

Workers' Rights

CASE STUDY

Outworkers

Mai is a migrant from China with limited English who has been working at home sewing shirts for five years. She is paid per item and earns between \$2 and \$3 per hour. On average Mai works 12 hours per day, up to seven days a week. This means she earns \$170 to \$250 per week. In order to meet deadlines, Mai often needs the help of her 10- and 12-year-old daughters. Sometimes her children work 3–4 hours at night and up to 10 hours on the weekends. Mai has not been paid for the work that she did three months ago and is struggling to pay the bills.¹

CASE STUDY

Freedom of association and collective bargaining

Sam has worked for a company for 20 years. His employment conditions are in a collective agreement negotiated through his union. The company wants workers to leave the union and is offering better pay if they sign individual contracts which will not allow them to be represented by a union. Sam needs a pay rise but wants the union to be able to represent him and others in the future.²

Julie went to a job interview and was told that there were no unions in the workplace and that she had to sign an individual contract if she wanted the job.³

Workers' rights in international conventions

The *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognise the rights to:

- work
- just and safe conditions of work
- non-discrimination at work
- equal pay for equal work; and
- form and join trade unions.⁴

The International Labour Organisation (ILO) is a United Nations body consisting of government, employer and union representatives. It has developed many conventions on workers' human rights, which many governments, including the Australian Government, have signed. These cover:

- prevention of forced labour⁵
- safe working conditions
- non-discrimination at work
- equal pay for equal work⁶
- minimum age of employment to prevent child labour;⁷ and
- the right to organise trade unions and to negotiate working conditions collectively.⁸

However, the rights in the signed Conventions have never been fully implemented into Australian law. We are left with scattered protections in some state and Commonwealth legislation.

Current Australian policy on workers' rights

Australia has federal and state industrial laws, which set minimum standards for employment.

The *Workplace Relations Act 1996* is the main federal law covering workplaces in Australia. It includes maternity and parental leave,⁹ equal pay for equal work,¹⁰ and recognition of the role of unions.¹¹

➔ For more information on equal pay see fact sheet N^o 14: **Women's Rights** and fact sheet N^o 2: **Age Discrimination**

State industrial laws generally provide for minimum wages, and annual and sick leave. However, for Victorian workers these areas are covered in the *Workplace Relations Act 1996*.¹²

This Act also enables employers to implement individual workplace agreements (Australian Workplace Agreements), which can deny the right to collectively negotiate through unions.

Anti-discrimination laws make it illegal to discriminate in the workplace on the grounds of sex, race or disability. Occupational health and safety laws promote a safe working environment.

Rights not protected in Australia

While Australia has signed many important international Conventions, these standards have not always been put into practice and have sometimes been breached.

Outworkers

Over the last ten years, the number of outworkers has increased. There is some legislation that attempts to protect them. But outworkers are easily exploited because they work on an individual basis, often have limited English, and don't know about their rights.

In Australia many are paid on a per-item basis and often do not receive the minimum hourly wage. Sometimes they receive no payment for their work. They receive no sick leave or annual leave, have limited or no occupational health and safety

CASE STUDY

Unreasonable hours and family responsibilities

Sarah has been working as a telesales operator for several years. The company recently rescheduled the roster. Sarah's rostered start time is now 6.30 am rather than 8 am. This change is incompatible with caring for her three children. The company has refused to allow Sarah to swap her shift with a colleague who has been rostered to start at 7.30 am.¹³

protection, and receive no workers compensation if injured at work. These conditions breach many national and international human rights standards.¹⁴

Right to collective bargaining

The ILO has concluded that, in practice, Australia's *Workplace Relations Act 1996* allows employers to deny the right to collective agreements. The ILO has consistently requested that the Australian Government amend the legislation to bring it into line with the *Convention on the Right to Organise and Collective Bargaining*. In a case about the 1998 waterfront strikes, the ILO again found that the *Workplace Relations Act 1996* was in breach of the right to negotiate work conditions collectively. To date the Federal Government has not taken the necessary steps to address this fundamental breach of human rights in the legislation.¹⁵

International example of workers' rights protection

Overseas examples demonstrate the extent to which the protection of workers' rights can be improved. For example, in Finland the Constitution and legislation guarantee everyone adequate social, health and medical services, including child-care for working parents. In a recent case one parent in a couple could not work for several weeks because of the municipality's delay in arranging child-care services for their two children. The Helsinki Court of Appeals held that parents have a right to have their child in municipal day-care until the child begins school.¹⁶ In this case the local authority was held responsible for the financial loss it caused to the parent as a result of its delay in arranging day-care places.

