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Proposals – Second Phase Review of the Employment Act and the Employment of Foreign Manpower Act

1. BACKGROUND & GLOSSARY

The following proposals are provided by Transient Workers Count Too ('TWC2') in response to the call for public submissions by the Ministry of Manpower ('MOM') in July 2013 in connection with the 'second phase' of its review of the Employment Act ('EA') and the Employment of Foreign Manpower Act ('EFMA'). By way of background, TWC2 previously provided submissions in relation to the preceding phases of MOM's recent review of these Acts including a submission dated 4 June 2012, followed by a letter to MOM in August 2012 in response to proposed amendments to the Employment of Foreign Manpower Act and a subsequent submission dated 10 January 2013 in relation to the amendment of the Employment Act.

TWC2's proposals address the specific issues identified by MOM under its second phase review, namely:

(i) Protection for workers under non-traditional work arrangements such as term contract workers, outsourced workers and freelancers maintaining business flexibilities (see part 4).

(ii) Additional protection for vulnerable low-wage workers (see part 5).

(iii) Circumstances under which foreign workers could be allowed to change employers (see part 6).

1.01 Glossary

In the paper, there are a number of new concepts. For easy reference, we list here the working names we have given to these concepts each with a brief explanation.

"Bilingual versions" of documents: Documents with two languages co-appearing on the same page; distinct from documents with different languages on different pages.

"Foreign workers assistance fund": A new MOM-managed fund financed either by dedicating some portion of the existing levy, or through a new mechanism based on the Controller's powers to require 'security' under regulation 12 of the Employment of Foreign Manpower (Work Passes) Regulations ('Work Pass Regulations'), and meant to provide salary relief to workers with salary claims against disappeared or bankrupt employers, and to provide these workers with accommodation and related support which disappeared or bankrupt employers would normally be required to provide. More discussion in Section 3.02.

"Job Search Special Pass": a 30-day Special Pass given to foreign workers as a matter of course (unless permanently incapacitated or convicted of a serious crime) to enable them to find a new job, after the cessation or loss of an earlier job or promise of a job (as indicated by having received an In-Principle Approval and air-ticket to Singapore); this Job Search Special Pass should be routinely extendable by a further 30 days upon the worker's request.

"Monetized upkeep and maintenance": the monetary equivalent of an employer's or former employer's obligation to provide upkeep and maintenance to foreign employees under Work Pass Conditions, rated at two-thirds of Average Monthly Earnings, payable through the worker's bank account in the same manner as his salary, and subject to the same punctuality conditions as monthly salary; this is separate from an employer's or former employer's obligation to provide accommodation and meals (where so stipulated below), and medical care.

"On-going employment": a contract of employment with no predetermined cessation date; it may be subject to renewal of a work pass, but should that work pass be renewed, employment is considered as continuing, rather than as a new contract.

2. EXECUTIVE SUMMARY

A number of the specific recommendations set out in this submission are underpinned by three key themes, namely:

(i) that it is in the best interests of both the Singaporean community and foreign workers for foreign workers to be employed in period for extended periods of time in Singapore;

(ii) foreign workers need to have simple, efficient mechanisms for redressing salary claims and other employment grievances; and

(iii) domestic workers should be included within the ambit of the EA, so as to receive greater protection under Singapore law for employment related issues.

Accordingly, we have elaborated on these three themes at the outset of the paper (see part 3) in order to provide background to the specific recommendations that follow in parts 4 to 6.

Our specific recommendations in relation to MOM's Second Phase review of the EA and EFMA include recommendations relating to the following issues:

(A) Protection for workers under non-traditional work arrangements

- Duration of a worker's employment contract should be separated from duration of work pass (with related presumption of 'ongoing employment' – see Glossary).
- Term contract workers with back-to-back renewals of contract should be deemed to have ongoing employment for the purposes of calculating entitlements, regardless of contract/work pass renewals with the same employer.
- Contract duration should be a minimum of two years for foreign workers.
- Domestic workers require greater protection as term contract workers.
- A government administered fund ("Foreign Workers Assistance Fund" – see Glossary) should be available to compensate outsourced workers who face salary default or, failing that, section 65 and 166 of the EA should be amended to offer more comprehensive protection to workers in relation to salary defaults by their employers.

(B) Additional protection for vulnerable low-wage workers

- There should be mandatory written employment contracts containing prescribed basic terms. These should be provided to the worker in their native language.
- Mandatory pay slips should include itemised calculations and copies of timesheets.
- It should be mandatory for employers to pay a worker's salary into a bank account controlled exclusively by the employee.
- Any loans or advances made to workers should also be made electronically.
- The practice of employers making undocumented loans and advances to workers should be eliminated.
- The termination provisions of the EA should provide workers with more notice. In addition greater provision should be made to help workers in their claims for wrongful dismissal.
- The meaning and extent of 'rest day' in the EA and EFMA should be clarified.
- MOM needs to redress the fear felt by foreign workers that they may be prosecuted for making false claims if their claims against their employers are unsuccessful.
- There should be a penalty for employers who inflate deductions for lost or damaged items.
- Employers should be required to accurately record annual leave.

- Retrenchment benefits should be available to workers after one year of employment.
- Workers should be able to leave their workplace to eat and rest during their breaks.
- Provisions relating to the wrongful detention of employees should be enhanced.
- Additional measures should be put in place to protect foreign workers from salary reductions.
- The provisions relating to under-employment and under-payment of foreign workers should be enhanced to provide more comprehensive protection.
- There needs to be greater enforcement of the prohibitions for kick-backs.
- MOM's policy in relation to prosecuting workers for submitting fake documents should be reviewed in light of the power imbalance between foreign workers and employers.
- Penalties for working without a work pass need to be made more equitable for foreign workers.
- The provisions relating to the 'debarment' of non-compliant employers and their associates under the EFMA should be more transparent and comprehensive.
- Enforcement of provisions relating to the custody of work passes needs to be enhanced.
- The existing inadequacy of Singapore law in helping workers to recover owed payments and compensation needs to redressed. *[Stylistic amendment 31 Oct 2013]*
- The 'blacklist' of foreign workers should be abandoned.
- Bilingual versions (see Glossary) of the In Principle Approval ('IPA') letter should be provided to foreign workers.
- S Pass workers who are not paid S Pass salaries, should not have inferior rights to those of Work Permit holders.
- A comprehensive set of rights/obligations needs to be put in place for the support of workers who are awaiting resolution of their WICA or salary claims.

(C) Circumstances under which foreign workers should be allowed to change employers

- Foreign workers should be given Job Search Special Passes (see Glossary) to remain in Singapore for up to 60 days (30 days plus a possible further 30 days) following the termination of their employment, unless they have been convicted of a serious crime. During this time a worker would be permitted to seek a new position in Singapore.

Within this period, the responsibility for the support of the worker would depend upon the circumstances, as elaborated in our proposal.

- A foreign worker should not need a release from his/her employer in order to change employers.

- Foreign workers should be given at least 30 days' notice if their contract is not to be renewed.

- Other measures should be put in place to encourage employers to employ foreign workers who are already in Singapore.

3. UNDERLYING PRINCIPLES AND CONSIDERATIONS

3.01 Legislative framework and policies should support longer periods of employment for foreign workers

TWC2 is firmly of the view that it is in the best interests of both the Singapore community and foreign workers for foreign workers to be employed for longer periods and more fully integrated into Singapore's social and economic fabric. While we do not have a view on the total numbers of migrant workers which should be allowed to live and work in Singapore at any given time, we firmly believe that reducing turnover in the arrival and departure of foreign workers would have a number of significant benefits. In particular, legislative and policy measures which support long term employment of foreign workers in Singapore:

(i) Will help to ensure that working in Singapore is financially worthwhile from the worker's perspective, given the high initial costs involved in obtaining a job in Singapore. These costs include intermediary fees (for foreign and local employment agents) of up to $11,000. Many workers report that a significant proportion of their first two years (from a minimum of six months to a maximum of 17 months) in Singapore is spent working to recoup these upfront costs and pay related debts.

(ii) Will assist Singapore in remaining an attractive destination for foreign workers in a developing region. As the economies of China, India, Indonesia and other Asian nations grow, offering more job opportunities and higher wages to their citizens, Singapore will need to offer foreign workers better conditions in terms of job security and employment law rights in order to continue to attract foreign workers.

(iii) Will assist in raising industry productivity and standards. Foreign workers who are kept on for a longer period by their employers will have significantly enhanced skills and experience, which will be used for the benefit of the Singapore economy. In addition, enhanced productivity will flow from the reduction of 'churn' in workplace teams, resulting in more functional and efficient teams of workers.

(iv) Will encourage foreign workers to spend more of their income in Singapore, rather than repatriating most of their income to repay initial employment costs, thus contributing to the wellbeing of the Singapore economy. The longer a foreign worker remains in Singapore, the more disposable income that worker will have to spend within the Singapore economy.

(v) Will reduce fees paid by foreign workers to overseas and local intermediaries in order to obtain new positions in Singapore, thus preventing unscrupulous individuals from profiteering from the vulnerability of foreign workers.

(vi) Will, if combined with reforms allowing foreign workers to change employers more readily:

(a) discourage employers from taking advantage of worker vulnerability (eg underpayment of salaries, illegal deductions, inadequate safety standards);

(b) encourage foreign workers to report illegal practices (eg failure to comply with safe work practices); and

(c) reduce opportunities for unscrupulous employers to obtain kickbacks for contract renewals.

(vii) Will help to reduce any social/cultural adjustment issues between foreign workers and the Singapore community. The longer a foreign worker lives and works in Singapore, the more he/she will understand and adopt Singapore's social, legal and cultural norms.
Annexure A to this submission contains an article which explores in greater detail the benefits of engaging foreign workers on a longer-term and more integrated basis. We urge you to read and consider the arguments set out in that paper before considering the specific proposals outlined below.

3.02 Legislative framework should allow foreign workers fair and efficient redress for common claims such as salary claims

As an organisation, we are constantly exposed to the practical, financial and legal difficulties faced by foreign workers who have been let down by unscrupulous or impecunious employers and are seeking compensation and justice through the regulatory and judicial systems currently in place. While Singapore's judicial and administrative systems are the envy of the region and serve the needs of Singaporeans very effectively, many foreign workers suffer extreme hardships trying to access justice and in many cases, simply give up and go home, with nothing to show for their time in Singapore other than crippling debt.

TWC2 was delighted to see the promulgation of new regulations following the enactment of the Employment of Foreign Manpower (Amendment) Act in 2012, which require employers of non-domestic workers to be responsible for the upkeep and maintenance of foreign workers who are awaiting resolution and payment of any statutory claims for salary arrears under the Employment Act. However, we still routinely encounter workers who are left without accommodation, food, medical treatment or other support while awaiting resolution of salary claims, including those who remain in Singapore on special passes. The reasons for this are explored in greater detail in part 5.26 below but include employer threats and intimidation.

The Singaporean community benefits enormously from the efforts of foreign workers and it offends the fair-mindedness and morality of most Singaporeans to think that workers should have to suffer such hardship simply to obtain what they are owed for the work that they have performed. Accordingly, it is our view that a government-administered fund ("Foreign Workers Assistance Fund" – see Glossary) should be established, contributed to by all employers of foreign workers. This would allow workers who have well-founded salary disputes to obtain compensation efficiently and move on with their lives (either in Singapore or elsewhere) in situations where a worker's own reasonable attempts to obtain payment directly from an employer has failed. MOM could then to use its regulatory powers (including its powers in connection with security bonds) to ensure that the defaulting employer reimburses MOM for any payments made by MOM on its behalf, along with additional fines, penalties and by initiating enforcement proceedings .

Such a fund could be established in reliance on existing mechanisms, such as the Controller's powers to require 'security' under regulation 12 of the Employment of Foreign Manpower (Work Passes) Regulations ('Work Pass Regulations'). This regulation empowers the Controller to require an employer to furnish security 'for the purpose of ensuring compliance with any undertaking given by or requirement imposed upon the employer'. Such security may be given 'by bond, guarantee, cash deposit or any other method, or by any 2 or more different methods'. Alternatively, changes could be made to the administration of the levy system in order to establish such a fund.

We note that such a system would be greatly supported by more modern and transparent salary payment methods (eg bank transfers) and greater documentation in relation to salary payments, which are discussed in greater detail in our specific recommendations below.

3.03 Domestic workers should be included under the ambit of the Employment Act

MOM has pointed out in the documents accompanying its 22 July 2013 press release, that term contract workers in Singapore already enjoy a degree of protection under the EA, Work Injury Compensation Act (WICA) and the EFMA, including protection for timely salary payment, protection against unauthorised deductions, unfair dismissals and entitlement to sick leave and public holidays. However, aside from the timely salary payment provisions in the EFMA, these protections are not afforded to domestic workers, who are presently excluded from the scope of the EA and the WICA. In particular:

(i) Domestic workers are unable to access the protections offered under the WICA as WICA excludes domestic workers from its ambit. This exclusion is a function of the Fourth Schedule of WICA (which lists domestic workers as among those excluded from the operation of WICA) and could be readily amended.

(ii) Domestic workers do not receive protection against unauthorised deductions, as these protections are a feature of the EA.

(iii) Domestic workers are not entitled to sick leave or public holidays as these provisions are part of the EA.

(iv) Domestic workers cannot redress employment disputes through the Labour Tribunal established under the EA, but must rely on costly and time-consuming civil proceedings.

(v) Domestic workers have no protection whatsoever in relation to unfair dismissals, as these protections are contained in the EA. Domestic workers can be dismissed with no notice, for any reason, at any time. This allows employers far too much leeway in the way that domestic workers can be treated and exposes the domestic workers to any number of unfair outcomes. Her ability to raise concerns, make complaints or even discuss basic terms of employment is eroded by the ever present threat of being 'sent back' if she irritates or angers her employer. A clear example is the issue of rest days – it is not difficult for an unscrupulous employer to coerce a domestic worker into agreeing to forgo her rest day in exchange for one days' pay, even though the worker might never agree if she knew she could not be dismissed for refusing.

As part of its First Phase review of the Employment Act in late 2012/early 2013, MOM considered the issue of whether domestic workers should be included under the EA. Despite consideration of the numerous calls for domestic workers to be protected, MOM decided not to change this feature of the EA on the basis of the 'personalised nature' of domestic work. Respectfully, we take the view that it is precisely because of the personalised nature of the work that domestic workers require such protection. While the EFMA provides protection for payment of salary, safety and accommodation, beyond that, the conditions of employment of domestic workers are almost entirely determined by individual employers, most of whom are fair-minded and some of whom, unfortunately, are not.

Domestic workers indirectly support every sector of Singapore's economy by liberating large numbers of Singaporean citizens from the demands of housework, child care and aged care. However, because structural factors dictate that workers live with their employers, it is very common for interpersonal conflict to arise or basic incompatibility to exist within the employer/employee relationship. However, unlike any other employment arrangement, the employer always has the upper hand – the worker can be repatriated at any time according to the whim of the employer.

There is no suggestion that employers should be forced to continue to employ domestic workers with whom there is a basic incompatibility. However, by bringing domestic workers under the ambit of the EA and WICA, the government can establish a more suitable range of protections for domestic workers and provide a more level and fair employment dynamic. In addition, allowing domestic workers to transfer employers without a release letter from their employer would go a long way towards addressing the imbalances in the employer/employee relationship, as explored further in part 6 below.

4. PROTECTION FOR WORKERS UNDER NON-TRADITIONAL WORK ARRANGEMENTS

4.01 Term Contract Workers

4.01.1 Duration of employment contract should be separated from duration of work pass

At present, foreign workers who are Work Permit and S Pass holders can be treated as 'term contract workers' in the sense that it can be assumed by employers and MOM that their term of employment is the same as the duration of the Work Permit (usually 1 or 2 years). In some cases, this is clearly the case (eg for domestic workers often have employment contracts stipulating a two year term of employment). In other cases, from a legal perspective, the position is unclear in the absence of a written employment contract.

By contrast, foreign professionals who hold Employment Passes are generally regarded as being employed either on a permanent basis, or on a longer contract period negotiated between the employer and employee which usually bears no relationship to the validity of the Employment Pass. In such cases, employment contracts may stipulate that the continuance of the employment contract is 'subject to' renewal of the employee's Employment Pass, or may simply be silent on the issue, with both parties relying on an assumption that in the usual course of business a request for renewal is not likely to be refused by MOM.

TWC2 believes that this second model, in which the terms of employment are subject to, but not determined by, the duration of the work pass, is clearly a better conceptual framework for the employment of all foreign workers in Singapore. We urge MOM to review its policies and procedures to ensure that it is understood that a worker's term of employment is viewed as a separate matter from the duration of his or her work pass. The EFMA and EA should also be amended to provide that in the absence of a specified term of employment in a written employment contract, the employee shall be deemed to be employed on permanent basis (also known as "on-going employment"- see Glossary), subject to MOM renewing their work pass as required and subject to lawful termination by either party in accordance with the termination provisions in the EA and/or the terms of the contract. Employers and employees also need to be made aware of this distinction (including its impact on annual leave and medical leave entitlement) and encouraged to enter into employment contracts which reflect the true nature of the arrangement.

In addition to the above recommendations, we recommend that the EA and the EFMA should require both the IPA application and letter must clearly stipulate if the contract is <u>not to be</u> on-going (ie is of a fixed term). If not, the default presumption would be that the contract is on-going. For termination at the end of the term to be valid, this information must also be clearly stated in a written employment contract (discussed further in part 5.01 below).

By clearly separating the term of employment from the validity period of the work pass, the nature of the employment arrangement is made much more transparent and the foreign worker can then make an informed decision about whether the position meets his or her needs.

4.01.2 Term contract workers should be deemed to have continuous employment for the purposes of calculating entitlements

In line with the above proposals, we also recommend that new provisions be inserted in the EA which make it clear that where an employee has been employed on 'back to back' contracts by the same employer prior to the enactment date of these proposed new amendments, the worker shall be deemed to have worked continuously for that employer for a period equal to the total of each contract period for the purposes of calculating employee entitlements such as entitlements to leave and retrenchment benefits, regardless of how many times the employee's contract and/or work pass may have been renewed within that period.

4.01.3 Contract terms should be a minimum of two years for foreign workers

It is well-known that most low-paid foreign workers incur significant fees in securing jobs in Singapore. In spite of MOM's efforts to cap fees levied by Singaporean employment agencies, which we commend, foreign workers typically pay thousands of dollars to overseas or local intermediaries in order to secure an initial position in Singapore. Furthermore, while MOM continues to discourage the illegal practice of employers seeking kickbacks from employees, it is still common practice.

Our 2011/2102 airport survey of 192 Bangladeshi construction workers in the process of being repatriated[1] found that inexperienced workers paid on average $7,256 in intermediary fees in order to secure their first job in Singapore. Workers typically have to borrow money or sell family property to raise these funds. Those who borrow money often have to do so from unregulated money lenders who may charge very high interest rates and use illegal methods, threats and physical violence to recover their loans.

For workers on an average salary of $674 per month, it would take on average almost 11 months of work to simply repay these upfront costs, assuming that the worker's entire salary is applied to recouping these expenses and ignoring cost of living expenses which include employer deductions for accommodation and food.

In addition, 65% of the surveyed workers reported paying kickbacks in order to secure renewal of their contracts, with the average 'fee' being $1081.

In light of the low salaries of these foreign workers and the high costs incurred by them in obtaining and renewing their jobs in Singapore, it is critical that foreign workers be allowed remain working in Singapore long enough to recoup these costs and earn some money beyond recouping their expenses in securing their jobs.

[1] See Worse off for working? Kickbacks, intermediary fees and migrant construction workers in Singapore (http://twc2.org.sg/2012/08/12/worse-off-for-working-kickbacks-intermediary-fees-and-migrant-construction-workers-in-singapore/)

We firmly believe, for the reasons elaborated in 3.01 above, that the interests of foreign workers and the Singaporean community would be best served by enabling foreign workers to work in Singapore for prolonged periods (eg eight years or more). In the past, foreign workers were typically employed on two year contracts/work passes. However, in the last few years, a new norm seems to have developed whereby foreign workers in the construction industry seem to be typically engaged on the basis of one year contracts/work passes. While we appreciate that some industries are project based and experience up-turns and down-turns in work levels, we believe that foreign workers should not be the ones to bear the impact of such vicissitudes by being engaged on such short term contracts, which can result in harsh and exploitative outcomes. If a particular job is clearly of a short term nature, we suggest that it should be performed by local rather than imported labour, particularly given the current inability of foreign workers to readily change employers at the end of a contract period.

We urge MOM to amend the EFMA Work Pass Regulations by stipulating a minimum contract period of at least two years for Work Permit and S Pass holders. However, as proposed in part 4.01.1 above, in the absence of a stipulated contract duration, the contract would still be presumed to be on-going. In addition, we note that significant liberalisation of the circumstances in which foreign workers can change employers while remaining in Singapore (explored in part 6 below) would also help to address the negative ramifications of short term contacts.

4.01.4 Most domestic workers are term contract workers who should be protected under the Employment Act

Most, if not all, domestic workers have written contracts (a matter of routine practice by employment agencies that place domestic workers), are 'term contract' workers, and are subject to all of the same vulnerabilities as other foreign workers (some of which are discussed above) as well as additional concerns related to their status as 'live-in' employees. Domestic workers are given a degree of basic protection under the EFMA but are not protected by the law in relation to many other areas including unfair dismissal, unauthorised deductions, public holidays, sick leave etc. In addition, domestic workers are not given access to compensation for workplace injuries under WICA.

For the reasons outlined in part 3.03 above, we urge MOM to give further consideration to including domestic workers within the ambit of the EA and WICA and thus ensure that all of Singapore's vulnerable term contract workers are protected, not just those working in industry. Once domestic workers are covered by the EA and WICA, the disadvantage of being term contract workers is precipitated, particularly in respect of annual leave and medical coverage in the initial phase of each new contract. We urge a new rule that says workers on term contracts that are renewed back-to-back should enjoy the cumulative annual leave stipulated by the EA, and the medical coverage of the WICA as if they are on ongoing contracts.

4.02 Outsourced Workers

MOM has observed that outsourced workers are already covered under the EA, EFMA and WICA but that they are more vulnerable to salary defaults because their employers compete on price to win contracts, sometimes to the point of having unsustainable businesses. In addition, employers can suffer from cash-flow problems when they are not paid on time by the principal. Section 65 of the EA currently addresses this issue in part by making a principal who is operating in the same trade as a sub-contracting employer liable to pay up to one month's salary for each worker (eg in the event of the default/bankruptcy of the employer). Section 116 allows the Commissioner to summon a principal to pay to the Commissioner any money owed to the employer, if the employer owes any sum of money to any workman, which the Commissioner may then pay to the workman.

While the current provisions of the EA go some way towards addressing the particular vulnerabilities of outsourced workers in relation to salary default, we do not believe that they offer adequate protection. Our proposals in this regard are as follows.

4.02.1 Create a government-administered fund ("Foreign Workers Assistance Fund" – see Glossary) from which workers may efficiently recover unpaid salaries etc

The vulnerability of out-sourced workers to salary default situations is an excellent example of why a more simple and efficient mechanism is required to enable foreign workers to access justice for employment claims, as outlined in part 3.02 above.

While section 65 of the EA tries to provide some additional protection to workers, its effect is very limited. Firstly, it only places joint and several liability on a principal where the employer has contracted to undertake 'any part of any work undertaken by the principal'. From MOM's briefing documents, we understand that MOM interprets this caveat as requiring that the principal and employer must be 'in the same trade'. Applying a 'same trade' requirement is not only open to a broad variety of interpretations, but also excludes a large number of outsourced arrangements such as:

(i) outsourcing of cleaning and security services by hotels, shopping malls and other commercial venues, where the employer (a firm specialising in cleaning or security) would presumably not be considered to be in the same trade as the principal; and

(ii) outsourcing of domestic services by private individuals (eg cleaning, gardening, pool maintenance, pest control, aircon servicing) where again the employer (a private individual) would not be regarded as being in the same trade as the principal.

Secondly, section 65 makes the principal liable for a maximum of one month's salary. Typically, if an employer is unable or unwilling to pay a worker, it will take at least two months before the employee lodges a formal complaint with MOM. Workers will typically not realise that they may not be paid by their direct employers until at least five weeks have passed (one month salary period plus seven days, by which time salary is due). Typically they do not stop work or complain to MOM immediately, but hope to wait it out or resolve the matter internally. By the time they realise the seriousness of

the problem and lodge a formal complaint, more often than not at least two months would have passed.

Given the obvious gaps in the protection offered by section 65, as well as the practical difficulties in extending the reach of section 65 to cover a broader range of work arrangements, it is clearly preferable for workers to have access to a government-administered fund (contributed to by all employers of foreign workers) which they can make claims against, as outlined in part 3.02 above.

4.02.2 Alternatively, broaden the scope of section 65 and amend section 116

In the absence of the establishment of a government-administered fund as outlined in parts 3.02 and 4.02.1 above, section 65 should be amended so that the section:

(i) Applies to all outsourcing arrangements, whether or not the principal and the employer are in the same trade as one another.

(ii) Covers up to two months of the worker's salary, rather than only one month. For the reasons explained above, typically workers will wait for at least two months before lodging a formal complaint with MOM. During this time, the worker will have worked for the benefit of the principal and so it is appropriate that the principal bear responsibility for payment of salary in the event of a default by the employer.

(iii) In cases where the outsourced worker undertakes work for more than one principal during the relevant salary period (eg outsourced cleaning and security services or construction industry workers who work on more than one site) each of the principals should be liable on a pro-rated basis according to the percentage of the worker's time spent working for that principal during the relevant period.

Secondly, Section 116 allows the Commissioner to recover from a principal any monies owed to the employer, if such monies are owed to any workmen. The section does not stipulate what the Commissioner must do with the funds collected through this process. While we assume that in practice such funds are passed on to the aggrieved worker by the Commissioner, we see no reason for this mechanism to be discretionary and recommend that a new subsection be introduced to require the Commissioner to pass on such funds to the relevant worker.

4.03 Freelance workers

TWC2's objectives as a society do not extend to advocating in relation to the work conditions of freelancers who tend to be either Singaporean citizens/permanent residents, or self-employed foreigners who are unlikely to be vulnerable to systemic exploitation in the Singapore labour market. Accordingly, we make no specific recommendations in relation to the treatment of freelancers under the EA.

5. ADDITIONAL PROTECTION FOR VULNERABLE LOW-WAGE WORKERS

5.01 Mandatory written employment terms (under EA)

TWC2 support and endorse all measures which increase the transparency of employment arrangements and accountability of employers in relation to their contractual commitments to employees. Accordingly, we strongly support the proposal that written employment terms should be mandatory under the terms of the EA and the EFMA. The legislation/regulations should stipulate the basic terms that should be stipulated in the employment contract. These should include:

- Duration of contract (fixed, or ongoing albeit subject to renewal of work pass)
- Nature of work
- Basic monthly salary
- Deductions (nature and amount)
- Allowances (nature and amount)
- Normal hours of work covered by basic salary (days of the week plus start time and finish time)
- Rest day
- Estimate of overtime hours and overtime rate
- Rate for work on rest day (if applicable, but consistent with law)
- Items to be provided by employer (if any) (eg tools, uniform, protective gear)
- Items to be provided by employee (if any) (eg tools, uniform, protective gear)
- Leave entitlement

It is also important to address the issue of language in this context. In practice, it is very easy for employers to insist on workers signing contracts in a language they do not understand in order to secure 'agreement' in relation to substandard or undisclosed employment terms. Accordingly, either the EA or the EFMA should require that Work Permit and S Pass holders should have bilingual employment contracts (ie in English and in the worker's native language – see Glossary for "bilingual versions"). While some might argue that it would be burdensome for small companies to translate employment contracts, it would not be difficult for MOM to provide standard employment contracts in a number of bilingual versions (ie with two languages co-appearing on the same page) on its websites, which employers and workers could download and complete by filling in the blanks. Our proposals in this regard are consistent with our proposals below in relation to the language in which IPA letters are issued.

5.02 Mandatory pay slips should include itemised calculations and copies of timesheets (EA)

At this stage, details of the proposed changes to the EA announced by MOM on 14 March 2013 regarding mandatory pay slips do not appear to be publicly available. We strongly urge MOM to ensure that the new provisions include a requirement that payslips include itemised calculations of how the final pay figure has been calculated (eg separate calculation of basic hours worked, overtime hours worked, rest day and public holiday hours worked, each multiplied by applicable pay rates) as

well as other relevant amounts (including details of any deductions, allowances, loan repayments and leave taken). Pay slips should also be accompanied by copies of the worker's time sheets. All of this information is crucial for enabling the employee to check whether the amount paid has been accurately calculated and such information should be given to workers on each pay day as a matter of course (rather than only on request).

5.03 Mandatory electronic payment of workers' salaries into a bank account controlled exclusively by the employee and related issues (EA)

TWC2 believes that the commitments made by MOM in relation to introducing mandatory pay slips need to be complemented by adding a new requirement in the EA and EFMA that salaries must be paid by electronic transfer into a Singapore-based bank account in the name of the employee and controlled exclusively by the employee (thereby giving both parties free and easy access to a record of payments made by the employer to the employee). Too often salary disputes turn on evidentiary matters such as whether the worker's signature on a pay slip is genuine. Electronic transfers into a bank account will provide objective evidence of payments that have been made, which will greatly reduce the frequency of salary disputes and help in the speedy resolution of any disputes which may arise.

5.04 Mandatory electronic payment of loans and advances (EA)

For the same reasons as those set out in part 5.03 above, we also recommend that it be stipulated in the EA that any loans or advances made by employers to employees be made by the same means, thereby resulting in some basic documentation of the loan/advance and reducing the chance of disputes.

5.05 Eliminate practice of undocumented loans and advances (EA)

TWC2 was disappointed that MOM did not enact reforms to the EA to prevent salary deductions for undocumented loans and advances. In our experience, some unscrupulous employers hide payments of money by workers to retain their jobs when an employment contract expires by recording them as the repayment of loans or salary advances.

Given the ingenuity with which such employers have hidden illicit transactions in the past, we anticipate that particular attention will need to be paid to effective enforcement of the amended law.

Our proposal, that loans and advances be made only by electronic transfer, would go some way towards redressing this issue. However, we still urge MOM to require that deductions for loans and advances can only be made if such loans or advances have been documented in writing and signed by both employee and employer.

5.06 Penalty for inflated deductions (EA)

We have come across numerous instances of employers using inflated deductions *[stylistic amendment 31 Oct 2013]* for loss or damage to equipment to reduce salary payments to workers (eg $400 deduction for a lost hammer). To combat this unethical practice, we recommend the amendment of section 27(1) of the EA so that the quantum of any deduction for 'damage to or loss of goods expressly entrusted to an employee' can be no more than the fair replacement value of the item.

5.07 Termination of employment contract (EA)

As discussed further in part 6 below (which concerns situations in which foreign workers should be allowed to change employers) we believe that section 10 of the EA needs to provide workers more time to make plans in the event that they are to become unemployed. Accordingly, we believe that the period of notice to be given to workers (or by workers if they are contemplating leaving their current employment) under section 10(3) of the EA should be amended in line with following:

> (3) The notice to terminate the service of a person who is employed under a contract of service shall be not less than —
> (a) seven days notice if he has been so employed for less than 1 year;
> (b) 2 weeks' notice if he has been so employed for 1 year or more but less than 5 years; and
> (c) 30 days' notice if he has been so employed for 5 years or more.

Section 11(2), which provides for termination of the contract without notice, should also be amended to take greater account of the possibility of wrongful dismissal. The party terminating the contract without notice should be required to inform the other party ***in writing*** of the grounds for the termination and recapitulate the due process that had been accorded the worker so that, should the termination subsequently be contested, clear evidence of the original stated grounds will be available.

Section 14(2) (which allows a worker to contest a dismissal based upon alleged misconduct) should be amended to allow a longer time for a worker to make representations to the Minister for re-instatement. We recommend two months, instead of one. While one month would usually be adequate for a Singaporean employee, a migrant worker expelled from Singapore by his/her former employer or people employed by that employer may require longer to seek advice and to present their appeal, especially if they are not proficient in English.

We know that it may be impractical to seek the reinstatement of a migrant worker, especially a domestic worker (should domestic workers be brought under the EA), with an employer with whom relations are poor. Accordingly our proposals in part 6 below would, if adopted, ensure that under EFMA the migrant worker who has been dismissed before the end of the anticipated contract period is permitted to seek work with another employer, providing that the worker has not been convicted of any serious criminal offence. Depending on the nature of any changes to the EFMA concerning foreign workers changing employer, it would be worth considering whether any changes need to be made under section 14(4) of the EA to ensure consistency with the EFMA.

5.08 Clarify meaning of 'rest day' (EA)

TWC2 continues to receive anecdotal reports of employers seeking to erode worker's rights to rest days under the EA and the EFMA by taking advantage of the slightly unclear provisions relating to rest days. Accordingly, we urge MOM to amend section 36(1) so that the phrase 'one whole day' is replaced by the term 'at least 24 continuous hours'. The terms of the EFMA Work Pass Regulations should also be clarified along these lines in the event that domestic workers continue to be excluded from the operation of the EA.

5.09 Redress fear of prosecution for making claims against employers (EA)

As an organisation, we have come across a number of instances of workers who have been prosecuted or threatened with prosecution in connection with salary or other employment related allegations that they have made against their employers. We understand that these prosecutions are usually initiated pursuant to section 177 of the Penal Code but also note that section 107 of the EA creates an offence for furnishing the Commissioner with false statements.

In applying these provisions, it is important for MOM officers and prosecutors to recognise that many employment-related disputes involving foreign workers in Singapore require decision makers to choose whether to believe the testimony of the worker or that of the employer. These decisions are not easy to make and, even with the best will and intentions in the world, decisions makers are bound to make incorrect findings from time to time. They may make decisions that seem justified by the quality of the evidence that is presented to them. However, the failure of a worker to make a convincing case does not of itself prove that the complaint was unfounded. It is our experience that unscrupulous employers will go to considerable lengths to ensure that workers have as little material evidence as possible at their disposal to corroborate their complaints.

We strongly believe that it distorts the purposes of Singapore's employment and workplace laws for workers to be subject to prosecution for making statements regarding their employers, which they may not be able to prove to the satisfaction of MOM officers. Accordingly, we recommend that MOM's internal policies in relation to the enforcement of the 'false information' provisions of the EA and the Penal Code be reviewed and amended to ensure that workers are not deterred from making complaints against their employers in relation to workplace safety, salary payments and other terms and conditions of employment due to a fear of prosecution under these provisions. We are also in favour of the insertion of a requirement in the EA that the Commissioner/MOM shall not pursue the criminal prosecution of a foreign worker under the provisions of the EA or the Penal Code unless the it can be proven (subject to a criminal standard of proof ie beyond reasonable doubt) that the unsubstantiated complaint was deliberately malicious or vexatious.

We also strongly recommend that MOM should regularly and publicly assure workers (using its various online and other platforms) that they will not face the risk of prosecution for speaking up in good faith about illegal employment practices.

5.10 Better recording of annual leave (EA)

Migrant workers often work excessive hours and some do not receive the leave to which they are entitled. A modest step forward would be the insertion in section 42 of a requirement that the annual leave taken 'must be accurately recorded for each salary period'.

5.11 Enhance entitlements to retrenchment benefits (EA)

We welcome the proposed changes to section 45 of the EA announced by MOM in March 2013 which will reduce the eligibility for retrenchment benefits from three years to two years. However, given than most foreign workers are only employed on one or two year contracts, they often miss out on being compensated for retrenchment.

We reiterate our previous recommendation that the qualification period be further reduced from two years to one year.

These proposals are made in addition to our proposals in part 4.01.2 in relation to preventing employers from using short term contracts to avoid responsibility for employee entitlements such as leave and retrenchment benefits.

5.12 Shops and Canteens (EA)

Section 60 prohibits an employer from requiring employees to purchase food from a company shop or canteen through a contract of service. We recommend that it should further stipulate that employees are to be permitted to leave company premises or work-site during their meal break to purchase their food and eat elsewhere, providing that they return by the end of the break.

5.13 Wrongful Detention of Employee (EA)

Section 108 should be amended to make it clear that an employer commits an offence under that section if the employer commissions another party to detain a worker who has left the service of the employer.

Employers of migrant workers on occasion employ repatriation agents that use force or the threat of force to detain workers at their will. We consider this to be a violation of the Penal Code which prohibits 'wrongful confinement' but recommend that this principle be reinforced by addressing it specifically in the EA.

5.14 Translation of IPA letter into worker's native language (EFMA)

In reviewing the Second Reading Speech for the Employment of Foreign Manpower (Amendment) Bill (11 September 2012), TWC2 was very pleased to read of MOM's plans to introduce a requirement

that employers must ensure that the IPA letter is sent to foreign workers in the worker's native language prior to the worker's journey to Singapore. We believe that this would be a very positive step towards improving the transparency and accountability of employers in relation to the terms of their agreements with foreign workers. Accordingly, we were disappointed to see no mention of this 'native language' requirement in the revised Work Pass Regulations and now urge MOM to follow through on its proposals in this regard.

We have speculated that the reason for lack of implementation of this proposal may be that it is difficult for MOM to provide employers with translated IPA letters in all relevant languages, given that there are some languages that only a small number of foreign workers speak. If this is indeed the case, we propose that MOM make translations available in all of the most common languages used by foreign workers and that the Work Pass Regulations include a requirement that employers provide prospective workers with the IPA letter in the worker's native language whenever such a translation is made available by MOM.

Finally, we have come across many instances in which an employer only sends the English version of the IPA letter to a foreign employee notwithstanding that an MOM-supplied translation is readily available. This is presumably done to secure the manpower in situations where the worker might not have agreed to work in Singapore had they known the true terms and conditions of their employment. This is easily done by employers simply failing to send the native language version of the IPA. To thwart these attempts, we suggest that moving forward MOM produces 'bilingual versions' (see Glossary) of IPA letters which contain the English language and native language translation alongside each other within the same pages of the document, so that the native language translation cannot be detached.

Please note that these recommendations are made in addition to our recommendations in part 5.01 in relation to native language employment contracts.

5.15 Implement measures to protect workers from salary reductions etc (EFMA)

We welcome the revised provisions in the Work Pass Regulations which prevent employers from reducing salaries or raising deduction amounts without the foreign employee's prior written consent. This is a positive step forward towards eliminating exploitative practices which we often encounter, whereby some employers lure foreign workers into positions on the promise of a particular salary, only to revise the salary downwards on the arrival of the worker, who is then essentially 'trapped' by virtue of the costs they have incurred in securing the position. However, it is important to consider this issue in the context of the power asymmetry that exists between employers and foreign workers. At present, workers do not have an option of changing employers (either during or at the end of a contract period) and are usually in debt due to hefty intermediary fees and thus very fearful of losing their jobs or being unable to renew their contracts. Accordingly, unscrupulous employers can easily take advantage of the worker's vulnerability and coerce employees into agreeing to new contracts in writing. Accordingly, we propose that employers should not be able to reduce salaries or raise deductions even with the consent of the worker or, failing such a blanket stipulation, should only be able to do so for compelling reasons with the consent of the Controller, following a meeting between the employer, employee and the Controller.

5.16 Enhance consequences for failing to give foreign workers gainful employment on their arrival in Singapore (EFMA)

The new section 22B of EFMA makes it an offence to 'obtain a work pass for a foreign employee for a trade or business that does not exist, that is not in operation … and fails to employ the foreign employee.'

TWC2 has seen cases that answer this description *[stylistic amendment 31 Oct 2013]*. Companies whose object is to supply workers to other companies, in the marine or construction sector, sometimes boost their numbers of foreign workers but leave them idle and unpaid when they cannot get the requisite number of subcontracts.

Firstly, section 22B does not provide a mechanism for compensating the employee in this situation and we urge MOM to put in place a system that does this, given the high upfront costs incurred by foreign workers in securing positions in Singapore.

Secondly, by making it necessary to prove both limbs of the proposed of the offence (that is, that the work does not exist AND the employer fails to employ the worker) the new provision has limited usefulness and only addresses the most egregious cases of employer misconduct. In our opinion, any instance in which foreign employees are brought to Singapore and then subsequently not placed in paid employment should be redressed, regardless of whether the work did or did not exist at the time of engaging the worker.

While TWC2 recognises that the new section 22B is a step in the right direction, we urge MOM to hold employers to account to ensure that when foreign workers come to Singapore on the understanding that they will have a paying job, they are indeed ensured a paying job or at the very least compensation for the expenses they have incurred in getting to that point. This could be achieved by amending section 22B (ie replacing the word "and" with "or" at the end of section 22B(1)(a) and by putting in place other legislative provisions to ensure that workers are adequately compensated in such instances. This is another example of where a government-administered Foreign Workers Assistance Fund, as discussed in part 3.02, could be very effective.

In this context it is useful to consider the Work Pass Regulations which stipulate that the employer shall, regardless of whether there is actual work for the foreign employee, pay the foreign employee not less than fixed monthly salary declared in the work pass (or any lawful variation of that amount).[2] To strengthen this position, we propose the addition of a paragraph stipulating that the worker shall in all cases be deemed to have commenced work (and thus accruing salary entitlements) no later than one week after arrival in Singapore, whether or not the employer has taken the necessary steps to convert the IPA into a Work Permit. This is a fair expectation on the part of the worker and employers should not escape the obligation to pay basic salary by failing to convert the IPA into a Work Permit.

[2] Work Pass Regulations, Fourth Schedule, Part I, paragraph 7 (Domestic Workers) and Work Pass Regulations, Fourth Schedule, Part III, paragraph 4 (Non-Domestic Workers).

Finally, we also note that the relevance of these issues would be greatly diminished if MOM pursues legislative and policy changes that provide foreign workers with a right to change employers and seek new employment in Singapore (see part 6 below).

5.17 Protect workers from under-utilisation/under payment (EFMA)

Related to the concern set out in part 5.15 above is our concern in relation to under-utilised workers who are paid for the hours that they have worked during a salary period, rather than being paid the 'fixed monthly salary' stipulated in the work pass application.

This practice appears to be at odds with the Work Pass Regulations which require that an amount no less than the fixed monthly salary be paid no later than 7 days after the last day of the salary period[3] and that that amount should be paid 'regardless of whether there is actual work for the foreign employee'.[4]

The legal basis upon which employers do this is not entirely clear (if, in fact, there is any basis). There is suggestion that in some cases employers claim that workers were on 'no pay leave' for significant parts of the salary period (although, strictly applied, the Work Pass Regulations only make allowance for salary reductions to take into account workers who are on 'no pay leave outside Singapore').

We urge MOM to improve provisions to ensure greater clarity on this subject. We propose: Firstly, EFMA or the Work Pass Regulations should stipulate that 'salary period' means one month and secondly, that 'no pay leave' must be documented by a leave application willingly signed by the employee in order to be deducted from the fixed monthly salary.

Naturally, strict enforcement would also be required to stamp out the existing exploitative practices.

5.18 Better enforcement of provisions banning kick-backs (EFMA)

TWC2 welcomed the introduction in section 22A of the EFMA of more comprehensive provisions in relation to employers obtaining 'kickbacks' as consideration for the employment of foreign workers found. The practice of receiving kickbacks is both illegal and immoral and erodes many of the regulatory advances made by MOM in recent years. Unfortunately, in our experience, this practice continues to be quite common in Singapore. We urge MOM to take a proactive approach to identifying employers who receive such kickbacks, particularly in instances where MOM receives multiple reports about a particular employer from a number of different sources over a period of time. One suggestion is for MOM to combine forces with income tax authorities to secure evidence of such practices in the event of complaints being made by employers. When irregularities are reported we urge MOM to ensure rigorous enforcement of the new provisions.

[3] Work Pass Regulations, Fourth Schedule, Part I, paragraph 6 (Domestic Workers) and Work Pass Regulations, Fourth Schedule, Part III, paragraph 3 (Non-Domestic Workers)

[4] Work Pass Regulations, Fourth Schedule, Part I, paragraph 7 (Domestic Workers) and Work Pass Regulations, Fourth Schedule, Part III, paragraph 4 (Non-Domestic Workers).

These enforcement efforts would be greatly aided by the launch of an awareness campaign, aimed at informing foreign workers and their employers of the fact that this practice is a crime. Part of this campaign could be the promotion of a hotline which workers can call to report kickbacks on a strictly confidential basis.

5.19 Review policy for prosecuting workers for submitting fake documents (EFMA)

TWC2 has encountered cases where employers, wanting to hire foreign workers doing menial jobs on low wages but finding themselves without the needed Work Permit quotas, resort to hiring foreigners on S-Passes and even Employment Passes. To do so, employers and their agents submit falsified qualifications and declare inflated salaries in order to meet the conditions of the S-Pass or Employment Pass.

The often lowly-educated worker is either unaware that fake qualifications have been submitted on their behalf or is led to believe that such deceit is widespread and normal practice, and that in any case, if the worker does not countersign the submissions whenever asked to, the worker would not be able to avail themselves of that much-desired job. Moreover, foreigners, especially those still in their home countries prior to taking up their jobs, may not be aware of Singapore law, or of the severe penalties for such falsification.

The 2012 amendments to the EFMA include enhanced penalties for submission of fake qualifications. Workers now face a fine not exceeding $20,000 or imprisonment not exceeding 2 years, or both. In addition, the EFMA now includes a presumption that anyone who makes an application for a work pass, or any part of an application, has knowledge of any falsehood contained within. The burden of proving innocence falls on the applicant. We are concerned that this burden is too great and ask MOM to consider how, in practice, a foreign worker can be expected to discharge this burden.

TWC2 is concerned that the realities inherent in the work pass application process, in the case of low-wage workers, may be inadequately recognised *[typo correction, 31 Oct 2013]* by the law. Power differentials between employers and prospective employees and information asymmetry between them should surely change the balance of culpability.

TWC2 accepts that the law isn't there to suit just the kinds of cases we see (i.e. among low-wage workers). There will be the occasional instance where a self-employed S-Pass or Employment Pass holder is solely responsible for submitting fake documents. In such a case MOM may need to have tough laws with heavy penalties. The law has to span all circumstances.

Accordingly, TWC2 urges that MOM and the prosecutors whom MOM works with be highly conscious of the possibility of extenuating circumstances – where power differential and information asymmetry indicate that employees could have been duped into submitting documents or signing off applications that contain false statements. In such situations, prosecutorial discretion needs to be exercised.

5.20 Employment without a work pass (EFMA)

TWC2 is concerned about the longer jail term that can be imposed on employees working without a valid work pass under section 5 of the EFMA, compared with that imposed on employers.

An employer, if an individual, who employs someone without a valid work pass is now liable to a fine not exceeding $30,000, or imprisonment up to 12 months, or both. However a worker, employed without a valid work pass, is liable to a fine not exceeding $20,000, or imprisonment of up to two years, or both. We are concerned that the maximum jail term is twice as long for the worker compared with the employer.

Such a heavy sentence can be used as a tool by traffickers to induce fear in persons they have under their control, or whom they have brought into Singapore without proper work passes. The worker or victim, fearing that exposure of the illicit arrangement he or she is under will lead to severe penalties on himself or herself, will be deterred from blowing the whistle or seeking help.

We urge MOM to reduce the period for imprisonment of workers under section 5(7) to one year (in line with the penalty for employers). We also recommend that MOM add a new sub-section that makes it clear that no employee shall be prosecuted under section 5 if they were working without a valid work pass as a result of having been misled in relation to the requirements of Singapore law or if they were working as a result of any type of fraud, coercion or duress.

In addition, the provisions should provide that the penalty of imprisonment shall not be applied to a worker who has been found to be working for someone who is not their official employer in circumstances where their official employer has not met its legal obligations to the worker (eg has failed to make salary payments, provide medical leave etc). In this situation, workers are clearly under a significant degree of financial duress, in addition to suffering from the language and educational barriers that might prevent the worker from fully understanding the illegal nature of working for someone other than their official employer. We note that the instances of this type of illegal work would greatly diminish if workers were given greater freedom to change employers legally (see part 6 below).

5.21 Implement more detailed and transparent 'debarment' provisions for non-compliant employers (EFMA)

TWC2 welcomes the progress that MOM has made in enacting provisions which allow the Controller the discretion to debar persons who have acted in concert with or on the direction of a previously debarred person or who have certain associations with debarred persons (section 7(4B) and 7(4C) of the EFMA). To support the operation of those powers, we urge MOM to adopt regulations requiring a prospective employer to disclose certain key associations and relationships in order to enable MOM to better identify persons who should be debarred under those provisions. For example, corporate employers should be required to disclose their shareholders, directors and other persons with whose directions the company is accustomed to acting. Employers who are private individuals should be required to list key family members and other individuals involved in the management of the commercial enterprise, site or household within which the worker is to be engaged. The EFMA should place a positive obligation, rather than just a discretionary power, upon the Controller to debar employers who have relevant connections with other debarred persons or entities.

5.22 Better enforcement of regulations that prevent employers from retaining work passes (EFMA)

Our case workers still commonly encounter anecdotal reports that some employers continue to retain custody of their employees' Work Permits. Accordingly, we urge MOM to ensure rigorous enforcement of the provisions of the Work Pass Regulations which prohibit employers from retaining possession of their employees' Work Permits.

5.23 Law still inadequate in helping workers recover owed payments and compensation (EFMA)

TWC2 is disappointed that the recent amendments to the EFMA did not address a major failing in the existing system. Errant employers ordered to settle owed payments, especially work injury compensation, have been seen by TWC2 to ignore and flout such orders with impunity. MOM tends to consider its role accomplished at the point of issuing such orders without ensuring that they are carried out.

Foreign workers still urgently need a simple mechanism to obtain satisfaction. To tell workers that they can hire a lawyer to sue employers in court and then to insist that the worker return to their home country is to ignore the impracticality of it and the reality that access to such justice is costly (often beyond the means of low-wage workers).

TWC2 urges MOM to design a better and simpler system for workers to obtain redress and due payments and consider introducing a government-administered fund ("Foreign Workers Assistance Fund" – see Glossary) against which workers can claim, as explored in part 3.02 above.

While this is not the forum in which to address the operation of WICA in detail, we note in passing that section 40(3) of WICA should be repealed (ie an employer's debt to an employee should not be extinguishable upon the conviction/sentencing of the employer). Furthermore, the court ordering compensation under section 40 should be given the power to order punitive damages, payable to the injured employee, of up to triple the amount that the employee was owed.

5.24 Abandon 'blacklist' of foreign workers

TWC2 understands from anecdotal accounts that MOM maintains a 'blacklist' of foreign workers who have been brought to the attention of MOM by disgruntled employers or in the process of MOM investigations. We understand that any foreign worker who is included in this blacklist will find it very difficult, if not impossible, to ever secure a new position in Singapore. We recognise that workers who are found guilty in a Singaporean court of law of a serious criminal offence may rightfully be debarred from seeking work in Singapore. However, it is another matter entirely to impose such a significant penalty against a worker who has not been proven to have committed any

offence nor been given any opportunity to address the allegations made against them. We believe that it is very unfair for such lists to be maintained and in particular, the absence of a right for the worker to be notified of their proposed inclusion on such a list and defend themselves. We therefore urge that the maintenance or use of a blacklist should be discontinued and that, instead, only workers who have been convicted of a serious criminal offence should be barred from seeking employment in Singapore.

5.25 Treatment of S Pass Workers

As MOM is aware, it is not uncommon to find cases where employers have obtained S Passes for foreign workers (in order to circumvent restrictions/quotas in relation to the employment of low-skilled foreign workers) and then fail to pay workers in accordance with the salary set out in the S Pass application or IPA.

Putting aside the penalties that may be imposed for the commission of such fraud, we believe that the Work Pass Regulations should make it clear that in these situations the worker in question shall be accorded rights and privileges in no way inferior to those of Work Permit holders.

5.26 Treatment of Workers Awaiting Resolution of Claims (including those on Special Passes) (EFMA)

TWC2 believes that the EFMA/Work Pass Regulations should include enhanced protection for foreign workers who remain in Singapore, not gainfully employed, as a consequence of a salary dispute, illness or injury. For the following purposes, we refer to these workers as 'workers awaiting resolution'. Many of these workers remain in Singapore on Special Passes issued by MOM, being former Work Permit holders or recipients of an IPA for a Work Permit.

By way of background, we come across two main categories of workers awaiting resolution. Firstly, some of these workers remain in Singapore continue to hold valid Work Permits issued in connection with the job in relation to which the dispute has arisen. Other workers awaiting resolution are placed on Special Passes by MOM following the cancellation of their Work Permit. This cancellation is either initiated by the employer or by MOM — most likely because the employer has infringed MOM conditions. TWC2's understanding is that a Special Pass is granted when MOM assesses that a worker has a legitimate reason to stay on in Singapore to resolve a dispute or claim against the employer, or to obtain medical treatment and complete the work injury compensation process.

TWC2 was pleased to see the enhanced protection given to workers awaiting resolution which are now contained in the Fourth Schedule of Work Pass Regulations (paragraph 16, Part III). For the purposes of the below comments, it is helpful to extract the provisions of that Regulation:

> 16. The employer shall continue to be responsible for and bear the costs of the upkeep (including the provision of food and medical treatment) and maintenance of the foreign employee in Singapore who is awaiting resolution and payment of any statutory claims for salary arrears under the Employment Act, or work injury compensation under the Work Injury Compensation Act. The employer shall ensure that the foreign employee has acceptable accommodation in Singapore. Such accommodation must be in accordance with the requirements in any written law, directive, guideline, circular or other similar instrument issued by any competent authority. These responsibilities shall cease upon resolution and payment of the statutory claim or work injury compensation.

The enhanced protection offered by this paragraph is a great step forward. However, there are a number of questions raised by the specifics of this provision that need to be addressed:

(i) It is not clear to us whether this provision is also intended to apply to workers awaiting resolution who have been placed on Special Passes. Based on our knowledge of several recent cases where MOM case officers have instructed former employers to provide continuing accommodation, we presume the intention is that former employers remain responsible for providing for the well-being of such workers. Clearly all workers awaiting resolution require basic support in the form of accommodation, food, medical treatment and other basic needs (including a degree of financial assistance to cover transport, telephone calls and other basic personal needs as discussed further in part 5.26.2 below). However, the drafting of this provision does not make this entirely clear, and can be improved.

(ii) Paragraph 16 only covers non-domestic workers under the Work Permit regime. There is no equivalent provision for domestic workers.

(iii) Paragraph 16 does not make any provision for workers awaiting resolution whose employers or former employers have disappeared or who are insolvent. We must not allow these employees to 'fall through the gaps' in the regulatory system.

Drawing on TWC2's extensive interactions with workers awaiting resolution, we know that these workers face extreme hardship. Very few workers with outstanding claims against their employers stay on in accommodation provided by their employers. This is because they are unaware of their employers' obligation to provide accommodation, have been denied accommodation, have been given very unsuitable accommodation or, in many cases, fear intimidation by employers or their agents, or attempts to forcibly repatriate them. As a result, many of these workers end up 'sleeping-rough' on the streets of Singapore, reliant for food, medical care and other basic needs on the limited help that they can obtain from NGOs such as TWC2.

The regulatory regime must take account of the realities of the situation faced by workers awaiting resolution and establish a regime under which workers can feel secure about making legitimate salary and other claims. Accordingly, we suggest the following measures:

(i) MOM should put in place a comprehensive set of regulations in relation to the status and support of foreign workers who remain in Singapore while awaiting the resolution of legal claims (whether statutory or common law) against their employers or former employers. These regulations should cover all relevant workers including those holding Special Passes, Work Permits (domestic and non-domestic) as well as S Pass holders. The regulations should set out clearly who is responsible for providing accommodation, food, medical treatment and basic additional financial support to the workers during the relevant period (refer to part 5.26.2 below for discussion on financial support). Among other things, the protection offered by paragraph 16 discussed above should be redrafted to make it clear that the obligation extends to former employers providing for workers awaiting resolution who are on Special Passes or other passes.

(ii) Where workers make a claim against an employer and/or are placed on a Special Pass, employers should be notified in writing by MOM to remind them of the nature of their

continuing obligation to provide acceptable accommodation, food, medical treatment etc and making it clear that employers will face stiff penalties if they use any means to intimidate workers in these circumstances.

(iii) Where the worker's employer/former employer is unable to meet its obligations to support workers awaiting resolution, MOM should be required to provide support directly to the worker (possible drawing on the Foreign Workers Assistance Fund *[typo correction, 31 Oct 2013]* proposed in part 3.02 above).

(iv) MOM should ensure that relevant offences/penalties are put in place to deter non-compliance with these obligations by employers. Offences should include penalties for the actual or threatened detention, confinement or assault of any employee or former-employee by an employer or any person acting on the instructions of the employer.

(v) MOM must respond diligently and efficiently to any workers or their NGO representatives about maltreatment along the lines enumerated above, including putting in place a 24-hour hotline and a quick response team.

(vi) Where an employer has violated these rules before, applying the power vested through paragraph 11B to issue directives, MOM should direct the employer to house the employee in a separate location, which is not accessible by the employer or its agents except with the express permission of the worker.

While still on the subject of workers awaiting resolution of claims,

5.26.1 Workers awaiting resolution - Respect for worker's right to find own accommodation

In addition to the more general issues raised above in relation to workers awaiting resolution, TWC2 is troubled by a series of accounts from injured workers who report that their MOM case officers applied pressure on them to return to their employers' dormitory. We know of one case where a worker was told by an MOM officer that his Special Pass would not be renewed — and that he would have to return home — unless he did so. We understand that this threat was in fact carried out and he left Singapore before his work injury compensation case was resolved. In our opinion, such pressure contravenes the rights of foreign workers under the Work Pass Regulations. In particular paragraph 3 in Part VI of the Fourth Schedule provides:

> 3. Except for a foreign employee whose occupation as stated in the work permit is that of a "domestic worker", the foreign employee shall reside at the address indicated by the employer to the foreign employee upon the commencement of employment of the foreign employee and shall inform the employer about any subsequent self-initiated change in residential address.

It is evident from the above that a non-domestic Work Permit holder is free to self-initiate a change in residential address. For an officer of MOM to say he/she must not do so, and penalise them should they do so, is clearly in contravention of this principle and may in fact expose MOM itself to negligence claims by the worker should the worker be subsequently harmed by the employer or its agents.

5.26.2 Workers awaiting resolution – financial support

Since the great majority of commercial dormitories are located in distant parts of Singapore with poor transport linkages and few amenities, housing workers awaiting resolution in these locations gives rise to additional considerations that have to be taken seriously and addressed.

The income of such workers awaiting resolution is typically either drastically reduced or non-existent. Lack of income following an injury/salary claim brings with it serious hardship, some of which may actually prevent the workers from successfully pursuing their valid claim. Workers awaiting resolution (including those on Special Passes) are regularly required to make long journeys to attend appointments at MOM offices or at hospitals etc. Such workers may also need to travel to access charitable services (such as free meals) as well as legal and other support from lawyers and NGOs. In addition, workers need to be able to communicate by telephone with all of these organisations as well as with family/friends in their home countries. Even obtaining food can be an issue as employers typically have lunch (and sometimes dinner) supplied to workers at the relevant work-site rather than the dormitory, leaving injured or non-working employees without sustenance.

Workers whose injuries occurred at work and who were given certified medical leave by doctors, and whose accident occurred less than twelve months prior, are supposed to benefit from a monthly stipend in the form of Temporary Incapacity Compensation (also known as "medical leave wages") as per sections 14A(1) and 14A(2) of WICA. The reality is, however, that employers often do not pay medical leave wages on time. Many ignore their obligations for months. MOM case officers do not always insist that employers live up to this obligation promptly. It is of utmost importance that MOM pursues rigorous enforcement of this requirement.

Furthermore, MOM needs to address the situation of workers who do not benefit from medical leave wages under WICA. Workers in this situation may include:

(i) Workers whose injury status has been downgraded from medical leave to "light duties", or are not given any medical status. Some workers in this category will have had their jobs terminated and remain in Singapore on a Special Pass but with no income.

(ii) Workers who are still on certified medical leave but are no longer entitled to medical leave wages by virtue of paragraph 4(1) of the Third Schedule of WICA (as well as page 6 of the WIC Guide for Employers) which indicate that employer's obligation to pay medical leave wages ceases at the anniversary of the injury. It is not uncommon for workers to be on medical leave for more than a year following serious injury[5] yet such workers are not entitled to any financial support.

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[5] In a recent survey conducted by TWC@, 20.3 percent of 153 survey respondents reported that their accident was more than twelve months ago. Refer to: Housing Conditions - Cuff Rd Project Survey (http://twc2.org.sg/wp-content/uploads/2013/09/Housing_conditions_report_v6-9.pdf)

(iii) Workers awaiting resolution of salary claims, whose jobs have been terminated as a result of the salary claim.

TWC2 proposes that workers caught in these situations described should receive a monthly "Monetized upkeep and maintenance" allowance (see Glossary) equivalent to two-thirds of their average monthly earnings, in addition to accommodation and food. This support should continue until such time as (a) the dispute is resolved, all necessary payments made to the worker and the worker is repatriated (having first been given an opportunity to seek new employment as recommended in part 6) ; or (b) the worker commences employment with a new employer in Singapore, whichever occurs first.

The question of providing meals to an injured worker when housed in employer-provided accommodation also needs to be addressed. Good nutrition is a necessary aid to recovery. Expecting injured workers to cook their own meals is impractical — some do not know how to cook, all would have difficulty purchasing supplies, and those who are post-operative, or with mobility, limb or eye injuries, are just not able to do so. Employers should be required to provide meals to injured and Special Pass employees they house, and these meals must meet reasonable nutritional standards and accord with workers' dietary customs.

5.26.3 Provision for post-operative and seriously injured workers

The particular needs of post-operative and seriously-injured workers also needs to be considered separately (eg those with mobility difficulties, head injuries or requiring regular nursing attention). Ideally, doctors and MOM should insist that such cases be placed in nursing homes at employers' expense until they are well enough to transfer to a dormitory.

TWC2 however recognises that nursing home beds are in short supply in Singapore, and the cost can be prohibitive for small employers (though changes to insurance requirements can address the latter). Injured and sick workers should never be discharged into accommodation where their medical needs cannot be adequately met or where they will be exposed to new risks (eg wound infection). However, where workers can be safely discharged to dormitories for their convalescence, we propose that all commercial dormitories have dedicated sections *[redundant words deleted, 31 Oct 2013]* for the seriously injured. Specifically, we propose that:

(i) Every licensed commercial dormitory should be required by law or licence conditions to set aside one percent of all beds — and these should be in ground floor rooms, enabling ease of access for those with mobility difficulties — for the seriously injured, and equip such rooms with grab bars and other necessary conveniences.

(ii) All these beds should be single-level beds, not double- or triple-decker beds since seriously injured workers will have difficulty getting into higher beds.

(iii) Such beds must be made available, pro bono, to cases of injured workers recommended by any registered charity working with migrant workers, subject to a maximum stay of two months per injured worker.

(iv) The dormitory must accord full access to the worker, all the way to their bed space, and to authorised persons from the recommending charity so that these persons and the charity can provide such care and support as the worker may need through their recovery and claim process.

5.26.4 Workers awaiting resolution - Protecting freedom of movement

It is important to clarify that enhanced provisions relating to employers' obligations to provide for workers awaiting resolution should not result in employers feeling entitled to exercise control over the movements of workers. Accordingly, it is important to make it clear in the necessary regulations that employers:

(i) shall not impede the right of workers to exit and re-enter the place of accommodation;

(ii) shall not seize or exercise control over the workers' possessions;

(iii) shall not violate the confidentiality of their documents; and

(iv) shall not seek to control the worker's communications with any person or organization.

Unless these rights are forcefully protected, workers will again have reason to fear that living in employers' accommodation is a security threat to themselves, or that it jeopardises their right to case advice or social contact.

5.26.5 Domestic workers awaiting resolution

We urge MOM to consider the position of domestic workers who have claims against their employers and to ensure that such workers have access to suitable support while these matters are being resolved. At present, the process for resolving such matters is not outlined in the Work Pass Regulations and workers must find their way through the system, largely relying on the support of NGOs and charities while they do so. Ultimately, we feel that MOM should take responsibility for these workers in the event that other support options are not readily available. MOM can then rely on its rights pursuant to the security bond that it holds in respect of each foreign worker to recover any costs it incurs in supporting workers during the relevant period.

Most critically, the Work Pass Regulations should provide that domestic workers should be permitted to seek new employment while awaiting case resolution, without requiring any release from their former employer or special approval by MOM. This is consistent with our recommendations in part 6 concerning the situations in which foreign workers should be allowed to change employers.

6. Circumstances under which foreign workers should be allowed to change employers.

The following recommendations are made in relation to the regulatory regime for foreign workers established by EFMA and are in addition to our general recommendations concerning termination of employment under the EA.

6.01 General principles

As explored in part 3.01 of this paper, TWC2 firmly believes that it is in the best interests of both the Singaporean community and foreign workers if the regulatory regime for foreign workers allows and encourages foreign workers to remain working in Singapore for prolonged periods. Clearly, in order to achieve this, regulatory instruments must allow, rather than restrict, the ability of workers to change employers in Singapore.

The lack of opportunity for foreign workers to change jobs of their own accord gives rise to a number of negative outcomes, especially when considered against the background of high intermediary costs incurred by workers and the consequent indebtedness they suffer. In particular, the absence of transfer rights:

(i) gives excessive leverage to employers, some of whom are tempted to exploit such leverage unfairly (e.g. through underpayment of salaries, illegal deductions, or working without adequate safety equipment);

(ii) can lead to under-reporting of abuses and shortcomings in employment and work safety practices when workers are disempowered and fearful of losing their jobs;

(iii) opens the door to "worker-churning", since employers have near-total freedom to send workers home and replace them with fresh intakes; and

(iv) as a consequence of (iii), tends to undercut efforts to improve productivity as experience and experientially-acquired skills (including social and communication skills interacting with workers from other communities and Singaporeans) are lost.

Many of the regulatory policies that MOM is pursuing to ensure better treatment of foreign workers by their employers will be greatly supported by more freedom on the part of the worker to change employers. Accordingly, TWC2's view is that MOM should endorse and incorporate the following guiding principles when considering the regulations surrounding change of employment by foreign workers:

(i) All foreign workers who are fit to work should be free to change employers and seek new jobs should they wish to do so (barring any exceptional circumstances such as being convicted of a serious crime or suffering a substantial injury, addressed in greater detail in part 6.05 below).

(ii) In no circumstances should foreign workers (whether domestic workers or otherwise) require their employers to grant a 'release' in order to change jobs in Singapore. Foreign workers should not be treated as the property of their employers. By comparison, Singaporean workers do not require a release from their current employer in order to change jobs. MOM has a legitimate interest in ensuring that the worker has a valid work pass with the correct employer (together with the necessary security bond, medical insurance etc). However, the circumstances in which workers can lawfully terminate their employment should be governed by the terms of the relevant contract and the termination requirements of the EA. There is no justification for giving employers the power to essentially force workers to choose between remaining in an unsatisfactory job in Singapore or being repatriated empty-handed.

(iii) Workers should be given suitable opportunities to seek new jobs in Singapore rather than being automatically repatriated at the end of a contract period or at the whim of the employer.

(iv) In all cases, foreign workers should be informed in writing at least 30 days prior to the expiry of their contract period whether their contract is to be renewed or not.

6.02 Sudden/unexpected job loss – non domestic workers

Workers may find themselves quite suddenly without a job in a number of ways:

(i) when their employment is terminated at short notice and their Work Permit is prematurely cancelled by their employer;

(ii) when their Work Permit is cancelled by MOM for reasons to do with the employer breaching the EFMA requirements; or

(iii) when their employer disappears or becomes insolvent.

A worker in either of the first two situations should be given a '30-day Job Search Special Pass' (see Glossary), with employer responsible for accommodation, food and a 'Monetized upkeep and maintenance allowance (see Glossary) for the first 30 days. It is not right to expect the worker to obtain and pay for their own basic support at such short notice. A worker in the third situation (ie with no viable employer) should be provided with the same job search opportunities and be supported by MOM for this period, through the proposed Foreign Workers Assistance Fund (see Glossary) with MOM able to reclaim the expense through the employer's security bond. It should be noted that subsistence support provided to a worker in the third situation is only for 30 days, and self-limiting.

Upon the worker's request, a worker should be given a further '30 day Job Search Extended Special Pass'. However, for this extended period, workers should be responsible for their own needs (eg accommodation, food, expenses etc). It should be illegal for an employer to repatriate a worker during either of these job search periods. If the worker finds a position within this period, the worker should be free to enter into a new contract with the new employer and, together with the new employer, apply for a new work pass.

The issuance of a new work pass to the worker (with all of the related work pass obligations such as medical insurance and the security bond being assumed by the new employer) should automatically relieve the previous employer of any responsibility for the support or repatriation of the employee from that date onwards. Under such a process, there is no need for the first employer to issue any 'release' letter or sign any documentation in connection with the transfer. In this regard, we note that MOM currently provides some foreign workers with Special Passes which allow them to seek new employment, in salary dispute situations. In doing so, MOM presumably recognises that it is quite possible to allow workers to change employers without destroying the integrity of MOM's work pass/security bond system.

One of the collateral benefits of allowing a worker to remain in Singapore for a period following the unexpected loss of a job, is that it provides the worker with an opportunity to make a claim for unfair dismissal under section 14 of the EA (where relevant). At present, workers are often in practice denied their right to file a complaint for unfair dismissal as they can be terminated on short or no notice (depending on the situation) and repatriated without having the opportunity to make a complaint to MOM. Once returned to their home countries, where they often live in remote rural areas, the practical obstacles to making and pursuing an unfair dismissal claim against a Singapore-based employer are almost impossible to surmount. The changes that we propose would redress this concern.

6.03 Sudden/unexpected job loss – domestic workers

The above-mentioned principles (ie that foreign workers should be free to change jobs, without a release from their employer but subject to the provisions of the EA and their employment contracts) should apply equally to domestic workers, though we recognise that in practice there are some different considerations that need to be taken into account given that domestic workers are required to live with their employers.

In the case of a domestic worker who unexpectedly loses her job, the employer could choose between two alternative options. The domestic worker could be given a cash allowance that is reasonable in the light of market conditions to pay for her own basic accommodation and food during the first 30 days, together with a 'monetized upkeep and maintenance allowance' (see Glossary). Alternatively, in cases where the relationship between the employer and the worker remains harmonious and if the worker consents, the worker could continue to reside with the employer during the 30-day Job Search Special Pass period and be provided with food and the monetized upkeep and maintenance allowance. These provisions *[typo correction, 31 Oct 2013]* ensure parity in the treatment of domestic workers vis-à-vis non-domestic workers, in similar sudden/unexpected job loss situations. The domestic worker would also be eligible to apply for a further 30-day Job Search Extended Special Pass as outlined above. Again, if the employer has disappeared or does not have sufficient financial resources to meet these obligations, MOM should be required by law to step in and provide similar support for the worker during this period and use its powers to recover its costs using the security bond mechanism.

In this regard, we understand that domestic workers could access hostels and other dormitory-style accommodation (either via employment agencies or independently) for approximately $30 per day.

We recognise that giving domestic workers greater freedom to change employers would be a significant change in the employer/employee dynamic in Singapore. However, the current situation, in which employers can dismiss a domestic worker for no cause and with no notice, means that the worker bears a disproportionate share of the burden and suffers by far the greatest loss for issues that arise as a result of basic incompatibilities between employer and employee. Such incompatibilities often arise in a domestic environment through no fault of either party. Our proposal would shift the burden for the losses that follow from these unfortunate situations so that it is more evenly shared between employer and employee.

6.04 Foreseeable job loss (domestic and non-domestic workers)

A worker should be able to foresee the impending termination of their employment in certain situations:

(i) the contract term expires and the employer chooses not to renew it and provides the worker with 30 days' notice in writing that the worker's contract is not going to be renewed; or

(ii) the worker resigns from the job of his/her own volition.

A worker in either of these situations should likewise be given a 30-day Job Search Special Pass. However, unlike in the unexpected job loss situations, the employer should not have to be responsible for the worker's accommodation, food and expenses during the first 30 days. The worker should be able to anticipate the impending job-loss and therefore should be responsible for his/her own basic needs during this period.

Upon the worker's request the worker should be given a further 30 days on a Job Search Extended Special Pass, and similarly, should be responsible for his or her own accommodation. It should be illegal for an employer to repatriate a worker at any time during these periods.

6.05 In the case of a worker who has suffered an injury and is admitted into the Work Injury Compensation Act (WICA) process

In many cases involving workplace accidents, employers terminate a worker's contract and cancel the relevant Work Permit soon after realising that the injury is serious and the recovery process may be lengthy. While WICA provides some protection, there are many gaps and defects that leave workers who are recovering from injuries without adequate protection. While this is not the forum to discuss the weaknesses of WICA in detail, it is necessary to dovetail the available protections from WICA with new proposals we are making here, so that we eliminate the gaps in worker protection.

In the period between an accident and the conclusion of the WICA process, a worker can find himself in four kinds of situations:

(i) The worker is certified to be under medical leave, up to twelve months after an accident;

(ii) The worker is still certified to be under medical leave, but more than twelve months have elapsed since the accident.

(iii) The worker is certified to be under "light duties" or has no certified medical status at all, but is still receiving medical treatment or occupational therapy.

(iv) The worker has completed medical treatment but is waiting for his medical board assessment, or waiting for the results of the assessment.

The total period can be as long as 24 – 30 months between the accident and date on which the final Notice of Assessment is issued.

[Redundant words deleted, 31 Oct 2013]. WICA only mandates income support in the period mentioned in (i), at two-thirds of Average Monthly Earnings (note: not two-thirds of basic salary, as incorrectly implemented by some MOM case officers). WICA offers no assistance to workers in the periods referred to in (ii), (iii) or (iv). This is clearly an insupportable situation - workers must have a means of survival.

One possibility is to permit workers in periods referred to in (ii), (iii) or (iv) to seek new jobs, but working when they have not completed treatment may aggravate the injury, as well as complicate the assessment of permanent incapacity. TWC2 does not think this would be a good idea.

