

ATTACHMENT 1

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996
s.107 reference to Full Bench

Workplace Relations and Other Legislation Amendment Act 1996
application under item 49 (now under item 51) of Schedule 5

Textile, Clothing and Footwear Union of Australia
(C No. 33994 of 1998)

CLOTHING TRADES AWARD 1982
(ODN C No. 00696 of 1980)
[Print F1647 [C0037CRA]]

Outworkers

Clothing industry

VICE PRESIDENT McINTYRE
DEPUTY PRESIDENT DUNCAN
COMMISSIONER BLAIR

SYDNEY, 12 MARCH 1999

Outworker provisions - Clothing Trades Award - allowable award matters - items 49 and 51 of Schedule 5 of the Workplace Relations and Other Legislation Amendment Act 1996 - s.89A of the Workplace Relations Act 1996

DECISION

INTRODUCTION

1. This decision is about three clauses in the Clothing Trades Award 1982 (the clothing award) relating to outworkers and the effect on those clauses of s.89A of the *Workplace Relations Act 1996* (the WR Act) and item 51 of Schedule 5 of the *Workplace Relations and Other Legislation Amendment Act 1996* (the WROLA Act). The proceedings giving rise to this decision were initiated by an

application filed on 10 June 1998 by the Textile, Clothing and Footwear Union of Australia (the TCFUA) to vary the clothing award pursuant to item 49 of Schedule 5 of the WROLA Act. Because item 49 ceased to operate from 30 June 1998 (being the end of the interim period referred to in Schedule 5) it was agreed by the parties and interveners, and accepted by us, that the application now falls to be determined under item 51. Item 50 provides among other things that, "[a]t the end of the interim period, each award ceases to have effect to the extent that it provides for matters other than allowable award matters". Item 51(1) and (2) states:

"(1) As soon as practicable after the end of the interim period, the Commission must review each award:

(a) that is in force; and

(b) that the Commission is satisfied has been affected by item 50.

(2) The Commission must vary the award to remove provisions that ceased to have effect under item 50."

One of the allowable award matters in s.89A(2) of the WR Act is:

"(t) pay and conditions for outworkers, but only to the extent necessary to ensure that their overall pay and conditions of employment are fair and reasonable in comparison with the pay and conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises."

Subsection (9) of s.89A says:

"In this section, *outworker* means an employee who, for the purposes of the business of the employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer."

Subsection (6) of s.89A says:

"The Commission may include in an award provisions that are incidental to the matters in subsection (2) and necessary for the effective operation of the award."

2. The application was initially listed before Larkin C when application was made by the TCFUA pursuant to s.107 of the WR Act for it to be referred to a Full Bench. On 16 June 1998, the President referred the application to a Full Bench. It was heard by us on 28 July, 13 October, 7 and 10 December 1998 and 8-10 February 1999. During December 1998 and January 1999 conciliation proceedings took place but no agreement was reached.

THE OUTWORKER CLAUSES IN THE CLOTHING AWARD

3. The three clauses relating to outworkers in the clothing award that require consideration are clauses 26, 27 and 27A. They are set out in Attachment A.

4. Mr Crawshaw, senior counsel for the TCFUA, summarised the clauses (transcript pp. 93-4) in the light of the evidence before us. We set out this summary (which we do not understand to be contentious) with some minor amendments:

"Clause 26 governs the relationship between the parties in the contracting or production chain, the chain referred to in Mr Tubner's and Ms Delaney's evidence. The clause controls each link in that chain in a manner which, firstly, ensures that outworkers' conditions retain parity with those of factory workers; secondly, in a manner which limits award evasion; and, thirdly, in a manner which simplifies and aids award enforcement. Ms Delaney's statement referred to the various relationships of that nature which the clause regulates. The mechanisms used in this

clause control that chain in the manner which I've spoken of. Firstly, there are record keeping requirements; records have got to be given to outworkers and lists kept for inspection; secondly, there is no less favourable requirement on the middle person who in turn employs the outworkers; and that of course is to prevent award evasion by simply contracting out; and, thirdly there are the enforcement mechanisms, the presentation of the statutory declaration and the reverse onus of proof, as its been called.

Clause 27 contains all the provisions which set terms and conditions of employment for outworkers and provides various mechanisms for ensuring parity with the terms and conditions of factory employees. For example, it provides such things as provisions concerning part-time and full-time workers, guaranteed minimum levels of income, provides for hours of work, detailed provisions aimed at ensuring regularity of hours and minimum levels of income, provisions preventing unpaid weekend and overtime work. Then also in this clause there are subclauses relating to record keeping. There are detailed requirements in relation to records given to the outworker containing all the information necessary for determining the correct rate of pay. These details are essential because of the way the industry works; in particular, the employers generally pay at a unilaterally determined piece rate rather than an hourly rate. This has the effect of driving down the hourly rate and in the absence of all those details, as was set out in Ms Delaney's evidence, the correct rate cannot be calculated back by use of those various details.

Clause 27A is the linchpin of this protective regime. It provides the registration requirements, the means of monitoring who is employing outworkers and who the outworkers are and where they are located. Now, we acknowledge that this is a unique requirement but we say this is a unique industry. Neither the employers nor the employees are easily identifiable and this is the only mechanism available."

OUTLINE OF MAIN CONTENTIONS

5. In brief:

- the TCFUA (and the interveners other than the Commonwealth) submitted that clauses 26, 27 and 27A are allowable in their entirety and that no changes to them are required by item 51; and

- the employers and the Commonwealth submitted that the clauses are substantially allowable; however, there are a number of provisions of them which are not allowable. Further, certain changes to them are required by item 51.

OUTWORKERS IN THE CLOTHING INDUSTRY

6. The position of outworkers in the clothing industry has been the subject of consideration by the Commission and its predecessors on a number of occasions. The decisions show that outworkers in the clothing industry have been exploited and unlawfully and unfairly treated; see, in particular, the decision of 7 April 1987 of Riordan DP (19 IR 416) and the decision of 12 June 1995 of Williams DP (Print M3574). The most recent comments about the unfortunate circumstances of clothing industry outworkers by an Australian industrial tribunal appear to be those of the December 1998 report of the Industrial Relations Commission of New South Wales (Glynn J) in the Pay Equity Enquiry.

7. The TCFUA tendered, without objection, a substantial number of witness statements by outworkers in the clothing industry, union officers and others. None of this evidence was challenged, by cross-examination or otherwise, by the other parties or the interveners. None of the other parties or the interveners called any evidence.

8. At the TCFUA's request we inspected the premises of, and spoke, through interpreters, to three outworkers in the clothing industry working in the Sydney area.

9. The unchallenged evidence before us shows that exploitation and unlawful and unfair treatment of outworkers in the clothing industry still continues. One of the results of this is that many outworkers fail to receive their entitlements under the clothing award.

CONSTRUCTION OF SECTION 89A(2)(t)

10. Various submissions were made about the construction of paragraph (t) of s.89A(2). In our view, the approach to the construction of s.89A adopted by a Full Bench in the *Hospitality Case* [(1997) 75 IR 272] and by a Full Bench in the *Leave Allowability Case* [(1998) Print Q9399] should be applied to paragraph (t). The approach taken in the *Hospitality Case* was to adopt the views expressed by another Full Bench in the *Commonwealth Bank Officers Award Case* [(1997) 74 IR 446], as follows:

"The list of allowable award matters is comprised of concepts of particular kinds of award benefits and conditions of employment. The construction of s 89A(2) demands that each concept be given a meaning consistent with the use of the concept in industrial relations practice in Australia. In its context, s 89A is not a provision for which there is need for either a restrictive or a generous construction. The terms in it are to be given their ordinary meaning having regard to industrial relations usage." (74 IR 458-9).

Put briefly, we will construe paragraph (t) by giving the words "their ordinary meaning having regard to industrial relations usage".

11. We do, however, take into account that paragraph (t) differs from each of the other paragraphs in s.89A(2). Paragraphs (a) to (s) specify matters without reference to any particular class of employee. Paragraph (t), on the other hand, concerns one specific class of employee; namely, outworkers. Outworker is

defined in s.89A(9). For outworkers, paragraph (t) specifies as an allowable award matter "pay and conditions" subject to the qualification that commences after the comma. This qualification has the effect of requiring the Commission to consider any evidence or other material before it that is relevant to it forming a view as to what is necessary to ensure the situation specified in the qualification.

12. In concluding this section, we note that paragraph (t) was not in the original *Workplace Relations and Other Legislation Amendment Bill 1996*. It was introduced pursuant to the agreement reached in October 1996 between the Commonwealth Government and the Australian Democrats. Clause 2.3 of this agreement contains a reference to "protections for outworkers". The explanatory memorandum for amendments to be moved on behalf of the Government and the Australian Democrats with respect to the *Workplace Relations and Other Legislation Amendment Bill 1996* says that "[n]ew paragraph (2)(t) is inserted to allow awards to include provisions which protect outworkers ...".

CONCLUSION ON ALLOWABILITY

13. We have come to the conclusion, for the reasons which follow, that clauses 26, 27 and 27A are allowable in their entirety under s.89A(2)(t) and s.89A(6).

14. Employees covered by the clothing award include outworkers and factory workers. Outworkers in the clothing industry are, as the decisions and the evidence show, because of the circumstances of their employment, much less likely to receive their award entitlements than factory workers. This has led to the development of special provisions in the clothing award designed to ensure that outworkers receive their award entitlements. These are the provisions currently found in clauses 26, 27 and 27A.

15. Before us there is unchallenged evidence that clauses 26, 27 and 27A as a whole are necessary to enable outworkers in the industry to receive their award entitlements. For instance, Mr Tubner, Secretary of the New South Wales Branch of the TCFUA, said in his statement:

"Any examination of these current Award provisions will reveal their necessity given the extent of the problems faced by outworkers in obtaining wages and conditions, and will reinforce the need for all parties connected to this industry, and indeed the community at large, to face up to their responsibilities in ensuring that outworkers obtain the benefits accorded to workers under the industrial relations system. The 'invisibility' of outworkers' work has not only made enforcement of award and statutory conditions more difficult, it has also prevented proper consideration and analysis of the work done by outworkers and of the true value of the skills used to do that work. Accordingly the TCFUA supports any process that brings those issues out into the open as this will assist the TCFUA in obtaining award entitlements for outworkers.

Any diminution of the Award's current protections for outworkers would make it impossible to enforce the legal entitlements of outworkers as defined by Clause 27. In particular, removal or restriction of Clause 27A would make it far more difficult to identify the employers who gave the work to those outworkers – and, without such identification, there can be no such enforcement. Similarly, any diminution of Clause 26 would also make it impossible to track the movement in the flow of clothing work orders given out and would thereby make it impossible to locate the ultimate outworkers (in order to determine whether those outworkers were receiving Award entitlements in accordance with clause 27). In addition, the removal of the statutory declaration provisions of clauses 26 and 27 would prevent effective enforcement of any remaining legal entitlements for outworkers, given their overwhelming lack of English language fluency and their social isolation (and the corresponding lack of witness evidence available to assist these outworkers)."

And, Ms Delaney, outwork co-ordinator of the Victorian Branch of the TCFUA, said in her statement:

"The current detail in clauses 26, 27 & 27A of the Award are essential to provide minimum conditions, and to provide requirements to monitor wages and conditions of workers. The record keeping, lists, registration and contract details prescribed in clause 26 is the most fundamental requirement to ensure manufacturers, fashion houses or contractors record who is getting their work, how much they are paying, how many hours work is involved and the volume of work in total."

16. Section 89A(2)(t) makes pay and conditions for outworkers an allowable award matter subject to the qualification which follows the comma. Giving the words "pay and conditions" their "ordinary meaning having regard to industrial relations usage" (*Commonwealth Bank Officers Case*; see above), we are of the view that clauses 26, 27 and 27A come within the description of "pay and conditions for outworkers" and also are "incidental to" (within s.89A(6)) "pay and conditions for outworkers".

17. We turn to the qualification in s.89A(t), "but only to the extent necessary to ensure that their overall pay and conditions of employment are fair and reasonable in comparison with the pay and conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises". Having regard to the evidence and the decisions relating to outworkers in the clothing industry, we are satisfied that clauses 26, 27 and 27A are, in their entirety, necessary to ensure what is specified in this qualification. These clauses, as the evidence and decisions show, contain a number of interrelated provisions having the object of ensuring that outworkers receive their award entitlements. If one or more of the provisions were to be removed, the remainder would be rendered less effective or ineffective to achieve this object.

18. We earlier expressed the view that clauses 26, 27 and 27A provide for pay and conditions for outworkers (s.89A(2)(t)) and also are, within s.89A(6), incidental to pay and conditions for outworkers. To the extent that we rely on s.89A (6), we are of the view that clauses 26, 27 and 27A are necessary for the effective operation of the clothing award. This is, in our opinion, demonstrated by the evidence and the history of the clauses. Without these clauses, outworkers in the clothing industry would, in many cases, be unable to receive their award entitlements.

19. Having, for the reasons we have given, concluded that clauses 26, 27 and 27A are allowable in their entirety, there is no need to deal with the submissions of the Commonwealth and the employers that, while the clauses are substantially allowable, there are a number of provisions in them which are not allowable.

ITEM 51 CONSIDERATIONS

20. Item 51 (6), (7) and (8) provides:

"(6) The Commission must, if it considers it appropriate, review the award to determine whether or not it meets the following criteria:

- (a) it does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level;
- (b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;
- (c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.

(7) The Commission must also review the award to determine whether or not it meets the following criteria:

- (a) where appropriate, it contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply;
- (b) where appropriate, it contains provisions enabling the employment of regular part-time employees;
- (c) it is expressed in plain English and is easy to understand in both structure and content;
- (d) it does not contain provisions that are obsolete or that need updating;
- (e) where appropriate, it provides support to training arrangements through appropriate trainee wages and a supported wage system for people with disabilities;
- (f) it does not contain provisions that discriminate against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

(8) If the Commission determines that the award does not meet the criteria set out in subitem (6) or (7), the Commission may take whatever steps it considers appropriate to facilitate the variation of the award so that it does meet those criteria."

21. We have given consideration to the requirements of these provisions. In our view, clauses 26, 27 and 27A meet or do not offend these criteria, except that specified in item 51(7)(c). Clauses 26, 27 and 27A are not, in our opinion, expressed in plain English nor are they easy to understand in both structure and content. The item 51(7)(c) criterion was the subject of discussion during the hearing and there was little dispute that clauses 26, 27 and 27A could be more

written submissions included various suggested redrafts of the clauses. We direct the award parties to confer on this matter in an endeavour to rewrite the clauses so that they comply with item 51(7)(c). The matter will be relisted for a report back on this matter on a date to be advised.

FINAL COMMENT

22. This decision deals with the clauses relating to outworkers in the clothing award and is made in the light of the evidence and submissions before us in relation to that award. Our decision that the outworker clauses in the clothing award are allowable in their entirety has no application to outworker provisions in any other award. Whether outworker provisions in other awards are allowable award matters will turn on a consideration of the evidence and submissions in relation to those awards.

BY THE COMMISSION:



VICE PRESIDENT

ATTACHMENT 2

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Review of awards pursuant to Item 51 of Part 2 of Schedule 5 of the
Workplace Relations and Other Legislation Amendment Act 1996
(C No. 00281 of 1999)

CLOTHING TRADES AWARD 1982

(ODN C No. 00696 of 1980)

[Print J6132 [C0037CRA]]

Various employees

Clothing industry

COMMISSIONER LARKIN

SYDNEY, 29 NOVEMBER 1999

Award simplification.

ORDER

A. Further to the *Award Simplification Decision* of the Commission issued on 23 December 1997 [Print P7500] and the decision of this Commission issued on 22 September 1999 [Print R9211] the above award is varied as follows:

By deleting all clauses, schedules and appendices and inserting the following:

PART 1 - APPLICATION AND OPERATION OF AWARD

1. AWARD TITLE

This award will be known as the Clothing Trades Award 1999.

2. ARRANGEMENT

[2 varied by V001 from 20Dec99; PR913497 ppc 20Jul01; (PR958983 cancelled and replaced by PR959584 ppc 07Jun05); varied by PR959584 ppc 07Jun05 (ppc 01Aug05 for Victorian employers bound to apply the terms of this award by PR950670)]

This award is arranged as follows:

Part 1 - Application and operation of award

1. Award title
2. Arrangement
3. Anti-discrimination
4. Definitions

5. Commencement date of award and period of operation
6. Coverage of award
7. Parties bound
8. Persons, organisation, industries and employers exempted from coverage
9. Relationship with other awards

Part 2 - Award flexibility

10. Enterprise flexibility
11. Procedure when implementing facilitative provisions

Part 3 - Communication, consultation and dispute resolution

12. Procedure for the avoidance of industrial disputes
13. Consultative mechanism
14. Award posted

Part 4 - Employment relationship and related matters

15. Types of employment
16. Full-time employment
17. Regular part-time employment
18. Casual employment
19. Period of probation
20. Apprentices
- 20A. School based apprentices
21. Juniors
22. Termination of employment
23. Redundancy
24. Stand down of employees

Part 5 - Wages and related matters

25. Wage rates
- 25A. Transitional Wage Rates for Victoria—Application of Common Rule Award
26. Skill levels
27. Allowances
28. Payment by results
29. Payment of wages
30. Superannuation
31. Supported wages system

Part 6 - Hours of work, breaks, overtime, shift work, weekend work

32. Hours of work
33. Breaks
34. Overtime
35. Shiftwork
36. Weekend work

Part 7 - Leave and public holidays

- 37. Annual leave
- 38. Public holidays
- 39. Sick leave/Carers leave
- 40. Parental leave
- 41. Bereavement leave

- 42. Jury service
- 43. Hospital leave

Part 8 – Accident pay

- 44. Accident pay

Part 9 Outwork and related provisions

- 45. Definitions
- 46. Contract work
- 47. Outworkers
- 48. Registration for the Purposes of Outwork and Contract Work
- 49. Boards of Reference

Schedule A Respondents to this Award

Schedule B Information To Be Given To Outworkers

Schedule C Request To The Union By The Outworker to Reduce The Number of Hours Worked Part Time

3. ANTI-DISCRIMINATION

- 3.1 It is the intention of the respondents to this award to achieve the principal object in s.3(j) of the *Workplace Relations Act 1996* through respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 3.2 Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 3.3 Nothing in this clause is to be taken to affect:
 - 3.3.1 any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;

44.12 Variations in compensation rates

Any changes in compensation rates under the respective Act shall not increase the amount of accident pay above the amount that would have been payable had the rates of compensation remained unchanged.

44.13 Death of employee

All rights to accident pay shall cease on the death of an employee.

44.14 Disputes

In the event of any dispute arising as to the entitlement of an employee to payment of accident pay in accordance with the provisions of this award the matter shall, if any party to this award so requires, be referred to the Board of Reference.

44.15 An employer shall pay superannuation contributions in accordance with 30 - Superannuation of this award to an employee receiving accident pay in accordance with this clause.

PART 9 - OUTWORK AND RELATED PROVISIONS

[Pt 9 substituted by V001 from 20Dec99]

45. DEFINITIONS

In this Part:

"employer" means an employer or person bound by this award;

"non-respondent" means an employer or person who is not bound by this award;

"ordinary working week" means the hours and days occurring between midnight on Sunday night and midnight on Friday night in any week;

"outworker" means a person who performs work as herein defined for an employer outside the employer's workshop or factory under a contract of service;

"work" means hand or machine work which relates to the construction or finishing of a garment or product, or part of a garment or product, when such work is performed outside a workshop or factory.

46. CONTRACT WORK

46.1.1 An employer registered under clause 48 may, under certain conditions set out below, give work out to:

46.1.1(a) Another respondent, who will have all the work carried out in their own workshop or factory registered in accordance with relevant State legislation;

- 46.1.1(b) Another respondent, who will not have all the work carried out in their own workshop or factory registered in accordance with relevant State legislation;
- 46.1.1(c) A non-respondent, who will have all the work carried out in their own workshop or factory registered in accordance with relevant State legislation, and who does not employ outworkers;
- 46.1.1(d) A non-respondent who will not have all the work carried out in their own workshop or factory registered in accordance with relevant State legislation;
- 46.1.1(e) A non-respondent who will personally perform all the work.
- 46.1.2 An employer must not give work out to that person(s) provided in clause 46.1.1(b) unless that/those person/s is/are also registered in accordance with clause 48.
- 46.1.3 An employer, when desirous of giving work out to any of the persons provided in clause 46.1.1(c), 46.1.1(d) or 46.1.1(e), must make application for registration in accordance with clause 48.

46.2 Work records

- 46.2.1 An employer must make a written record (called a "work record") whenever he/she gives work out to any of the parties listed in clause 46.1.1.
- 46.2.2 The obligations to keep records in clause 46.2.1 applies to an employer who has received work from another employer and who in turn gives out work to any of the parties listed in clause 46.1.1.
- 46.2.3 The work record must contain the following details:
 - 46.2.3(a) the name of the employer bound by this award;
 - 46.2.3(b) the employer's registration number;
 - 46.2.3(c) the address of the employer;
 - 46.2.3(d) the name(s) and address(es) of the person(s) to whom the work is given;
 - 46.2.3(e) the address(es) where the work is to be performed;
 - 46.2.3(f) the date of the giving out of work and the date for completion of the work;
 - 46.2.3(g) a description of the nature of the work to be performed (including construction, seam type, finishing and fabric type);
 - 46.2.3(h) a description and, where available, a rough drawn outline of the garments or articles of each type being given out to the respondent or non-respondent;
 - 46.2.3(i) the number of garments or articles of each type being given out;
 - 46.2.3(j) the sewing time allowed for each type of garment or article to be done;

46.2.3(k) the price to be paid for each garment or article; and

46.2.3(l) where the work is being given to the person listed in clause 46.1.1(e), the total amount to be paid for the work performed calculated in accordance with clause 46.2.3(i), (j) and (k).

46.2.4 In relation to the details recorded in accordance with clause 46.2.3(k), the union will not divulge any details concerning the price to be paid for each garment in any circumstances to any party save for enforcement proceedings in a Court or industrial dispute resolution proceedings in the Australian Industrial Relations Commission.

46.2.5 Within 2 working days of a request being made, the employer's work records must be provided by the employer to the union for inspection and copying:

- . At a time and place agreed between the employer and the union; or
- . In the absence of agreement, between 8 a.m. and 5 p.m. on a working day at an appropriate place nominated by the employer within a 50 km radius of the employer's premises and to which the employer must provide access. (The employer may nominate their own premises.); or
- . If the employer fails to nominate such a place, between 8 a.m. and 5 p.m. on a working day at an appropriate place nominated by the union within a 50 km radius of the employer premises. (The union must not nominate the employer's premises but may nominate its own premises if they are within the 50 km radius of the employer's premises.)

46.2.6 A copy of the work record must be given to the person doing the work.

46.3 Preparation and filing of lists

46.3.1 An employer who gives work to another respondent as provided in clause 46.1.1(a) or 46.1.1(b) must:

46.3.1(a) keep a list of the respondents to whom work has been given;

46.3.1(b) send a copy of this list to the Industrial Registrar and to the relevant State Branch of the TCFUA on the last work day of May and the last working day of November each year.

46.3.2 The Industrial Registrar may allow an organisation with a legitimate interest in the clothing industry to peruse such records.

46.4 Giving work out to respondents or non-respondents

46.4.1 An employer who gives work out to a respondent or non-respondent as provided in clause 46.1.1(e) must contract to provide, and must provide, terms and conditions no less favourable than those provided for outworkers in clause 47.

46.4.2 An employer may not enter into a contract or arrangement with a respondent or non-respondent as provided in clause 46.1.1(b), 46.1.1(c) or 46.1.1(d) unless:

46.4.2(a) the contract or arrangement contains a term which provides that any work performed by a person other than the respondent or non-respondent is carried out pursuant to a written agreement between the respondent or non-respondent and the person who will actually perform the work;

46.4.2(b) the written agreement must specify each of the matters set out in relation to the work records referred to in clause 46.2.3(a) to (l); and

46.4.2(c) the written agreement must provide for wages and conditions no less favourable than those provided for outworkers in clause 47.

46.4.3 An employer who gives work out to a respondent or non-respondent as provided in clause 46.1.1(b), 46.1.1(c), 46.1.1(d) or 46.1.1 (e) must:

46.4.3(a) keep a list of the respondent or non-respondent to whom work has been given;

46.4.3(b) keep a list of the contracts or arrangements entered into with respondents or non-respondents;

46.4.3(c) keep a list of the names and addresses of the respondents or non-respondents with whom they make such contracts or arrangements; and

46.4.3(d) provide a copy of these lists to the Industrial Registrar and to the appropriate State Branch of the union within seven days of the last working day of February, May, August and November of each year.

46.4.4 The Industrial Registrar may allow an organisation with a legitimate interest in the Clothing Industry to peruse such records.

46.5 Claiming payment from an employer

46.5.1 Where a person has performed work either:

46.5.1(a) directly for an employer pursuant to clause 46.4.1; or

46.5.1(b) for a non-respondent given work by an employer pursuant to clause 46.4.2;

the person may make a claim for payment for such work by serving upon the employer a statutory declaration in the terms set out in clause 46.5.2.

46.5.2 The statutory declaration must specify:

46.5.2(a) the identity of the person performing the work;

46.5.2(b) the work performed;

46.5.2(c) the date or dates on which the work was performed; and

46.5.2(d) the payment claimed.

46.5.3 If the statutory declaration is served within six months of completion of the work in relation to which payment is claimed, it must be accepted as proof of liability on the part of that employer to pay the sum claimed unless the employer is able to prove that:

46.5.3(a) the work was not in fact done; or

46.5.3(b) the payment claimed was not the correct payment for the work that was actually done.

46.6 Observance of the award

46.6.1 An employer bound by this award must not, in any way, whether directly or indirectly, be a party to or concerned in conduct that:

46.6.1(a) hinders, prevents or discourages the observance of this clause;

46.6.1(b) causes or encourages or is likely to cause or encourage, a breach or non-observance of this clause.

46.7 Information to certain persons

An employer contracting with a person as provided in clause 46.1.1(e) must provide to that person, each time work is given out, information as to their entitlements in the form and content of Schedule B of this award. In addition, where the outworker is not from an English speaking background, the employer must have the information contained in Schedule B translated into the appropriate language for the outworker.

46.8 Dispute settling procedure

Any dispute arising out of or concerning this award relating to the performance of work by a person under this clause may be referred to the Australian Industrial Relations Commission.

47. OUTWORKERS

47.1 An employer must not employ an outworker to perform work covered by this award unless that employer is a registered employer of outworkers pursuant to clause 48.

47.2 An employer must make application for registration pursuant to clause 48 before engaging or contracting to engage outworkers.

47.3 Written agreement about hours of work

47.3.1 An employer must not employ an outworker or outworkers unless the employer and the outworker have first made a written agreement which includes the matters set out in clause 47.3.2.

47.3.2 The written agreement must specify:

47.3.2(a) whether the outworker is to be employed on a full-time or regular part time basis; and

47.3.2(b) if the outworker is to be employed on a regular part time basis, the agreed number of hours of employment being at least 20 hours.

47.3.3 The employer and outworker may vary the written agreement from full-time to regular part time, and vice versa, only if:

47.3.3(a) The proposed terms of the written agreement must be provided in writing to the outworker prior to the agreement being signed. The proposed terms of the agreement must be expressed in a manner which enables the proposal to be understood by the outworkers. In addition, where the outworker is not from an English speaking background, the employer must have the proposal translated in the appropriate language for the outworkers.

47.3.3(b) The proposed terms of the agreement (in writing) and the written agreement reached must both be held in the written records kept by the employer in accordance with clauses 46.2 and 47.16 of this award.

47.3.4 The employer and outworker may vary the written agreement from full-time to regular part time and vice versa, only if:

47.3.4(a) the proposed variation (as translated into the appropriate language for the outworker) is provided in writing to the outworker prior to the variation being agreed; and

47.3.4(b) both parties consent to the proposed variation by signing a copy of the appropriately translated proposal, the signed copy to be held (along with an English language version) in the written records kept by the employer in accordance with clauses 46.2 and 47.16 of this award.

47.3.4(c) in which event the variation will take effect 3 days after the written agreement to vary is made.

47.4 An outworker may request in writing to the union a reduction in the hours of regular part time work to a minimum of 15 hours per week. The application must be submitted in accordance with Schedule C. The hours agreed in accordance with this subclause will override the hours prescribed in clause 47.10.

47.5 An employer must not employ more than 10 outworkers at any one time, unless the employer has:

47.5.1 the consent of the union; or

47.5.2 the consent of the Board of Reference, which may exercise its discretion to grant permission to the employer to employ a specified greater number of outworkers.

47.6 An employer must pay outworkers at the appropriate rates prescribed in clauses 25 and 28 for the work performed.

47.7 An employer must:

47.7.1 allow fair and reasonable working time for the work to be performed;

47.7.2 set time standards for the work to be performed by the outworker which will in every case be longer than the time standards that would be set for the same work if done in a workshop or factory; and

47.7.3 set time standards so that they include a reasonable component to cover time spent on ancillary tasks such as bundling and unbundling, sorting, packing and the like;

if the employer has no workshop or factory, a workshop or factory undertaking the same or comparable work will be used for the purpose of setting the time standards.

47.8 Payment by minute rates

47.8.1 An outworker must be paid for work performed in the ordinary working week; and for the first 38 hours of work at the minute rate of 1/2280 of the weekly award rate for the classification in which the outworker is employed.

47.8.2 The minute rate in clause 47.8.1 should be multiplied by 1.5 for each hour worked in excess of 38 hours in the ordinary working week.

47.8.3 The minute rate in clause 47.8.1 should be multiplied by 2 for any work performed or deemed to have been performed on a Saturday, Sunday or public holiday in accordance with clause 47.17.

47.9 Clause 28 applies to any outworker working under any system of payment by results, except where expressly excluded by this clause or clause 28.

47.10 Hours of work

47.10.1 An outworker who is ready able and willing to work must be provided in an ordinary working week with the following hours of work:

47.10.1(a) if employed on a full-time basis, 38 hours worth of work; or

47.10.1(b) if employed on a regular part time basis, the regular minimum number of hours as agreed by the employer and employee in accordance with clause 47.3.2.

47.11 If an outworker, including those employed under any system of payment by results, who is ready, able and willing to work receives in any ordinary working week fewer hours than the minimum number of hours provided for in clause 47.10 (or no work at all), the outworker must be paid:

47.11(a) if employed on a full-time basis, the weekly award rate for the classification in which the outworker is employed; or

47.11(b) if employed on a regular part time basis, for the number of hours for which the outworker is employed.

47.12 An employer must not require an outworker to complete more than 38 hours of work, or if employed on a regular part time basis, more than the number of hours for which he or she was employed to work, in any ordinary working week.

47.13 Subject to clause 47.17, an employer must not require an outworker to work on a Saturday, Sunday or a public holiday.

47.14 An employer must pay an outworker for each public holiday prescribed by this award an amount equal to 1/5 of the weekly award rate for full-time employees and an amount calculated on a proportionate basis for regular part time employees.

47.15 Stand-down of outworkers

47.15.1 An employer may stand-down an outworker, without pay, where no work can be offered as a result of circumstances beyond the employer's control, proof of which lies with the employer.

47.15.2 An employer may only stand-down an outworker for a maximum of 10 days per year, and no more than 2 days in any consecutive four week period.

47.15.3 Where an employer stands down any outworker, he or she must keep a record of:

47.15.3(a) the name and address of the outworker(s) stood down;

47.15.3(b) the commencing date and duration of the stand-down; and

47.15.3(c) the reason for the stand-down.

47.15.4 Within two working days of the stand-down, a copy of this record must be given to:

47.15.4(a) the outworker who has been stood down; and

47.15.4(b) the relevant State Branch of the union.

47.15.5 Within 2 working days of a request being made, the employer's work records must be provided by the employer to the union for inspection and copying:

- At a time and place agreed between the employer and the union; or

- In the absence of agreement, between 8 a.m. and 5 p.m. on a working day at an appropriate place nominated by the employer within a 50 km radius of the employer's premises and to which the employer must provide access. (The employer may nominate their own premises.); or

- If the employer fails to nominate such a place, between 8 a.m. and 5 p.m; on a working day at an appropriate place nominated by the union within a (50 km) radius of the employer premises. (The union must not nominate the employer's premises but may nominate its own premises if they are within the 50 km radius of the employer's premises.)

47.16 Employer's requirement to keep records

- 47.16.1** An employer must keep true and correct written records of the matters specified in clause 47.16.3.
- 47.16.2** An employer must provide a copy of the written records to the outworker at the time of delivery.
- 47.16.3** The written records must contain full details of the following matters:
- 47.16.3(a)** the name of the employer bound by this award;
 - 47.16.3(b)** the employer's registration number;
 - 47.16.3(c)** the address of the employer;
 - 47.16.3(d)** the name of the person to whom the work is given;
 - 47.16.3(e)** the address where the work is to be performed;
 - 47.16.3(f)** the date of the delivery of the work to the outworker;
 - 47.16.3(g)** a description of the garments or articles upon which work is to be done (eg skirts, dresses, jeans);
 - 47.16.3(h)** a description of the nature of the work to be performed (eg overlocking);
 - 47.16.3(i)** the number of garments or articles of each description being given out to the person;
 - 47.16.3(j)** full details of the appropriate time standard in accordance with clause 47.7, which when considered with the minute rate set out in clause 47.8, will enable calculation of the price to be paid for each garment or article;
 - 47.16.3(k)** the number of working hours that will therefore be necessary to complete the work; and
 - 47.16.3(l)** the number of days that will be needed to perform the work, to be calculated on the basis of 7.6 hours being worked on each day (consistent with clause 47.12);
 - 47.16.3(m)** the appropriate time and date for the work to be picked up from the outworker;
 - 47.16.3(n)** the total amount to be paid to the outworker, calculated in accordance with clause 47.16 (i), (k) and (l).
- 47.16.4** Within 2 working days of a request being made, the employer's work records must be provided by the employer to the union for inspection and copying:

- At a time and place agreed between the employer and the union; or
- In the absence of agreement, between 8 a.m. and 5 p.m. on a working day at an appropriate place nominated by the employer within a 50 km radius of the employer's premises and to which the employer must provide access. (The employer may nominate their own premises.); or
- If the employer fails to nominate such a place, between 8 a.m. and 5 p.m. on a working day at an appropriate place nominated by the union within a 50 km radius of the employer premises. (The union must not nominate the employer's premises but may nominate its own premises if they are within the 50 km radius of the employer's premises.)

47.17 Work on weekends and public holidays

47.17.1 The time and date for the pick up of work from an outworker recorded in clause 47.16.3(m) must be set on the basis that no work will need to be performed on any Saturday, Sunday or public holiday, except:

47.17.1(a) if there is a prior written agreement between the employer and outworker that work will be performed on any or all of such days;

47.17.1(b) the written agreement specifies the actual date of any Saturday, Sunday or public holiday on which it has been agreed that work will be performed; and

47.17.1(c) the written agreement specifies the number of hours to be worked on each such day; failing which the outworker will be deemed to have worked and will be entitled to payment for that day at the rate specified in clause 47.8.3.

47.17.2 If the time between delivery and pick up includes any Saturday, Sunday or public holidays then the time for completion of the work will extended to a new pick up date to ensure that the outworker will not be required to work on any Saturday, Sunday or public holiday in order to complete the work.

47.17.3 If the time between delivery and pick up includes a Saturday, Sunday or public holiday, the outworker can agree or elect to complete the work by the pick up date, rather than extending the time to a new pick up date.

47.17.4 If an outworker agrees or elects to complete the work by the pick up date rather than extending the time to a new pick up date, the outworker will be deemed to have completed 7.6 hours work on each of the Saturdays, Sundays or public holidays occurring in the period between delivery and pick up, and be paid for such time at the rate specified in clause 47.8.3.

47.18 Annual leave

An employer must pay an outworker annual leave in accordance with clause 37 of this award.

47.19 Payment of wages

47.19.1 An employer must pay an outworker all wages due within two working days of the end of the working week.

47.19.2 Wages must be paid at a time and by a method mutually agreed between the employer and the outworker.

47.19.3 On or before the pay day, the employer must provide to the outworker in writing:

47.19.3(a) details of the wage payment;

47.19.3(b) the amount of any deduction made; and

47.19.3(c) the net amount being paid.

47.20.1 The following clauses of the award do not apply to outworkers because these terms and conditions are otherwise provided by this clause:

47.20.1(a) 32 Hours of work

47.20.1(b) 34 Overtime

47.20.1(c) 29 Payment of wages

47.20.1(d) 17 Regular part-time employment

47.20.2 Outworkers are entitled to all terms and conditions of employment provided by this award excluding the following clauses:

47.20.2(a) 14 Award posted

47.20.2(b) 18 Casual employment

47.20.2(c) 27.4 Dining room allowance

47.20.2(d) 27.3 Meal allowance

47.20.2(e) 33.1 Mid day meal break

47.20.2(f) 34.4.3 Rest breaks

47.20.2(g) 27.5 Rest room allowance

47.20.2(h) 39 Sick leave

47.20.2(i) 27.9 Tool allowance

- 47.21** An employer must provide outworkers with all necessary materials, trimmings and sewing threads.
- 47.22** An employer must cause all work to be delivered and collected from an outworker at no cost to the outworker.
- 47.23 Claiming payment from an employer**
- 47.23.1** Where an outworker has performed work for an employer he or she may make a claim for payment for such work by serving upon the relevant employer a statutory declaration in the terms set out in clause 47.23.2.
- 47.23.2** The statutory declaration must specify:
- 47.23.2(a)** the identity of the person performing the work;
 - 47.23.2(b)** the work performed; and
 - 47.23.2(c)** the payment claimed.
- 47.23.3** If the statutory declaration is served within six months of completion of the work in relation to which payment is claimed, it must be accepted as proof of liability on the part of that employer to pay the sum claimed unless the employer is able to prove that:
- 47.23.3(a)** the work was not in fact done; and/or
 - 47.23.3(b)** the payment claimed was not the correct payment for the work that was actually done.
- 47.24** In any proceedings concerning work performed pursuant to this clause, a person alleging that the person performing the work was not an employee, bears the onus of proving that this was the case.
- 47.25** An employer bound by this clause must not, in any way, whether directly or indirectly, be a party to or concerned in conduct that:
- 47.25(a)** hinders, prevents or discourages the observance of this clause; or
 - 47.25(b)** causes or encourages, or is likely to encourage, a breach of, or non-observance of, this clause.
- 47.26** An employer must provide to the outworker, each time work is given out, information as to their entitlements in accordance with the form and content of Schedule B of this award. In addition, where the outworker is not from an English speaking background, the employer must have the information contained in Schedule B translated into the appropriate language for the outworker.

47.27 Any dispute arising out of or concerning this award relating to the employment of an outworker may be referred to the Australian Industrial Relations Commission.

48. REGISTRATION FOR THE PURPOSES OF OUTWORK AND CONTRACT WORK

48.1 An employer must be registered by the Board of Reference before having any work performed away from his or her own workshop or factory as provided by clauses 46 and 47.

48.2 An employer must not give work to another respondent who may have any work performed outside a workshop or factory registered in compliance with the relevant state legislation unless that other respondent is also registered by the Board of Reference pursuant to clause 48.1 of this award.

48.3 On application, the Board of Reference may register the employer on conditions determined by it for a period of twelve months.

48.4 The Board of Reference may revoke the registration of the employer that fails to comply with any or all of such conditions.

48.5 Upon registration, the Board of Reference will give an employer a registration number.

48.6 The Industrial Registrar will maintain a record of registered employers.

48.7 Each employer who is registered must, at the time of registration and on each anniversary of registration, place a notice in the public notices column of a metropolitan daily newspaper circulating throughout the state in which the work is to be performed.

48.7.1 The notice must state that:

48.7.1(a) The employer is a registered employer of outworkers;

48.7.1(b) The identity of the employer and the employer's registration number;

48.7.1(c) The location at which all documents in the employer's possession or custody which relate to the terms and conditions or contracts of employment of outworkers may be inspected by the union.

48.8 An employer may make an agreement in writing with the union or apply to the Board of Reference to be exempted from the notice requirement. A copy of any written agreement made between a Respondent and the union must be lodged with the Industrial Registrar.

49. BOARDS OF REFERENCE

49.1 For the purposes of this Part, power is given to the Registrar to appoint a Board of Reference at such place as he or she may from time to time determine.

49.2 In accordance with clause 49.1 power is given to the Registrar to appoint Boards of Reference for each of the following places:

Adelaide
Brisbane
Hobart
Melbourne
Perth
Sydney

49.3 The Board must consist of two union representatives and two employer representatives with the addition of the Registrar, or Deputy Registrar, or such person as he or she may nominate as Chairperson of the Board. In the event of the representative members of the Board being equally divided in opinion, the Chairperson may cast his or her vote to give a majority decision.

49.4 Any Board member may appoint a substitute to act on his or her behalf at any time.

49.5 Three members, one of whom must be the Registrar or Deputy Registrar or a Deputy as provided for in clause 49.3 will constitute a quorum.

49.6 A Board of Reference may sit at such times and places as the members may agree or the Registrar or Deputy Registrar may fix and may adjourn from time to time and place to place.

49.7 The functions of the Board of Reference will be to deal with any matter as directed by this Part of the award.

ATTACHMENT 3

Parliament of the Commonwealth of Australia

**OUTWORKERS IN
THE GARMENT INDUSTRY**

SENATE ECONOMICS REFERENCES COMMITTEE

DECEMBER 1996



OUTWORKERS IN THE GARMENT INDUSTRY

SENATE ECONOMICS REFERENCES COMMITTEE

DECEMBER 1996

MEMBERS OF THE COMMITTEE

Core Members:

Senator J.M.A. Collins (Chair) ¹	(Australian Labor Party - VIC)
Senator A.B. Ferguson (Deputy Chair) ²	(Liberal Party - SA)
Senator B Burns (until 30 June 1996)	(Australian Labor Party - QLD)
Senator M. Bishop (from 1 July 1996)	(Australian Labor Party - WA)
Senator H.G.P. Chapman	(Liberal Party - SA)
Senator B.K. Childs ³	(Australian Labor Party - NSW)
Senator S. Mackay (from 9 May 1996)	(Australian Labor Party - TAS)
Senator S. Spindler (until 30 June 1996)	(Australian Democrats - VIC)
Senator A. Murray (from 1 July 1996)	(Australian Democrats - WA)
Senator J.H. Panizza	(Liberal Party - WA)
Senator T.C. Wheelwright (from 9 May until 30 June 1996)	(Australian Labor Party - NSW)

1. From 9 May 1996
2. Chairman until 9 May 1996
3. Deputy Chairman until 9 May 1996

Participating Members:

Senators: E. Abetz, B. Brown, D. Brownhill, P.H. Calvert, M. Colston, P. Cook, B.Cooney, W. Crane, C.V. Evans, R. Kemp, I.D. Macdonald, S. Macdonald, D.J. MacGibbon, D. Margetts, J. McKiernan, N. Minchin, S. Murphy, B.J. Neal, W.G. O'Chee, C. Schacht, N. Sherry, G.E.J. Tambling, J.M. Troeth, J.O.W. Watson and R.L. Woods (at 2 December 1996).

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TERMS OF REFERENCE

1. The extent to which "outworking" and other subcontracting methods used in the Australian garment industry impose working conditions on outworkers and their families which do not meet accepted standards of fairness and equity, particularly with regard to:

(a) all aspects of remuneration, including piecework rates, hours of work, leave entitlements and training, as well as comparison with conditions that apply to on site garment makers;

(b) all aspects of working conditions and their occupational health and safety implications, including delivery times for orders;

(c) the extent to which children aged under 15 are involved in outworking and the effect this may have on their education, health and general well-being;

(d) the extent to which aspects of outworking may result in a breach of any laws, either by the employer or the outworker and their family, particularly in relation to employment conditions and the proper reporting of payments made or received for work completed;

(e) contract policies and procedures between retailers, subcontractors and outworkers and whether these practices run contrary to any international conventions, for example the International Labour Organisation; and

2. Steps which could be taken to address any deficiencies identified in paragraph (1) and any other matter which, in the opinion of the Committee, is relevant to the issue of whether outworkers and their families are exploited by existing conditions of employment.

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EXECUTIVE SUMMARY

The Textile, Clothing and Footwear Industries in Australia have undergone major restructuring over the last decade as a result of reductions in tariffs and bounties, forced by government in an effort to make the industry more internationally competitive. Manufacturing in routine, high-volume clothing areas has, for the most part, moved off-shore. Manufacturing in high fashion, seasonal areas has remained in Australia. However, in an effort to remain competitive in the face of increased imports, manufacturing has moved from a factory-based workforce to outworkers. Outworking is now so prevalent that it is not just a characteristic of the industry, the entire industry is structured around it.

With the addition of a large outworker labour force and their associated intermediaries, the chain of garment production has lengthened. In some instances, as many as seven parties may be involved (distributor, retailer, manufacturer, cutting contractor, sewing contractor, subcontractor, outworker). Because the chain of garment production is so long, it has become easy for responsibility to be passed off from one element to another along the chain.

Estimates provided indicate that there is somewhere between 50,000 and 330,000 people involved in outworking in the garment industry on a full and part-time basis. However, regardless of the absolute number of people involved in home-based garment manufacture in Australia, it is highly likely that the number of outworkers has increased considerably over the last decade. **More importantly, the Committee believes that there are sufficient people involved in the industry for concern about them to be warranted.**

Most outworkers are migrant women, aged between 25 - 35, who have young children at home. Some are assisted by their husbands, either in a full-time or part-time capacity. Most have very poor English language skills and are thus unable to find work elsewhere. Elderly people and children assist in many outworker families with ancillary tasks.

Problems experienced by outworkers include: low piece rates which translate to low hourly rates; impossible deadlines for completion of work; late payment, underpayment, non-payment for completed work, rejection of work and unreimbursed expenses; physical and verbal harassment from intermediaries

(blackmail, threats, coercion and bribes); substandard working environments; and worries associated with combining work with family responsibilities. These stresses are compounded by the lack of English language skills and inadequate training.

Through the availability of the various clothing trades awards, mechanisms exist for outworkers to be paid wages equivalent to factory employees and some outworkers are paid award wages. If this is done, it can provide a satisfactory employment option for women who for family or cultural reasons would prefer to work at home. However, the structural complexities of the garment manufacturing chain, and resultant ease with which various parties can shed responsibility, mitigates against full award compliance and it appears that the majority of outworkers are not paid award wages. Some outworkers are seriously exploited.

The Committee notes that the *Workplace Relations and Other Legislation Amendment Act 1996* will change the circumstances under which outworkers may be employed by providing for individual Workplace Agreements with scrutiny of such agreements available through the Employment Advocate. It is the Committee's view, however, that in accordance with the nature of outwork and past experience in the industry, it is probable that most outworkers will not be required to sign any contract and will continue to be employed in the same manner as they have been in the past.

In addition, powers of inspection (right of entry provisions) previously delegated to the Union, will be curtailed by the new legislation. The Committee is concerned that these changes have the potential to adversely affect the conditions under which outworkers are employed. The Committee concludes that for both these reasons alone, outworkers need extra employment protections as outlined in later conclusions and recommendations.

However, Government Committee Members believe that the strengthening of penalties for breaches of awards and the proactive role to be played by both the Office of the Employment Advocate and the Awards Management Section of the Department of Industrial Relations concerning outworkers, under the new *Workplace Relations Act 1996*, will improve outworker protections.

The Committee received compelling evidence that the employment status of outworkers is confused. While some legislation and certain awards make it clear that some outworkers are employees, the lack of clear national legislation and, more importantly, the actual conditions of employment experienced by outworkers give rise to the belief among many people that outworkers are

contractors rather than employees. The Committee believes that, because of the nature of the work undertaken and the circumstances of their employment, most outworkers in the garment industry should be considered to be employees. Accordingly, the Committee recommends that the Government examine ways to clarify the employment status of outworkers in the garment industry (Paragraph 2.69).

The Committee notes that occupational health and safety of outworkers is a neglected issue. Although the magnitude of occupational and secondary stress induced health problems is not known, the Committee is concerned that because outworkers are treated as contractors rather than as employees, the ultimate cost of accidents and illness among them may be being borne by the public sector. The Committee endorses the recommendations made by Worksafe Australia (Paragraph 3.84):

- That TCF industry parties continue and extend the steps already taken to work co-operatively in order to improve the OHS performance of their industry;
- That retailers and contractors in the TCF industry continue and extend the co-operative establishment of agreed minimum standards covering the conditions applied to outworking;
- That the TCF Development Authority give consideration to incorporating OHS criteria when determining funding for industry restructuring and training under the *TCF 2000 Development Package*; and
- That the TCF Development Authority consider allocating funds under the Authority's Best Practice program ... to develop ... a framework in which to achieve improvements in workplace control over hazards and more appropriate contractual arrangements with outworkers (Paragraph 3.45).

Evidence shows that children are involved in outworking and the Committee concludes that there is sufficient evidence to suggest that some children are involved to an unreasonable extent. The Committee believes that the situation endured by exploited children will only be ameliorated through an improvement in the employment conditions experienced by their parents. Having regard to Australia's international and national obligations to protect children from exploitation, the Committee suggests that Government consideration of this matter is warranted (Paragraph 3.85).

The Committee concludes that enforcement by government agencies of compliance with award wages and conditions has declined considerably in recent years, being more reactive than proactive, and that this in itself has contributed to an increase in the level of non-compliance. However, the Committee acknowledges that the level of non-compliance in TCF industries is exacerbated by an unwillingness on the part of outworkers to report non-compliance and to have government agencies involved in the circumstances of their employment.

The issues of taxation obligations and eligibility for welfare benefits are of concern to some outworkers; particularly those who may have been coerced into infringements. As evidenced by the introduction of the Reportable Payments System and the Social Security amnesty for outworkers, these issues are clearly also of concern to the relevant government instrumentalities.

The Committee strongly believes that the Australian Taxation Office could take greater advantage of the Reportable Payments System to fully investigate taxation avoidance in TCF industries. The Committee notes that an important additional benefit of the Reportable Payments System is that it will assist in identifying all parties involved in the garment manufacturing chain, particularly those at the level of intermediary. In addition, the Committee notes that information gained from the Reportable Payments System is able to be used by the Department of Social Security to investigate welfare benefits fraud.

The Committee concludes that the Social Security amnesty for outworkers has been of limited success because of the difficulties associated with conveying information to outworkers and with their reluctance to become involved with government agencies. The Committee believes that the amnesty had merit. The Committee recommends that the Government consider reinstating an amnesty for outworkers for a period to allow community groups sufficient time to communicate with outworkers and to persuade them of its benefits. The Committee further recommends that funding from the TCF 2000 Development Package be made available for community groups to inform outworkers of the amnesty (Paragraph 4.53).

The Committee notes that despite a low participation rate, the Labour Adjustment Program has been of benefit to a number of people in TCF industries who would otherwise have continued to be employed as outworkers in undesirable circumstances. The Committee believes that more outworkers would benefit if the cut-off date for prior employment was extended from July 1994 to some appropriate date in the future. The Committee therefore

recommends that the government consider extending the cut-off date for prior employment of the Labour Adjustment Program to a date in the future to be determined in consultation with the Union (Paragraph 4.54).

The Committee notes that Australia has not become a signatory to the ILO Convention and Recommendation on Home Work, but that the Government is currently undertaking consultations with the states, the Australian Chamber of Commerce and Industry and the ACTU with a view to presenting a report to Parliament on this matter by the end of June 1997. The Committee will review the Government's position in relation to the ILO Convention on Home Work in 12 months time (Paragraph 4.55).

The Committee notes the cancellation of the grant by the current Government to the Textiles Clothing and Footwear Union of Australia for outworker related activities. The Committee believes that the grant made by the previous Government to the Union for outworkers activities had already resulted in a number of beneficial outcomes. The Committee recommends to the Government that in evaluating proposals for expenditure from the TCF 2000 Development Package, consideration be given to the need for outworker projects similar to those carried out recently by the Union (Paragraph 5.24).

The Committee endorses the approach taken by the Union in promoting and establishing Deeds of Cooperation between the Union and garment retailers, manufacturing companies and government purchasers of clothing. The Committee recommends to all government agencies involved in clothing procurement that they consider whether outworkers are used in the manufacture of that clothing and, if so, whether they are able to enter into such Deeds of Cooperation (Paragraph 5.25).

The Committee believes that the draft voluntary industry 'Homeworkers Code of Practice' originally promoted by the Council of Textile and Fashion Industries of Australia could be an important step in changing the circumstances under which outworkers are employed. The Committee recommends that an industry 'Homeworkers Code of Practice' should be adopted by all participants in the garment retailing and manufacturing process. The Committee regrets that further progress has not been made towards establishing a voluntary Code and undertakes to review progress towards voluntary regulation in a further 12 months (Paragraph 6.50).

In attempting to resolve the problems faced by outworkers, quite a number of recommendations were made to the Committee by various government,

industry and community groups. It is clear from the number of suggestions that a combined and coordinated approach is needed. Of those recommendations made, the Committee endorses and recommends the following actions.

The Committee endorses the concept of labelling garments. The Committee recommends to the garment industry that it voluntarily adopt an agreed label declaring that the employment conditions under which the garment was made complied with legislative requirements (Paragraph 6.52).

Because the problem of outworker exploitation is multifaceted, the Committee sees merit in having a National Outwork Committee, coordinated at government level, which would include representatives from industry, unions, community groups, and government agencies. The Committee recommends that the government investigate the concept of a National Outwork Committee which would have responsibility, *inter alia*, for the initiation and allocation of funding for projects relating to outwork (Paragraph 6.53).

There is insufficient information about the number of outworkers involved in garment manufacture, and in other areas of home-based processing. The Committee recommends that the Australian Bureau of Statistics conduct a comprehensive survey of the number of home-based workers across all industries. The ABS should carry out this survey in conjunction with the ATO and information gained from the Reportable Payments System on the number of outworkers (Paragraph 6.54).

The English language skills of many outworkers are often completely inadequate. This reduces their ability to negotiate contracts and to understand the conditions under which they are employed. Notwithstanding existing programs, the Committee believes that there would be merit in all governments reviewing programs for English language education with a view to increasing access for outworkers. The Committee recommends that the Government review federally funded arrangements for English language education with a view to increasing accessibility for migrants involved in outwork (Paragraph 6.55).

A contributing factor in the shedding of responsibility along the garment manufacturing chain appears to be ignorance among participants as to their own rights and responsibilities, and those of other parties. There is a need for increased levels of industry education in areas of award compliance, industrial relations, taxation compliance, and management skills. The Committee recommends that the government review educational arrangements in

TCF industries for industrial relations and small business management (Paragraph 6.56).

The Committee believes that because a multifaceted approach is needed to eliminate exploitation of outworkers in the garment industry, the Government should move quickly to allocate funding identified in the TCF 2000 Development Package specifically for projects relating to outworkers, including those recommendations given above (Paragraph 6.57).

The Committee undertakes to review in 12 months time outworking in the garment industry, with particular reference to the recommendations contained in this report (Paragraph 6.58).

CHAPTER ONE

RECENT CHANGES IN TCF INDUSTRIES

1.1 Over the last decade the Textiles, Clothing and Footwear industries (TCF) have undergone major restructuring. In 1986, following a comprehensive Industries Assistance Commission inquiry, the Government announced an Industry Plan which would reduce the level of tariff support and consequently force TCF industries to become more internationally competitive. The Plan came into operation on 1 March 1989 and operated until 29 February 1996.¹

1.2 The major elements of the Plan included the phased removal of tariff quotas by 1995, reductions in bounties, phased reduction in tariffs to 1996, the simplification and rationalisation of the concessional entry system, an Industries Development Strategy of \$120 million to facilitate industry restructuring, and a Labour Adjustment Package (LAP) for workers displaced by the Plan. At the same time, the Government established a Textiles, Clothing and Footwear Development Authority to administer the Plan.

1.3 The progress of the Plan was such that changes to tariff protection were met earlier than expected and global quotas were removed nearly three years prior to that originally forecast. The objective of having a maximum tariff of 60% by 1 March 1966, was met in December 1994. The maximum tariff is now 37%, to be reduced to 25% by the year 2000. After a phased reduction, bounties were removed completely in July 1995.²

1.4 At June 1994, textiles, clothing and footwear industries in Australia comprised some 3500 businesses which employed over 73,000 wage and salary earners, and had an annual turnover of almost \$9 billion. The industries

¹ For more detailed information, see the Textiles, Clothing and Footwear Development Authority Annual Report, 1994-95.

² TCF Future Strategies Committee *Future Strategies for the Textiles, Clothing and Footwear Industries 1996-2000*. December 1994, p. 4.

accounted for 9.5% of Australia's factories, and within them 8.5% of manufacturing employment.³

1.5 In anticipation of the cessation of the TCF Development Authority in 1996, the Government commissioned in 1994 a Future Strategies Committee to review the strategies that the industries should pursue over the next decade. In turn, that Committee engaged consultants Werner International to conduct a detailed review.⁴ The resultant report concluded that there were good prospects for Australia's textiles, clothing and footwear industries and that the best Australian firms were equal with their international peers.⁵

1.6 Subsequent to the review, in May 1995, the Government announced the TCF 2000 Development Package: a \$45 million program to be implemented progressively from 1 July 1995 by the Department of Industry, Science and Tourism.

1.7 According to the 1994/95 Annual Report of the Textiles, Clothing and Footwear Development Authority:

... it is still too early to determine conclusively whether the Plan has been successful in its primary aim of restructuring the TCF industries to be internationally competitive and less reliant on government assistance. However there are clear indications that many firms are now internationally competitive and that this can be directly attributable to the Plan.⁶

1.8 However, aside from any benefits to individual companies that may have arisen from the Plan, the structural changes that have occurred within TCF industries have had a detrimental impact on factory-based employment. In fact, according to the Textiles, Clothing and Footwear Union of Australia (TCFUA or 'the Union'), reductions by the Federal Government in industry protection

³ Werner International Inc. *Review of the Textiles, Clothing & Footwear Industries Development Strategy - Final Report*. Prepared for the TCF Future Strategies Committee Australia. October 1994. pp. III1, and TCF Future Strategies Committee *Future Strategies for the Textiles, Clothing and Footwear Industries 1996-2000*. December 1994, p. 3. Note: this level of employment did not include self employed people (outworkers).

⁴ Werner International Inc. *op cit*.

⁵ As cited in the Textiles, Clothing and Footwear Development Authority Annual Report 1994-95, AGPS 1995, p. 23.

⁶ Textiles, Clothing and Footwear Development Authority Annual Report, *op cit*, p. 18.

have had 'devastating effects on employment in the TCF industries'.⁷ For example, as claimed by the TCFUA:

- total factory based employment of clothing workers fell from 62,900 in 86/87 to 34,000 in September 1994;⁸
- in women's fashion wear, factory based employment fell from 16,000 in 1986/87 (when the Plan was announced) to 9,700 in 1992/93;⁹
- at least 40,000 people have lost their jobs in TCF industries since 1989;¹⁰
- during the period 1987/88 to 1992/93, employment in footwear dropped 45%, in knitting mills it dropped 42%, yarns and fabrics 39%, and clothing 38%.¹¹

1.9 The two major changes that have contributed to a reduction in factory-based employment are, first, the move from Australian manufacturing production to offshore production and, second, the move from factory-based employment to the use of a home-based workforce: that is, outworkers.

1.10 In terms of manufacturing needs, clothing can be divided into two groups. One group comprises those garments which are stable in the marketplace, having relatively unchanging style and little variation in demand over season (for example, men's business shirts). These garments can be manufactured in long production runs. However, the companies which produce them are highly vulnerable to competition from manufacturers who can minimise production costs, such as material and labour. Thus because of lower labour costs overseas, many Australian manufacturers in this sector have moved to offshore production.

1.11 The other group is characterised by garments which change greatly in style and which have high variability in seasonal demand (for example, women's day-wear). These clothes require a short response time and are usually

⁷ Evidence, p. E 12.

⁸ Evidence, p. E 9.

⁹ Evidence, p. E 12.

¹⁰ Textiles Clothing & Footwear Union of Australia *The Hidden Cost of Fashion - Report on the National Outwork Information Campaign*. March 1995. p.4.