Improving workers' rights in Australia

Workers' organisations have improved working conditions through organising workers and by influencing law and policy makers. Unions have also taken test cases through industrial tribunals.

The Australian Council of Trade Unions' (ACTU) reasonable hours test case in the Australian Industrial Relations Commission is a positive example. This case established the right of workers to refuse to work overtime when doing so would result in the employee working unreasonable hours. In recognition of the adverse effects on employee health and their

families, the Commission ruled that workers may refuse to work overtime if there is a risk to the worker's health and safety or on the basis of family responsibility. However, such improvements are not guaranteed and can be reversed.

Protection of workers' rights in line with international standards is required to prevent unfair treatment at work.

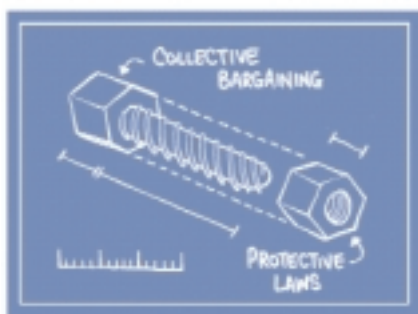
➡ For options about protecting human rights through a Charter or Bill of Rights see fact sheet N° 1: **Background to Human Rights**

REFERENCES

- ¹ Based on "Mai" case study from the Fairwear web site: www.fairwear.org.au (accessed on 1/4/2004) and *The Law Report* on Radio National: www.abc.net.au/rn/talks/8.30/lawrpt/stories/s831469.htm (accessed on 1/4/2004).
- ² Case study based on Australian Industrial Relations Commission, Decision 054/96 S Print M8600, 26/1/1996.
- ³ Case study reported to the Public Interest Advocacy Centre.
- ⁴ ICESCR, Articles 6, 8 and 7 respectively.
- ⁵ ILO Conventions 29 and 105.
- ⁶ ILO Conventions 111 and 100.
- ⁷ ILO Conventions 138 and 182.
- ⁸ ILO Conventions 87 and 98.
- ⁹ *Workplace Relations Act 1996* (Cth) Part VIA Division 5 and Schedule 14 give effect to the ILO 1981 *Workers with Family Responsibility Convention 156*.
- ¹⁰ *Workplace Relations Act 1996* (Cth) Part VIA Division 2 gives effect to ILO 1951 *Equal Remuneration Recommendation 90* and the 1958 *Discrimination (Employment and Occupation) Recommendation 111*.
- ¹¹ *Workplace Relations Act 1996* (Cth) Part XA.
- ¹² *Workplace Relations Act 1996* (Cth) sections 500, 501 and Schedule 1A give effect to minimum terms and conditions, including annual, sick and maternity leave for Victorian workers and give powers to the Australian Industrial Relations Commission to set and adjust minimum wages for employees within a work classification.
- ¹³ Based on a case cited on the NSW Department of Commerce, Office of Industrial Relations web site, www.dir.nsw.gov.au/action/policy/w&f/2001/general.html (accessed on 7/11/2003).
- ¹⁴ Senate Economics Reference Committee, *Outworkers in the Garment Industry*, Canberra, 1996, pp xi-xii.
- ¹⁵ *Complaint against the Government of Australia presented by the International Confederation of Free Trade Unions (ICFTU), the International Transport Workers' Federation (ITF), the Australian Council of Trade Unions (ACTU) and the Maritime Union of Australia (MUA)*, Report No. 320, Case No. 1963.
- ¹⁶ Helsinki Court of Appeals, 28 October 1999, Case No. S 98/225.

WORKERS RIGHTS

WHAT THE INTERNATIONAL CONVENTION DESIGNED:



WHAT THE AUSTRALIAN GOVERNMENT BUILT:

