

<b>Date submitted</b>	<b>22/09/2008</b>	
<b>Name of Organisation</b>	<b>Humanitarian Organization for Migration Economics (HOME); endorsed by Transient Workers Count Too (TWC2)</b>	
<b>Contact Details</b>	<b>Mr Jolovan Wham; jolovan@gmail.com</b>	
<b>Summary of Feedback</b>	<p>Amendments and proposals suggested are based on HOME's experience running its help desk and helpline for migrant workers. Over the last 4 years, HOME has assisted and documented the cases of over 2000 migrant workers (domestic and non-domestic) TWC2 endorses HOME's views based on its own findings from the operation of its helpline (which handled 544 calls from workers in its first year and a half), as well as from other extensive contacts with migrant workers</p> <p>These proposals are meant to ensure that migrant workers, who make up almost half of the 1.4 million workers covered by the Act are given sufficient statutory protections to prevent serious abuses of their rights.</p> <p>We believe that our proposals will benefit migrant and local workers alike.</p> <p>Our proposals, in summary are:</p> <ol style="list-style-type: none"> <li>1) Enhance the powers of the Commissioner for Labour in the enforcement of Labour Court Orders</li> <li>2) Extend the time bars for claims made by employees</li> <li>3) Introduce a minimum wage for migrant workers, including migrant domestic workers</li> <li>4) Include migrant domestic workers under the ambit of the Act</li> </ol>	
<b>No</b>	<b>Amendment</b>	<b>Rationale</b>
1	The Commissioner for Labour should be given the powers to administer all enforcement procedures for Orders made by the Labour Court, and the cost of enforcement should be charged not to the workers	<p>1) Low wage workers including migrant workers who lodge complaints at the Ministry of Manpower will usually go through several mediation sessions arranged by officers at the Labour Relations Department. When mediation fails, the disputes are brought before the Labour Court for adjudication.</p> <p>2) However, the enforcement of Labour Court</p>

<p>but to the errant employer</p>	<p>Orders is an uphill task for workers in the event that employers fail to comply with the order. Separate proceedings have to be filed in the District Courts (or the high Courts for certain applications) to enforce the order. Low wage migrant workers often find this protracted process costly and confusing. The two most common options given to workers to enforce the order are:</p> <p>(a) Writ of Seizure and Sale The court bailiff is directed to seize from the debtor property to be auction for sale to settle the judgment debt. Those workers who choose this option need to put up a minimum deposit of \$150 or \$800, depending on the value of the debtor’s property including the bailiff’s transport costs and the time spent (\$50 per hour) in execution.</p> <p>(b) Garnishee Proceedings. Garnishee applications are commenced by way of Summons and a supporting Affidavit. More often than not, the worker will be completely bewildered by the arcane rules, forms and procedures required. All in all, the worker would have to file no fewer than six (6) documents before he can obtain a single cent from the Garnishee application. The costs are also quite prohibitive for the worker as he has to pay the filing fees for the Summons (\$20), Affidavit (minimum \$10, depending on the number of pages), Garnishee Order (\$50), oath fees (\$25), etc. (the fees mentioned do <i>not</i> include the EFS surcharges and other costs related thereto). If the Garnishee application is unsuccessful, the worker will not be able to recover the above costs and charges incurred by him.</p> <p>(3) The administrative procedures and costs involved in enforcing judgment orders are a deterrent for many. Even with the assistance of a lawyer; it is an option that few can afford. Moreover, a migrant worker’s legal stay in Singapore is not guaranteed because the enforcement of a Labor Court Order is not within the ambit of the Employment Act. Government agencies generally do not extend the stay of foreigners pursuing non- statutory claims. The proposed change should help to ensure that the</p>
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		purpose of the Labour Court in making findings in favour of foreign workers are not thwarted by the lack of resources of those individuals.
2	Amend Part XV 115 (2) which limits the Commissioner from inquiring into matters earlier than one year from the date of lodging the claim and limits the claimant from pursuing claims after 6 months of leaving employment	<p>(1) Current provisions limit the Commissioner from inquiring into any dispute in respect of matters arising earlier than one year from the date of lodging the claim. They also require all claims to be lodged within 6 months of the claimant leaving employment. While we agree to the need for time limits to be placed on claims, one year and six months respectively are too short. What is the rationale for deciding on these time limits?</p> <p>(2) Employment contracts and work permits of migrant workers are usually valid for 2 years. The Commissioner should be able to inquire into disputes in respect of matters arising from 2 years from the date the claim is being lodged. Similarly, the time period for making a claim after a worker has left employment can be extended to one year. The Work Injury Compensation Act allows workers to make accident claims any time within one year of the date of the accident. The same can be done for workers with Employment Act claims.</p>
3	Introduce a minimum wage for migrant domestic and non-domestic workers	<p>(1) The absence of a minimum wage law has led to situations where migrant domestic workers are paid dismally low wages that are a fraction of what other workers in comparable sectors receive. For example, cleaners in industrial establishments earn a mean basic salary of S\$768 while a gardener earns a mean basic salary of S\$903.<sup>1</sup> The starting salary of many domestic workers, on the other hand range from S\$200 to S\$350. This is in contrast to the wages of their counterparts in Hong Kong, who are paid a minimum of S\$640 (HK\$3480). The wage levels of domestic workers in Singapore are also vulnerable to market forces and employment agency practices, which set wage levels according to nationality rather than ability, experience and skills. This latter practice would be utterly unacceptable in the employment of members of Singapore's own diverse communities and conflicts with our national ideals.</p>