¹¹ Werner International Inc. *op cit*. Figure 5, p. III.5.

made in short production runs. There is a strategic advantage in having these types of clothes made in Australia, either in factories or by outworkers.¹²

1.12 Therefore, in parallel with the reduction in factory-based employment, and stimulated to a large extent by decreased industry protection and increased import competition, there has been an increasing trend towards transient and informal employment relationships in TCF industries. That is, there has been a large increase in the use of outworkers to sew clothes. By doing this, companies have been able to shift some of the costs associated with a fixed labour force onto contractors, or onto the workers themselves. High numbers of both redundant factory workers and new migrants willing to sew clothes at home has meant that there is a ready and large pool of outworkers.¹³

1.13 As anticipated, recent TCF restructuring has resulted in strong competition between manufacturing companies. This has in turn resulted in a change in the pattern of stability of garment companies, and a large section of the industry now has a very high failure rate. According to the submission from the NSW Government, many garment manufacturing companies are short lived and frequently change location. Research conducted between November 1993 and September 1994 by a departmental task force found that nearly 40 per cent of businesses initially surveyed were no longer operating six months later:

... the industry is volatile in nature, ... businesses start and cease operations, transfer locations and/or change ownership on a regular basis. This in itself presents a problem in not only ensuring the effective regulation of the industry, but in merely identifying the location of garment outworkers manufacturers.¹⁴

1.14 Similarly, an analysis of membership statistics of the Australian Chamber of Manufactures showed that there was a huge turnover of companies in the clothing sector compared with other industries.¹⁵ This has also contributed to higher levels of unemployment and employment instability in the industry.

¹² It is clear from clothing industry statistics, for example, that imports supply only a minority of the Australian market for women's fashion wear. Evidence, p. E 12.

¹³ Evidence, p. E 370.

¹⁴ Submission No. 38, p. 2.

¹⁵ Evidence, p. E 326.

1.15 As summarised by the TCFUA Report *The Hidden Cost of Fashion*, there are now very few 'inside' workers compared to the number of outworkers. Statistics provided in that report indicated that, in 1995:

- one third of all companies respondent to the Federal award had less than 10 inside workers and two thirds of these companies had less than five inside workers;
- in the unregulated sector, 90% of companies had less than five inside clothing workers;
- up to three quarters of clothing companies had only 5-10 inside workers and the majority of their production was carried out by outworkers;
- most of these companies employed at least 10 outworkers, many used at least 50 outworkers and some used over 200 outworkers.¹⁶

1.16 In fact the Union claims that outworking is now so prevalent that is not just a characteristic of the industry, the entire industry is structured around it and it has become essential to the survival of locally-based production. In the meanwhile, the Union argues, those companies which either use a factory-based workforce or pay outworkers award wages, struggle to remain competitive against companies which use underpaid or exploited labour.¹⁷

1.17 Despite the firm shift in the industry towards home-based work, both the Werner Report and the Future Strategies Report which followed it, made little mention of the role of outworkers in TCF industries. The Werner Report simply noted that the level of employment in the industry would be significantly more if self employed home workers were included,¹⁸ while the Future Strategies Report noted the concerns of the TCFUA regarding outworkers, particularly in relation to exploitation and equity, and concluded that it was a complex issue. The Future Strategies Committee recommended that 'the Union program for informing outworkers of their entitlements should continue to be adequately funded'.¹⁹

¹⁶ Textiles Clothing & Footwear Union of Australia *The Hidden Cost of Fashion - Report on the National Outwork Information Campaign*. March 1995. p. 5.

¹⁷ *ibid* p. 4.

¹⁸ Werner International Inc. *op cit.* p. III1.

¹⁹ TCF Future Strategies Committee, *op cit.* p. 16.

1.18 Over the last decade there has been a number of specific studies carried out on the role and position of outworkers in the Australian labour force. These include, in reverse chronological order:

- March 1995 - *The Hidden Cost of Fashion - Report on the National Outwork Information Campaign* which was conducted by the Textile Clothing and Footwear Union of Australia from July to November 1994;
- September 1989 - *Out of Sight - Out of Mind: Outwork in South Australia*, Women's Working Centre;
- April 1987 - *Report on Areas of Work Without Enforceable Minimum Standards* produced by the Committee to Inquire into the Status of Women in Employment in Commerce and Industry and presented to the NSW Ministers for Industrial Relations and Employment.

1.19 Thus because of the dramatic restructuring that has occurred within TCF industries over a relatively short period of time, outworkers involved in garment manufacturing occupy a particular place in the labour-force. As outlined in the following chapter they are isolated, unseen, unorganised, non-unionised, ignorant of their employment rights and have poor English language skills. For these reasons, the Committee believes, outworkers as a group require special consideration.

CHAPTER TWO

OUTWORKERS AND GARMENT PRODUCTION

Garment Outworking in Australia

The Trend Towards Home-Based Work

2.1 New employment patterns are emerging in a range of industries and the trend towards greater flexibility in managing work has resulted in increasing numbers of people in a wide range of jobs seeking to work from home.¹ While outworking is not new, having been a part of the clothing industry in Australia for over 100 years, and long considered an appropriate form of work for women with family responsibilities or who cannot find other forms of employment,² it does appear that the very large increase in the number of outworkers in recent years has been a direct result of changes which have arisen from the reduction in industry tariffs.

2.2 Nor does outworking occur solely in Australia. Problems associated with home-based work have been identified in a number of overseas countries, including England and America,³ and are of sufficient international concern to have recently become the subject of an International Labour Organisation (ILO) convention.

2.3 The ILO describes outworking as 'the production of goods or the provision of services for an employer or contractor under an arrangement whereby the work is carried out at a place of the worker's own choosing, usually the worker's own home'.⁴ Thus an important aspect of the definition of an outworker is that the work is done outside the premises of the employer.

2.4 Another important criteria distinguishing outworking from other home-based economic activities is that it is based on a relationship of regular paid

¹ Evidence, p. E 421.

² Evidence, pp. E 15, 389, 515.

³ Evidence, pp. E 38, 364, 302, 370, 704.

⁴ As cited in Evidence, p. E 150.

employment by an employer, although this is often done through an intermediary (a subcontractor, agent or middleman). Agreements between contractors and outworkers are often verbal, although written instructions as to the number of garments to be sewn and the payment per garment may accompany the delivery of raw materials.

2.5 There are a number of advantages of home-based work for both employers and employees. For employers, advantages include greater freedom to vary volume of work in response to irregular and seasonal fluctuations and a greater opportunity to vary the nature of the work. For employees, advantages include the ability to receive work which otherwise may not be forthcoming, the ability to more easily combine family responsibilities and work, and greater flexibility in pace and timing of work.⁵ While not lawful, the ability to earn income while receiving workers compensation or welfare benefits, and the ability to avoid taxation obligations through the receipt of payments in cash, are also seen by outworkers to be advantages.⁶

2.6 In evidence to the Committee, peak employer group the Victorian Employers' Chamber of Commerce (VECCI), stressed in its submission that, while outworkers in the garment industry faced many problems:

... it is also important to recognise the advantages of homework, not only because of the flexibility it offers to employers and workers alike, but also as a means of combating unemployment. For many workers, outwork may be the only means of earning an income because they do not have access to traditional job opportunities, be it due to a shortage of jobs, lack of skills, or family responsibilities.⁷

2.7 Industry attitudes to outworker vary but for the most part there is a strong belief that it is a legitimate and effective means of maintaining the flexibility and responsiveness necessary for on-shore production to compete effectively with imported apparel.⁸ Mr Harold Scruby, a consultant to TCF industries, argued that because the manufacture of basic items of apparel would have almost completely moved offshore by the end of the century and because the

⁵ Evidence, pp. E 133, 410, 421, 516.

⁶ Evidence, p. E 848, Submission No. 39, p.2.

⁷ Evidence, p. E 408.

⁸ Evidence, pp. E 390, 408.

only substantial part of the garment industry left in Australia would be home-based, outwork should be thoroughly legitimised and encouraged.⁹

2.8 However, the retail and manufacturing sector does not condone the exploitation of outworkers. It evidence to the Committee various manufacturing and employer groups expressed considerable concern that immediate and effective action be taken to elimination outworker exploitation and, in particular, to eliminate exploitative child labour practices.¹⁰

Type of Work Performed by Outworkers

2.9 Many home-based workers only sew clothing, although the type of clothing varies considerably in terms of fabric and quality of garment. While many outworkers make clothes at the cheaper end of consumer fashion, quite a number of home-workers sew clothes for high quality, expensive fashion labels.¹¹

2.10 In addition to garment manufacture, there are a large number of other products which are subject to home-based work. These include knitting, homewares (cushions, curtains, lampshades), manchester (sheets, towels, etc), and outdoor wear and equipment. In addition, other retail items which need to be processed are increasingly being assembled or packaged in homes. These include novelty toys, badges, alarm systems, gun sights, light fittings and foodstuffs.¹²

2.11 Although this inquiry relates solely to outworkers in the garment industry, it is important to note that people employed in other areas of home based-work probably also experience problems similar to those described for garment industry outworkers and that any attempt to formulate specific regulations based on the type of work performed may be artificial. As explained by Ms Kaz Eaton of the South Australian Working Women's Centre:

- Sometimes all that is different is the actual task that is being performed - the hours, the contracting arrangements, the pay rates, the working conditions and the lack of, or the wrong, information provided to workers can be much the same. This is particularly

⁹ Evidence, p. E 673.

¹⁰ Evidence, p. E 70, 133, 367, 408, 422, 698.

¹¹ Evidence, p. E 36, 51.

¹² Evidence, pp. E 495, 504, 519.

obvious when one tries to distinguish between an outworker sewing shirts and an outworker sewing curtains. One is in the garment industry and specifically covered by an industrial award; the other is in the furnishing trades industry and not specifically covered by an industrial award. So the point that we would like to stress here is that outworking is actually a form of work which is widespread in our community and our consideration of it must not be hampered by artificial distinctions based on the task performed.¹³

2.12 Another increasing area of homework is in computing and office services (often termed 'teleworking').¹⁴ However, this type of work is usually performed by people who have tertiary educational qualifications, whose first language is English and who, having previously worked in an office, have chosen to work at home for life-style or family-care reasons. This group of people are quite different from those who sew clothes and are not considered further in this report.

