.

Safety Net – The Award System

Case study V Outworkers

Many workers in the textile, clothing and footwear industries in Australia work from their homes as ‘outworkers’ making up or working on garments and articles. Workers in this largely hidden workforce are usually isolated, often exploited and rarely receive basic entitlements such as superannuation or sick leave.

Hong Ly, aged 55, has worked as a sewing machinist from her home for more than 20 years making garments for a range of women’s fashion labels. On many occasions Hong has been paid as little as \$3.00 an hour and sometimes was not paid at all.

“I work very hard and get little money. Many time I work seven day a week for 10-12 hours a day. Sometimes I even work overnight to finish an order. But I cannot receive extra money for overtime. I don’t have sick leave. I don’t have holiday pay,” said Hong.

Homeworkers in the textile, clothing and footwear industry have very little bargaining power and have trouble ensuring that they receive their legal entitlements.

“I tried to bargain with my boss and he said he will send the job to someone else. So I have to keep on working like this because we need the money for life, for our family,” said Hong.

For women workers like Hong who have little chance of negotiating or being included in collective agreements, basic legal minimum conditions are needed to act as a safety net to ensure their fair treatment and protect them from exploitation.

Safety Net — The Award System



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I tried to bargain with my boss and he said he will send the job to someone else. So I have to keep on working like this because we need the money for life, for our family.”

— Hong Ly

Safety Net – The Award System

“You know it is hard for women who work at home. They have to look after the children and work hard for long hours. They don’t get any benefit and they cannot bargain by themselves. They need the government to look after them to get the right conditions. The government should talk to the company and tell them to pay good wage to us and give us good conditions. The law needs to be improved to make sure that all workers can have rights and get fair pay and conditions,” says Hong.

Currently there is no national, federal legislation which provides minimum entitlements for outworkers. The safety net for these workers, as for 1.6 million other workers, is the award system.

Under the Howard Government the content of awards was significantly reduced and the safety net was stripped back. The current government has initiated a process to modernise the award system and reduce the number of State and Federal Awards. It has also required the insertion of an individual flexibility clause in each modern award.

This clause permits an employer and a worker to agree to contract out of certain award entitlements. This clause allows for individual agreements by another name. It is in fact arguably worse than the previous government’s system of AWAs which were assessed by a government body (although retrospectively), and in this respect provided a modicum of protection that workers’ entitlements and conditions were not being undermined. In contrast individual flexibility arrangements reached pursuant to the award clause will not be subject to external scrutiny, nor are workers guaranteed the right to be represented.

Safety Net – The Award System

To protect women workers under the new laws:

- The award modernisation process must not result in a reduction of the safety net.
- Modern awards must protect current entitlements and conditions and must reflect the safety net.
- The content of modern awards must not be restricted, and all matters necessary to the maintenance of the safety net must be included.
- Modern awards must contain effective dispute resolution processes, including a power for an independent tribunal to arbitrate disputes about award terms.
- There must be significant penalties for breaches of awards.
- Unions must be able to enforce award breaches and have effective right of entry to monitor award enforcement.
- The model award flexibility clause must be modified in awards to ensure that workers are not disadvantaged and that workers have a right to representation by their union.
- There must be national legislation enacted to protect all outworkers in Australia.