Instead, TWC2 proposes that when the entitlement to medical leave wages lapses, but the WICA process is still not concluded, then the obligation of the former employer to provide "maintenance and upkeep" (under the Work Pass Regulations) should kick in, and it should be in the form of a "monetized maintenance and upkeep" allowance (see Glossary), rated similarly at two-thirds of Average Monthly Earnings. This should be in addition to the obligation to provide accommodation and food (with no allowable deduction for accommodation and food). These two obligations should continue until the final Notice of Assessment.

In effect, there should be a seamless transition between medical leave wages provided to those referred to in (i) and "monetized maintenance and upkeep" for those in the phases referred to in (ii), (iii) and (iv).

Our proposal has two significant advantages. Firstly, injured workers who are not allowed to work (as a condition of their WICA Special Pass) shall not be left homeless, destitute and driven to illegal work. Secondly, employers will be disincentivised from dragging out the medical treatment and assessment process, because the longer it drags out, the longer they will have to keep providing income support to the worker. We commonly receive complaints from workers that employers seek to prolong this process by, for example, refusing to provide letters of guarantee to hospitals, or making objections to assessment points. Employers may be behaving in this way in the hope that workers would give up and choose to go home.

At the point when the final Notice of Assessment is served to the worker, there should also be some determination whether a worker is fit to resume working, or is so seriously incapacitated that he should be repatriated. A simple rule of thumb may be that any worker whose final Notice of Assessment awards him ten points or fewer shall be considered fit to resume work. In such a case then, TWC2 proposes that the worker's WICA Special Pass be replaced with a 30-day Job-Search Special Pass (see Glossary) from the date the final Notice of Assessment is served. The worker should be responsible for his own accommodation, food and expenses past this point.

Finally, a further 30-day Job Search Extended Special Pass should be available upon request by the worker.

6.06 In the case of a worker who has suffered an illness or injury, but not admitted into the WICA process

A mechanism also needs to be set up for a worker who has suffered a non-work-related injury or illness. This mechanism would need to determine whether the injury is minor enough that after a week or two, the worker is fit to work. If the worker is capable of working, but their employer has cancelled his Work Permit, thus leaving the worker with no job to return to, then MOM should issue him a 30-day Job-Search Special Pass (see Glossary). The employer should provide accommodation, meals and 'monetized maintenance and upkeep (rated at two-thirds of Average Monthly Earnings, see Glossary) for this 30-day period, since the disruption to the job had not been foreseeable, and the worker would have no time to plan for alternative accommodation.

Thereafter, at the worker's request, the Job Search Special Pass should be extended a further 30 days, but the worker would then be responsible for his own accommodation, food and expenses.

If, on the other hand, the injury/illness is judged to be too serious to expect a quick recovery, then the worker should be repatriated when doctors certify him/her fit to travel. The employer should provide accommodation, meals and "monetized maintenance and upkeep" (rated at two-thirds of Average Monthly Earnings) until repatriation.

6.07 Summary of change of employer scenarios

The table on the next page brings together the different scenarios, and indicates for each, when the 30-day job-search Special Pass should commence, and who should be responsibility for accommodation, meals and upkeep during that period.

For the avoidance of doubt, in all cases, the worker's employer/former-employer should remain liable for the worker's medical insurance/treatment and repatriation expenses until either (i) the worker finds a new position and obtains a work pass in the name of the new employer; or (ii) the worker is lawfully repatriated.

Summary Table

Scenario (for both domestic and non-domestic workers)	When 30-day Job Search Special Pass begins	Who responsible for accommodation, food and basic expenses (3)?	
		1st 30 days	2nd 30 days
WP prematurely cancelled by employer	Date WP cancelled	Employer (1)	Worker
WP prematurely cancelled by MOM	Date WP cancelled	Employer (1)	Worker
WP prematurely cancelled; employer absconds or bankrupt	Date WP cancelled	Foreign Workers Assistance Fund	Worker
WP expired, no renewal (2)	Date WP expired	Worker	Worker
Worker resigns of his/her own volition	Date WP cancelled upon his/her resignation	Worker	Worker
Worker ill or injured, then terminated, admitted under WICA:			
(a) Final NOA 10 points or less	Date final NOA served	Worker	Worker
(b) Final NOA more than 10 points	None	N.A.	N.A.
Worker ill or injured, then terminated, not admitted under WICA:			
(a) judged quickly recoverable and fit to work	Date medical leave ends	Employer (1)	Worker
(b) not fit to work	None	N.A.	N.A.

Notes to table:

(1) In the event that a worker presents a credible report that the employer has been abusive or threatening, or has hired repatriation agents who use forcible methods, MOM should direct the employer to provide accommodation to the worker at a separate location run by an independent operator, and to which the employer or his agents shall have no access except with the worker's express permission.

(2) The regulations should be amended to require that employers must provide 30 days' notice if there is no intention to renew the Work Permit; otherwise the termination of the Work Permit shall be treated as "sudden and unforeseeable, with the corresponding consequences.

(3) Where an employer is responsible for basic expenses, this responsibility should be discharged in the form of the proposed Monetized Upkeep and Maintenance allowance (see Glossary), rated at two-thirds of the worker's Average Monthly Earnings.

6.07.1 Side issue - Admission into WICA should be decided within 30 days of injury report or accident report

On a side note, TWC2 is alarmed by the increasing number of workers reporting that, months after an injury has taken place, their former employers suddenly deny that the accident in question was work-related. By this point, witnesses and other evidence are often no longer available. We are told that some MOM officers, on receipt of such employer denials, then put the burden of proof on workers to show that the incidents had been a work-related in the first place. This is grossly unfair. Not only is an impossible burden of proof placed on worker after this lapse of time, but they face the possibility of having all hospital and medical expenses, and all previously-received medical leave wages reversed; they would have to pay the entire amount back.

As a matter of good administrative practice, MOM should be prompt and conscientious, and bind itself to making a determination whether an incident is work-related or not, within thirty days of the initial injury or accident report. No objection should be entertained after 30 days of the injury.

6.08 Other measures needed to reduce worker churn

TWC2 is of the view *[stylistic amendment, 31 Oct 2013]* that the realities of the employment culture in Singapore should be taken into account in order to make it meaningful for workers to seek change of employer. Even when workers are allowed to seek new jobs locally without first being repatriated, take-up by employers may be too low, thus defeating the aim of retaining skills and experience. From TWC2's viewpoint, some of the stumbling blocks are likely to be:

(i) employers may believe the workers already here and looking for new jobs are more "difficult" workers; and

(ii) employers still often ask workers to pay 'kickbacks' in exchange for being given a job or having their positions renewed;

(iii) a belief amongst employers that, aside from the foreign-to-local manpower ratio, there is nothing which stands in the way of them bringing in 'fresh' workers, who may be more compliant, less 'savvy' to their legal rights and more willing to pay greater kickback amounts in return for their jobs.

For these reasons, in order to truly promote long-term stays by foreign workers in Singapore, measures must be taken to discourage the intake of 'fresh' workers from abroad.

Accordingly we recommend that applications for Work Permits for persons who have never worked in Singapore before, or who have stayed away for more than three years, be subject to a slight delay in processing (say, sixty days). That way, employers will soon realise that to obtain the manpower they need — at least within a short time frame — they should look to hiring workers who are seeking change of employer locally.

This delay period could be lengthened or shortened as needed according to supply and demand considerations. In this regard we expect that MOM should have no difficulty in accessing real-time data on how many workers are looking for new jobs in Singapore, as MOM would be in control of issuing Job Search Special Passes and Job Search Extended Special Passes under our recommendations above.

A further benefit from encouraging employers to hire migrant workers who are already here in preference over those fresh from aboard, is that should an employer ask for or receive a kickback, the illegal act takes place within Singapore's jurisdiction and thus can be readily prosecuted**.** By contrast, it is clearly very difficult for the Singapore government to police what transpires between foreign workers and intermediaries in the workers' home countries. Furthermore, workers who have been in Singapore for a number of years may also be less fearful and more prepared to report errant employers to MOM.

7. Conclusion

TWC2 commends MOM for inviting public comment in relation to the important issues identified by MOM in its press release of 22 July 2013. These issues are of vital importance to the dignity and well-being of foreign workers as well as the continuing vitality of the Singaporean economy. We urge MOM to give serious consideration to the issues raised and proposals made and would be happy to meet to discuss our proposals and concerns if MOM has any queries about the contents of this submission.

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Annexure A

Looking Ahead: Singapore and Migrant Workers

by John Gee[6]

The White Paper on Population issued by the government has given rise to a strong public reaction. Arguments centre on two issues: the projection of a possible increase in Singapore's population to 6.9 million by 2030 and the growth within that projection of the number and proportion of non-Singaporeans.

To comment on the wider population issue would take Transient Workers Count Too beyond its proper area of competence, but we feel that we have a responsibility to state our views on a number of questions concerning the status and rights of migrant workers in Singapore.

We do not have a view as a society on whether Singapore should have a greater or smaller number of migrant workers. It is the right of every sovereign state to determine its own population and immigration policies, with due respect for international law and human rights standards. We do not challenge that. Our primary concern is with the rights and well-being of those migrant workers who live and work here, regardless of their total number.

Long Term Goals

Our view is that the best interests of Singapore and of the migrant workers who are employed here would be best served by policies and practices that encourage those workers who are admitted to Singapore to stay and be employed over an extended period of time, preferably at least eight years.

We also believe that Singapore should take an integrative approach to the workers while they are present, rather than one that seeks to isolate them.

Finally, Singapore should give itself the option of accepting long stay, well integrated workers as citizens. We will argue these points further below.

Regional Context

In the debate on the Population White Paper, there has been a tendency to talk as if Singapore's development in the decades ahead will take place in a regional environment that will remain broadly similar to its present condition. This is unrealistic.

In the decades since independence, Singapore rose to First World status. It became a country with a serious labour shortage, but was able to attract migrant workers with no difficulty, thanks to its

[6] This article is an edited transcript on a talk given by John Gee, on behalf of TWC2, to a lunchtime forum at Singapore Management University on 3 April 2013.

favourable position as an economically advanced, relatively prosperous state in a region of rather less developed, poorer countries. That condition is changing. Like other developed countries, Singapore has seen its growth rate slow as it has progressed to the upper echelons of the global economy. A number of other countries in the region, including the Philippines and Indonesia, are achieving greater year on year growth, reducing the development gap between themselves and Singapore. They are far from catching up with Singapore, and that will become harder to do as they progress and hit similar development constraints to those faced by other rising economies, but nevertheless, their progress is bound to have a major impact on the availability of low waged migrant workers to Singapore – indeed, there is a good case for arguing that this has begun to happen.

It would not take much for men and women in most of the countries from which Singapore attracts workers to decide that the advantages of staying in their own country and finding work outweigh those of going to Singapore: all it would need for most would be the promise of regular work that allows them to support their families, and to stay with them. This could be met with wage levels still significantly below those currently available in Singapore. Migrant workers' home countries are gradually (or, in the case of China, rapidly) moving towards meeting that condition, just as South Korea did in the 1980s. Demand for migrant workers will grow within their own countries and in other states: it is not improbable that China will become a net labour importer before long. Japan is cautiously expanding its employment of certain categories of migrant worker.

It would therefore be very unwise to plan on the assumption that low cost foreign manpower will continue to be readily available to Singaporean employers, quite apart from any of the obstacles to its continued importation that might be put in the way as a result of public concerns over issues such as competition over jobs, living space and demands on public transport. The supply will shrink, with four consequences:

(i) Wages and conditions will have to be significantly improved to make the jobs locals do not at present want to do but that still need to be done attractive to migrant workers and locals;

(ii) The consequent rise in employers' costs will spur efforts to raise technological levels and achieve productivity gains;

(iii) Companies that cannot adapt will go out of business;

(iv) The threshold of affordability for the employment of domestic workers will rise, forcing the pace in the development of alternative means of providing child, elderly, and disabled care, as well as domestic services.

It is therefore the case that, in 2030 or thereabouts, far from worrying about how to cope with an excessive number of low paid migrant workers coming to Singapore, the country may be grappling with the problem of how to achieve even the minimum numbers needed to sustain services and an economy in 'just ticking over' status.

None of the problems we anticipate are insuperable, but they require changes at the levels of policy and public attitudes.

Longer Stays and Work Progression

It is fortunate that the requirements of just and fair treatment of migrant workers and the concerns of Singaporeans about the future growth in migrant worker numbers may be tackled, in large part, by complementary measures.

Migrant workers who seek employment in Singapore hope to obtain jobs in which they are paid decently and on time. This is the very minimum they require, as the primary purpose of most of them in going to work abroad is to support their families at home.

Workers' families only receive any net financial gain from their employment once their initial costs have been paid off. Typically, domestic workers have eight to nine months of salary deductions by their employers, who recover their placement costs, which they paid to an agency. Many male workers borrow money or use up family resources equivalent to their earnings in Singapore for a full year or more in order to meet their placement costs. Ways and means should be found to bring down these exorbitant expenses, and that is a task that should be undertaken by Singapore in cooperation with the workers' home countries.

However, whether initial costs are high or low, it is clearly the case that workers stand the best chance of making their investment worthwhile when they can be employed in Singapore over a period of several years, not just one or two. They can benefit more if long service brings with it increments in pay, as well as possible additional payments reflecting the acquisition of new skills.

The potential benefits for Singapore as a whole are evident.

The government has stressed the need to raise productivity. That can be achieved by a variety of means, including the introduction of new technology, enhancement of worker skills, and more rational organisation of work processes. Migrant workers in many fields can contribute to raised productivity when they receive training in skills that are in short supply and are then applied – not simply used to gain a reduction in the levy on them, regardless of whether the skills are employed. The impact of enhanced skills can be amplified by maintaining a relatively stable workforce that is accustomed to working as a team, rather than having to adjust constantly to the arrival of new members and the departure of others.

In itself, this should curb demand for more workers in the future.

A more contented migrant worker force might also be expected to be more productive.

Workers who stay for longer and earn more money will adjust their spending patterns. While their primary goal will continue to be to support their families, once they have the initial period of debt repayment behind them and are able to manage their families' most pressing needs, TWC2's experience suggests that workers will spend more of their earnings on goods to send or take home to their relatives and also be somewhat more inclined to spend more money on themselves, which will benefit the retail sector.

Many Singaporean citizens complain about the social impact of migrant workers. Littering by male workers is a long-term bone of contention. Workers who stay for longer periods are more likely to adjust their behaviour to allow for Singapore's norms and standards.

There would be some losers from a more stable, long stay migrant labour force in Singapore. Agencies that make money on worker turnover would lose out, but this would tend to concentrate business in the hands of the most adaptable agencies with the best standards of service; those that close down would vacate office space that could be used for other purposes and their staff might seek jobs that would be of greater benefit to the national economy.

Employers who take kickbacks for hiring new workers or demand payment from workers for contract renewal would also lose out, but such behaviour is reprehensible in any case and best suppressed. There is no reason why migrant workers, good employers and Singapore society as a whole should be disadvantaged for their sake.

What Needs to Be Done – General

(i) The system under which workers are attached to particular employers and can only normally change employers with the consent of their existing employers should be scrapped.

The main argument in favour of the present system is that it gives employers responsibility for ensuring that their workers return home at the end of their period of employment in Singapore. This is one of the means of preventing the workers from staying on and settling in Singapore. It is feared that workers with low skill levels would later become an economic liability to the country, requiring support for any children they might have, through the illnesses and ill-health to which lower paid workers are more prone than others, and finally, support in old age.

Assuming that present immigration criteria remain basically unaltered, with the technology now available, it should now be possible to rely chiefly on border controls, employment and other records to prevent any larger numbers of workers than in the present system from staying on illegally. Policies to restrict the proportion of foreign workers in any given sector or company might remain in place, but, by allowing easier labour mobility for migrant workers already in Singapore, this would enable companies to fill their complement of migrant workers from among them, not only from abroad, while providing workers who are keen to work and earn with the opportunity to do so for as long as they have authorisation to remain in Singapore. They would need to be allowed a reasonable period in which to find alternative work before they have to return home.

Some agents and employers would object that this could lead to 'job-hopping' that would leave them inconvenienced or even out of pocket. That would only be likely to happen in circumstances where a worker felt very disadvantaged in a placement. Under the present system, work conditions and pay that are inferior to those the worker expected to have on coming to Singapore may motivate a worker to want to find another employer, but workers have to have a letter of release before they can go to one, which may not be forthcoming from the initial employer. Workers can feel compelled to make do in bad conditions because they fear the alternative of being sent home, particularly if they have not yet paid off their placement costs.

Under the present system, unscrupulous employers or staff can coerce workers to pay illegally for the renewal of a contract on its expiry, out of fear of job loss and deportation. TWC2 research on Bangladeshi construction workers indicated that this is common practice among sub-contractors in their industry. Under a reformed system where workers are not tied to a particular employer, they could simply refuse to pay and go to an employer who would be pleased to take them on without any improper charges.

As in other employment situations, the thought that workers could walk out in search of better conditions should provide employers with an incentive to treat their workers well and pay them in full and on time. To retain workers, contracts setting forth clear conditions on the part of employers and workers might be signed at the beginning of a period of employment, which could include an undertaking by a worker to remain with the initial employer for a specified period, which could only be deviated from if the employer failed to honour the terms agreed in the contract.

Moving on would not annul any debt obligations a worker had. The issue does not generally arise with most workers, whose debts were incurred in their home countries, but it does in the case of domestic workers, whose employers generally pay agencies for their placement costs and then recover the money by deductions from their workers' salaries. Sometimes employers pay agencies by instalments, and agencies worry that if a domestic worker leaves her employer, the employer will not pay any outstanding debt.

Under a reformed system, a domestic worker ought to remain liable for any valid charges that remained unpaid if she moves on. The problem is that she is loaded with costs in addition to fees by recruiters and home and Singapore agencies. The axing of excessive charges would relieve all workers of high levels of salary deductions and shorten the repayment period, also relieving the anxieties of employers somewhat.

Under a new system, workers will have greater opportunities to find steady, long-term employment, giving them a strong incentive to stay in Singapore for a series of contract terms, securing them a better return on their initial investment in placement costs and retaining their skills and experience for Singapore's benefit for perhaps ten years or more.

(ii) Workers who have been given an In Principle Approval to undertake work in Singapore for an initial one or two year period should be permitted to stay on, if their employers terminate their employment before the end of this period, and seek work with other employers. On the expiry of the initial period, their Work Permits should be renewed as a matter of course unless there is a pressing reason not to do so.

(iii) Workers who have suffered an injury that only incapacitates them for a limited time should be able to resume working for their existing employer or take alternative employment once their recuperation period is over, if they are still waiting for their case to be settled.

(iv) Workers who are brought to Singapore with valid IPAs on the promise of regular paid work but whose employers either do not have work for them or have very little work, below that of a normal working week (without overtime), should be allowed to seek alternative employment while remaining in Singapore. Employers who make a habit of taking on workers for whom they then do not provide work should not be issued further IPAs, and they should not be

permitted to set up other companies to do the same thing again, or do that through family members or other agents. The combination of punitive regulatory measures and the removal of the ability of an employer to retain workers brought into Singapore under false pretences should largely stamp out this practice.

(v) There should be an avenue for workers who are employed in Singapore on a long term basis to gain citizenship. This need not lead to the problems anticipated when the existing system of Work Permits was introduced, providing that certain basic conditions are made. If existing workers were to be able to have opportunities for promotion (perhaps to qualify as a 'higher grade' worker in their existing fields or to move on to S- or Employment Pass level), this might be a qualifying condition. There might be a minimum 10-year qualifying period, with a clean legal record and a citizenship test.

The reasons for introducing greater flexibility in this area are clear: Singapore anticipates a continuing need for workers to fill gaps in its labour force, and this can be a source of working citizens already acclimatised to its social, cultural and legal norms, with years of contributing to the economy ahead of them. Worries about any negative impacts should be assuaged by the conditions attached. Migrant workers aspiring to citizenship would be those who felt that they could happily settle here, and telling them that this possibility existed would ease the worries of people who had developed a real attachment to the country that they would have to leave, regardless of how they behaved or worked.

(vi) The overall approach to migrant workers in Singapore should be integrationist, not exclusionary. This should influence policies on housing and facilities, as well as community level initiatives that should engage the involvement of migrant workers. With a more stable migrant workforce, tending to stay in Singapore for longer than at present, this should be more practical than it is under existing circumstances.

(vii) A minimum wage should exist for all workers, local and foreign. The issue has been much discussed and the arguments for and against rehearsed. Its introduction has been rejected thus far, but it does not seem likely that this will be the case indefinitely. It would be unjust to apply it only to citizens and offend against any concept of fairness and payment by work performed; it should now be as unthinkable as paying men and women different rates for doing the same job.

A minimum wage should be set at a level that protects workers from gross exploitation and allows them to pay their way through their earnings within normal working hours. Including migrant workers would not only be just to them, but might also promote an upward movement in salaries in low paid jobs that might make some become more attractive to locals.

Domestic Workers and Care Workers

Some further comments on domestic workers' status are necessary.

Singapore currently employs over 200,000 domestic workers. Demand for them has risen year on year since the recruitment of migrant domestic workers was first permitted in 1987, and there is little reason to think that this would change, if all other circumstances remained the same – which, as

we have argued, they will not. Singapore can engage in a 'race to the bottom,' adding new countries ever further afield periodically to its recommended source list in the quest for low cost labour, or it can undertake a fundamental rethink of its domestic worker policy.

It is ironic that domestic workers tend to be regarded as unskilled labour when employers generally want them for the multiplicity of tasks they can take on: cooking, cleaning, tidying, elderly, child and disabled care, washing, ironing and more. In fact, though most employers cite the need for someone to look after an elderly relative or a young child as the reason for seeking a Work Permit for a domestic worker, virtually all domestic workers take on a wide range of work around employers' homes.

The great majority work long hours for the lowest pay rates of any employee in Singapore and many face tight restrictions on their freedom of movement and association with other people. They are uniquely vulnerable to abusive behaviour by unscrupulous or exploitive employers, working in isolation within their employers' households as they do.

A start in overhauling policy towards domestic workers would be to think not so much in terms of how many more workers are needed, but of what they are needed for. On that basis, a number of responses to these needs might be put in place that better meet the legitimate requirements of employers and workers, current and potential in both cases. The result would be the present range of jobs undertaken by a domestic worker being undertaken by:

(a) Elderly, child or disabled care workers. Those wishing to take on such jobs would need to train and qualify for them. Those going into these professions would benefit from better pay and conditions than they would receive as domestic workers; employers would take on workers with skills sets and attitudes that meet specific, prioritised needs.

(b) Live-out part time domestic workers who are do specific sets of jobs. They would be employed by service companies that would offer workers who could come to the homes of those wanting their services at specific regular times to perform a set of tasks achievable within those times. For example, a worker might come by daily to clean, make beds, and wash up, or maybe come by to do washing and ironing of clothes on specific days.

    The employers would not have all their housework done, but perhaps the most irksome parts of it. Outside the workers' hours of work, their homes would be their own private space, not shared by a non-family member. They would pay less for this service than they would for a full time domestic worker. This service should be open to single people and couples who have no children; many are strained by the hours they work and then have to face all their housework. This would be a relief to them. Such services, if offered along with those suggested in (c) (below), could enable thousands of Singaporean women from low income families who wish to take on paid work but have to handle too much work in the home to do so to be able to realise their wishes.

    The workers would be able to make up the equivalent of a full time job by working legally at different locations. The nature of the work would mean that they would have regular working hours rather than open-ended hours.

The main difficulty would be providing accommodation: they would need to be able to have access to affordable places to live, whether flats, hostels or dormitories.

(c) There is a rising demand for elderly care and nursery places in Singapore, mainly from citizens who can't afford to hire a domestic worker in the first place. If greater social provision is made for this demand, some of those who presently feel obliged to hire a domestic worker may decide that it is a viable option for them. Trained staff from overseas may well be required to take on some of the work in these sectors.

(d) There will still be a role for general domestic workers. A flaw in the present system is that there is no avenue of progress for a domestic worker: she may get higher pay over the years when she stays with one employer, but if she goes to a new employer, she still has the same job description she started with. It should be made possible for a domestic worker to have a career progression: she might attain a 'higher grade' status, after passing a test of her skills on completion of a certain period of employment. A worker willing to use her spare time to undertake training as a care worker, in the home or in a social institution, should be enabled to do so.

Conclusion

TWC2 believes that it is possible for Singapore to manage its migrant worker policies in such a way that citizens' existing concerns about migrant worker numbers and their impact on local jobs and incomes are assuaged and migrant workers' rights are respected. Taken together, the measures we propose should result in a lower requirement for migrant labour in the long run, combined with better conditions for the migrant workers who do come to Singapore. The future should be built in partnership, not competition, and we believe that the proposals we have made can help ensure that.