<sup>1</sup>

Singapore Year Book of Manpower Statistics, 2008, Ministry of Manpower

		<p>(2) Similarly non-domestic workers may face similar situations of gross underpayment with wages going as low as \$14- \$16 a day for a shipyard worker or a worker in the conservancy sector. Employers may also decide the wages of such workers arbitrarily, leaving them with little room for recourse because of the unequal balance of power between both parties.</p> <p>(3) Setting a minimum wage sends a clear signal to employers about acceptable levels of payment for poor workers with weak bargaining rights, and protects them from the unpredictability of market fluctuations. The National Wages Council and other relevant government agencies can make periodic reviews of minimum wage levels to ensure it meets the needs of workers and the economy. The setting of a minimum wage for these migrant workers has a clear rationale as a measure to assist particularly low paid workers who have little or no means of ensuring pay commensurate with their work.</p>
4	Invoke Part VII to cover Domestic Workers under the Act	<p>Domestic workers, including migrant domestic workers, should be covered by the Employment Act in the following areas:</p> <p><b>(1) Notice of termination</b></p> <p>Based on our experience with providing assistance to displaced migrant domestic workers, abuses take various forms, such as, inadequate food, long hours of work, verbal and psychological maltreatment. When such cases are referred to the Ministry of Manpower, the complaints are generally deemed 'no case' and the women are immediately deported unless the employers give a written consent to reinstate their employment.</p> <p>If the domestic worker is covered by the Employment Act, there would be legal provisions for the termination of a contract by either party under Part II of the Act. An employer will therefore not be able to terminate an employee without the required notice period or the payment of notice in lieu, or immediately dismiss her without the due process of inquiry.</p> <p><b>(2) Maternity protection and benefits</b></p> <p>Presently, work permit and security bond conditions</p>

prohibit female work permit holders, including domestic workers, from getting pregnant. Such a discriminatory regulation should be repealed. Instead, the work permit holder should be protected by Part IX of the Employment Act, where provisions relating to maternity leave and other benefits are rights currently accorded to other female employees.

**(3) Rest days, hours of work, holidays, sick leave and annual leave**

Some of the intended protections of the conditions of the work permit issued under the Employment of Foreign Manpower Act are undermined by their uncertain wording. What constitutes ‘adequate rest’ is not presently defined, for example. Provisions for rest days depend solely on what is agreed upon in a contract. However, the current standard employment contract agreed by the accreditation bodies, CASETrust and AEAS, does not guarantee regular days off to workers. Clause 12, which appears at first sight to ensure that workers will receive at least one day a month off, is undermined by the acceptance that even this may be given up by workers in return for financial compensation. Workers are usually not in a position to say ‘no’, and so their consent cannot be considered to be given freely. The contract also does not have provisions to ensure migrant domestic workers are entitled to a minimum number of days for paid sick leave, paid annual leave, and public holidays. It also does not specify expected work hours or provide for remuneration for overtime work.

Hence, it is our view that the protection of migrant domestic workers under a standard contracts is inadequate because a weekly rest day is the right of all workers. Where the domestic worker is required to work overtime on her rest day or holiday, she should be compensated in accordance with current labour legislation. Similarly, minimum standards of paid annual and medical leave should be stipulated. These basic rights and benefits are provided for in part IV of the Employment Act.

It is the view of HOME and TWC2 that there is a need for additional protections for domestic workers, appropriate to their particular circumstances, such as

		ensuring that they receive sufficient food and that their right to privacy is respected, but we acknowledge that instruments other than the Employment Act need to be adapted to ensure comprehensive protection.
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