Protection from Unfair Dismissal

Case study VI

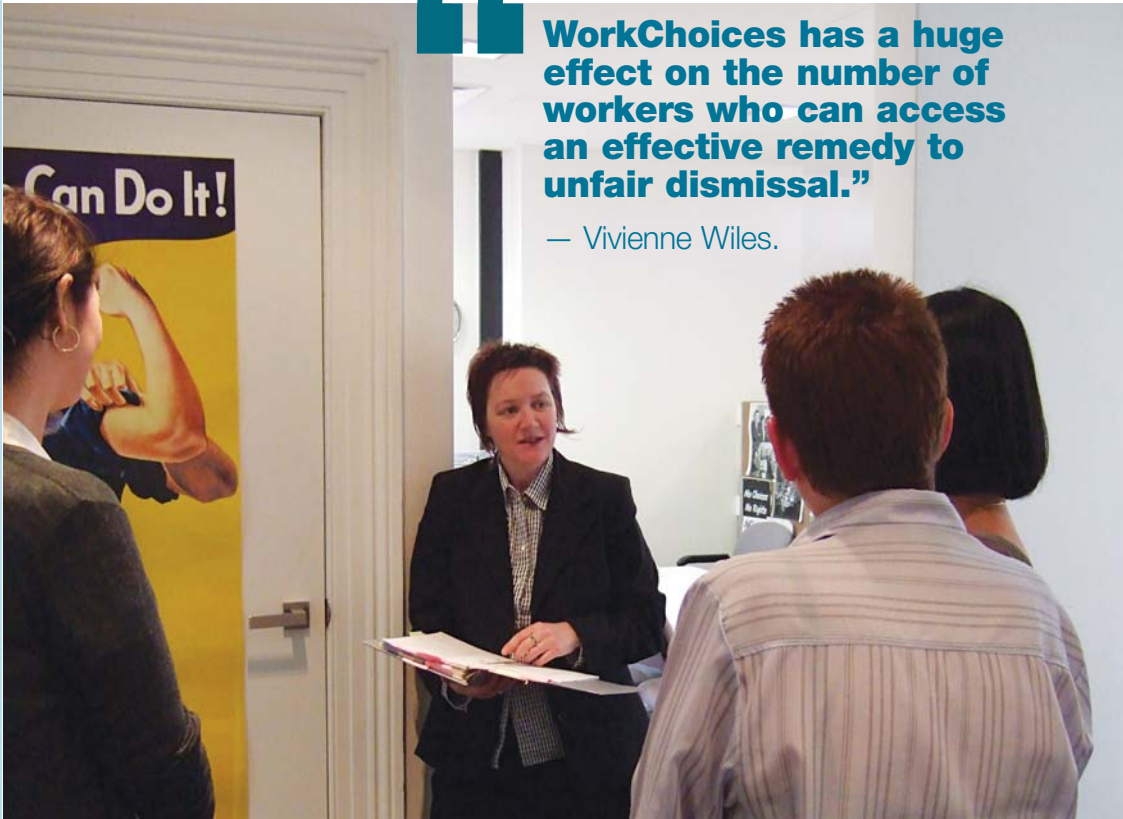
TCFUA Victorian Branch experience

Vivienne Wiles, 47, has been the Industrial Officer for the TCFUA Victorian branch since 2000 and has seen a dramatic reduction in the protection women workers have from unfair dismissals.



WorkChoices has a huge effect on the number of workers who can access an effective remedy to unfair dismissal.”

— Vivienne Wiles.



Protection from Unfair Dismissal

“Before WorkChoices we would usually get one or two enquires each week about unfair dismissal cases and run about five conciliations a month, the majority of which were settled between the parties with the assistance of the independent tribunal. Since March 2006, I’ve probably only been involved in two or three a year.” said Ms Wiles.

Prior to WorkChoices there was a remedy to have arbitrary or unfair terminations heard and determined by the Australian Industrial Relation Commission through both conciliation and arbitration. But when the WorkChoices laws were introduced, people at companies with less than 100 workers, could no longer bring any unfair dismissal claims against the companies.

“Because there are so many small to medium sized companies in the clothing and footwear sector, WorkChoices hit hard and given the make up of the people in this industry, it had a disproportionate effect on older migrant women,” said Ms Wiles.

WorkChoices has also seen many companies with over 100 workers terminating employment for ‘operational reasons’ which can be interpreted very broadly and is also exempt from unfair dismissal claims.

“WorkChoices has a huge effect on the number of workers who can access an effective remedy to unfair dismissal. Obviously cases of unfair dismissal are still occurring, but now there’s simply no avenue of redress,” says Ms Wiles.

The current laws only give workers the costly avenue of taking their cases to the courts. The laws need to be changed to protect women workers from unfair dismissal.

Protection from Unfair Dismissal

To protect women workers under the new laws:

- Reinstigate unfair dismissal rights for all workers which allow workers to take their complaint to an independent tribunal to have their case heard (including where a worker has been dismissed for operational reasons).
- This independent tribunal must be low cost, and provide a speedy resolution to the matter. It must have the power to award compensation and/or reinstatement.
- There must be no differential treatment for workers in small businesses under the unfair dismissal laws.
- In particular, the proposed Fair Dismissal Code for Small Business must not become part of the law – it imposes further hurdles to workers in small businesses to access unfair dismissal protections, including longer probationary periods, unfair processes and the denial of legal representation. It is rough justice at its worst and will disproportionately impact upon women workers.

The Need for an Independent Umpire

Case study VII

Toll Dnata

Maria Scafi and other customer service check-in staff knew they were being short-changed when they each signed an Individual Transitional Employment Agreements (ITEA) with a new airline company in May this year.

The ASU assessed the contracts and determined that staff were going to be up to \$5,000 a year worse off, when compared to the relevant Award. The ITEAs were based on AWAs that were still in the queue at the Workplace Authority, to be assessed against the Fairness Test. The AWAs and ITEAs included no penalty rates or shift allowances and overtime will only be paid after a worker completes 1,786 hours a year.

Due to flight scheduling, Maria and her colleagues start their shifts at 3.45am, 4.00pm or 11.30pm - a decent wage and penalty rates are important when you trade off sleep and time with family and friends. With no independent umpire available during the short negotiating period, staff were left with no option but to sign on the dotted line if they wanted a job. Maria and her workmates have found the whole process frustrating and protracted.

Then in September this year, more than eight months after the first AWA was signed and six months after the first ITEAs were signed, the Workplace Authority notified staff that their employment contracts had not passed their relevant tests.

Now staff must wait again as the process to correct the contracts and under-payments occurs.

“I have two kids aged eight and 12 years old and a mortgage so I rely on my income to support our family, but it was hard going to work everyday knowing that I was being underpaid. Everyone at work was frustrated because our union knew our employer was under-cutting our Award but the company did not have to listen to them. There was little that we could do until the contracts were assessed by the Workplace Authority and now we have to wait again while back-pay is determined,” says Maria Scafi.

The Need for an Independent Umpire



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I have two kids aged eight and 12 years old and a mortgage so I rely on my income to support our family, but it was hard going to work everyday knowing that I was being underpaid.”

— Maria Scafi

The Need for an Independent Umpire

To protect women workers under the new laws:

- Any agreement, including a 'Greenfield Site Agreement', must pass the 'No Disadvantage Test' before it begins to operate.
- Approval by Fair Work Australia 'on the papers' is not satisfactory where the employer and a union dispute the meaning and effect of terms and conditions contained in an agreement or dispute the appropriate underpinning Award. There must be an avenue, for either party, to apply for a hearing before Fair Work Australia so that Fair Work Australia can properly assess whether an agreement passes the 'No Disadvantage Test'.
- Once a determination has been made, there must be an avenue to appeal a decision made by Fair Work Australia. In such matters Fair Work Australia must provide a prompt determination.
- The role of the independent umpire must be to hear any dispute regarding the award, workplace agreement or any other employment matter. This must extend to covering matters outside bargaining periods and conciliation and arbitration matters.



Conclusion

The majority of members of the ASU, Victorian Private Sector Branch, and the TCFUA, Victorian Branch are women.

In addition to the case studies presented in this document, reports such as *Women and WorkChoices: Impacts on the Low Pay Sector and Down*¹ and *Out with WorkChoices: The Impact of WorkChoices on the Work and Lives of Women in Low Paid Employment*² demonstrate the negative impact that WorkChoices is having on women workers.

The truth is that under WorkChoices women:

- Earn less
- Have their predictability of pay and hours reduced
- Lose entitlements such as shift allowances and penalty rates
- Have their ability to negotiate and bargain with their employer weakened
- Have their ability to have a greater say in their working conditions reduced
- Are more insecure about their jobs
- Face the threat of retaliation and dismissal for raising complaints in the workplace
- Struggle financially as a result of change at work.

Ministers, Members of Parliament and Senators now have the opportunity to make sure new laws – beyond the scrapping of Work Choices – are created to protect women workers who are working in lower paid industries.

Specific laws and rights need to be introduced to assist working women. The stories of these workers should no longer remain untold.

1. Elton et al (August 2007)

2. Baird, Cooper and Oliver (June 2007)

**To assist women workers or for
more information contact
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