2.13 While not falling strictly under the definition of 'home-work', another area of employment where employees suffer exploitative rates of pay is letterbox delivery services. Correspondence received by the Committee indicated that people who undertake suburban letterbox deliveries are also paid well below award wages because there is no relevant Federal award and while State common rule arrangements may apply, they are usually ignored by employers who take advantage of the difficulty of establishing a clear employment relationship.¹⁵

Magnitude of the Outworker Industry in Australia

2.14 Estimates of the number of people involved in outworking in the garment industry vary widely. The only government estimate available is that of the Australian Tax Office which has calculated the magnitude of the outworker labour force to be about 50,000; a figure derived from data provided by manufacturers involved in the garment industry.¹⁶

¹³ Evidence, p. E 546.

¹⁴ Evidence, p. E 552.

¹⁵ Letters dated 13 June and 26 November 1996, from Mr Lawrence William Mousley, Scarborough WA.

¹⁶ Evidence, pp. E 603, see also pp. 74-5, 595, 608, 610.

2.15 However, the TCFUA has estimated that the number of outworkers is increasing with more than 300,000 workers currently involved. This figure encompasses both full-time and part-time outworkers and may include people who are involved in outwork intermittently or for only a few hours each week.¹⁷ The Union has also estimated that outworkers exceed factory workers by about 14:1 and that about 75% of companies in the clothing sector have the majority of their production performed in private homes.¹⁸

2.16 In the recent Union report, *The Hidden Cost of Fashion*, the following claims were made for the number of outworkers in each state:

Victoria	144,000
NSW	120,000
Queensland	25,000
South Australia	25,000
Western Australia	15,000
Total	329,000

Source: *The Hidden Cost of Fashion: Report on the National Outwork Information Campaign*, March 1995, TCFUA, p. 5.¹⁹

2.17 While community groups generally supported the Union's assessment, or stated that the actual number may be even higher, employer groups and government instrumentalities argued that the Union figure was likely to be a considerable over-estimate of the actual number of outworkers involved in the garment industry.

2.18 In its submission to the inquiry, the Association of Non-English Speaking Background Women of Australia (ANESBWA) stated that the

¹⁷ Evidence, pp. E 21, 40, 906-8.

¹⁸ Evidence, p. E 21.

¹⁹ Note: Estimates are based on information from companies listed as suppliers to large retailers; appearing on contractor lists provided by principle clothing companies; registered as clothing manufacturers; involved in the Federal Clothing Trades Award; or from which outworkers have reported receiving work.

TCFUA estimate of 300,000 outworkers was a 'very conservative estimate',²⁰ and argued that although:

... available statistics on outworkers are unreliable and patchy ... there is a strong indication that outwork is carried out on a large and significant scale in Australia ... [and that] available statistics usually underestimate the situation. This is due to the prevalence of large-scale clandestine and undeclared working arrangements.²¹

2.19 When asked to comment on the various estimates of the number of outworkers in the garment industry, Monash University academic Mr Ernest Healy commented: 'The only thing I would say there is that the official statistics data is almost certainly an under estimation [and that] involvement in garment industry work and garment industry outwork was much more prevalent than indicated in the official statistics'.²²

2.20 Similarly, both the Construction, Forestry, Mining, and Energy Union and Dale Street Women's Health Centre in South Australia commented that the official ABS statistics were likely to be an underestimate.²³

2.21 However, the Council of Textile and Fashion Industries of Australia (CTFIA) disputed the Union figure, stating in oral evidence:

We would not say that it is 300,000 people ... if you multiplied that number with any reasonable amount of money per year, you would come up with telephone numbers for the supposed added value in Australia for this particular section of the industry. There is just no way, if you look at the total output of the industry and the total sales of TCF, that you could get any realistic relativity in that sense.²⁴

2.22 Although the CTFIA held the view that, regardless of the actual figure, the number of outworkers involved in potentially exploitative employment practices was sufficiently high for them to be 'extremely concerned'.²⁵

²⁰ Evidence, p. E 180.

²¹ Evidence, p. E 150.

²² Evidence, p. E 796.

²³ Evidence, p. E 572 & 518, respectively.

²⁴ Evidence, pp. E 389 & 393.

²⁵ Evidence, p. E 389.

2.23 The Retailers Council of Australia (RCA) also disputed the Union estimate of the number of outworkers. While acknowledging that the RCA did not have any evidence as to the correct number, Mr Phil Naylor, Chief Executive Officer, made the observation that the figure of 300,000 seemed to be very large:

... given that the whole retail industry - that is, every retailer in Australia - only employs about one million people and the clothing sector of the retail industry probably only employs about 100,000. It does seem to us that 300,000 people involved in the manufacturing process, which is a relatively small part of the manufacturing industry, is a very large number ...²⁶

2.24 Finally, the Queensland Government, in its submission to the Committee noted the TCFUA estimate of 25,000 outworkers in Queensland and commented that: 'In view of the size of the clothing industry in Queensland and the smaller population of people from non-English speaking countries (compared to the southern states) the TCFUA's estimate appears to be rather high'.²⁷

Profile of a Typical Outworker

2.25 In its report *The Hidden Cost of Fashion*, the Union defined outworkers as: 'mainly migrant women of non-English speaking background who sew garments, in their own home, or some one else's home, for the clothing industry'.²⁸ Outworkers are typically recent migrants who, largely because of poor English language skills and family-care responsibilities, have limited employment opportunities and are thus unable to join the regular labour force. They are most often women, although there are some men who perform outwork full-time. There are also many other men who assist their wives on a part-time basis while holding another full-time or part-time job.²⁹ As well as sewing, men are often involved in ancillary tasks such as collecting and delivering work, and sorting and bundling job batches. Other family members, such as older relatives or children may also be involved in peripheral jobs such as cutting threads or turning collars, as well as sewing.

²⁶ Evidence, p. E 708.

²⁷ Submission No. 39, p. 1.

²⁸ Textile Clothing & Footwear Union of Australia *The Hidden Cost of Fashion - Report on the National Outwork Information Campaign*. March 1995. Cover Page.

²⁹ Evidence, p. E 223.

2.26 There appears to be no shortage of recent migrants available to do outwork. This is primarily because that sector of the population has a very high rate of unemployment, particularly among women.³⁰ In addition, there is a chronic shortage of semi-skilled jobs in the manufacturing sector in Australia.³¹

2.27 The countries of origin of outworkers surveyed by the TCFUA in its National Outwork Information Campaign were found to be predominantly Vietnamese and Chinese (mainland China, Hong Kong, Macau, and Taiwan), with fewer numbers of Arabic, Filipino, Khmer, Korean, Laotian, Portuguese, Spanish, and Turkish people involved.³² As a further example, the community group Asian Women at Work reported that it has regular contact with a number of outworkers who were all Chinese women aged between 28 and 45 (most were between 30 and 35), who were usually married, and who usually had one or two young children.³³

2.28 Outworkers are generally aged between 25 and 35, and most have young children for whom they have primary responsibility in addition to housework. The fact that they cannot afford to pay for child-care leaves many outworkers no choice but to work at home. If child-care was not so expensive, however, many outworkers would consider working away from home.³⁴

2.29 Many outworkers have no educational qualifications, although some have qualifications gained in their country of origin which are not recognised in Australia.³⁵ Outworkers usually experience significant barriers to obtaining alternative employment. They feel trapped in a working situation that offers little relief, inadequate support and few opportunities for change.

2.30 Garment sewing is usually performed within an outworker's private home, or in a garage associated with the home. In some instances several outworkers may work in the same private premises. Generally outworkers have their own machines and some have several machines for different sewing applications. Sometimes the employer owns the machines, or the outworker

³⁰ Evidence, p. E 9.

³¹ Evidence, p. E 21.

³² Textile Clothing & Footwear Union of Australia *The Hidden Cost of Fashion - Report on the National Outwork Information Campaign*. March 1995. Pages 8 & 12.

³³ Evidence, p. E 216.

³⁴ Evidence, pp. E 29, 516, 546, 554.

³⁵ Evidence, p. E 22.

may be buying them on a hire-purchase basis. As described by Ms Debbie Carstens, representing Asian Women at Work:

We have seen people with machines in their laundry, their bathroom, their kitchen, their lounge room, their dining room and their garage. One woman has two machines in her bedroom - an overlocker and a sewing machine. They are often very dark and confined spaces with not much air and there is a lot of dust in the air from the cloth they are using.³⁶

2.31 Although outworking has apparently increased in magnitude over the last decade, it appears that conditions experienced by outworkers have not improved and have probably even worsened.³⁷ The Union firmly believes that working conditions for outworkers have deteriorated in the last few years:

Outworkers, when they get work, typically work 12-18 hours per day, 7 days a week for about a third of the award rate of pay, and with no access to even the minimum conditions enjoyed by factory workers.³⁸

Ethnic communities, unions, community organisations, employers, and Federal, State and Local Government instrumentalities have been debating strategies to improve the situation of outworkers for over twenty years. Conditions for outworkers are now worse than they have ever been.³⁹

2.32 This view was endorsed by the Victorian Associates of the National Council of Women of Australia. In a submission to the Committee the Council noted that in 1987 it had investigated conditions experienced by outworkers and found them to be unacceptable. Since that time, the Council argued, nothing had changed for the better and, if anything, conditions had got worse.⁴⁰

2.33 According to Ms Alcorso who gave evidence to the Committee on behalf of the Working Women's Centre (NSW), the deterioration of working conditions experienced by garment industry outworkers has been a direct result of the impact of government policy in reducing tariffs and quota protection

³⁶ Evidence, p. E 218.

³⁷ Evidence, pp. E 462, 581.

³⁸ Textile Clothing & Footwear Union of Australia *The Hidden Cost of Fashion - Report on the National Outwork Information Campaign*. March 1995. p. 4.

³⁹ Evidence, p. E 10.

⁴⁰ Evidence, p. E 846.

which had consequently increased competitive pressure to reduce labour costs.⁴¹

Employment Status

2.34 The question of whether an outworker is an employee or a self employed contractor is central to the issue of the terms and conditions under which that person works. As defined through judicial determination, 'employees' are considered to be people who work under *contracts of service*, whereas 'independent contractors' are people who work under *contracts for service*. Thus whether an outworker is an employee will depend on the facts of the relationship and while many outworkers are considered in practice to be 'independent contractors', by legal definition they are more likely to be employees. To assist in this determination a number of legal 'tests' have been developed.⁴²

2.35 While the federal *Industrial Relations Act 1988* does not refer to any particular occupation as part of the definition of an employee, legislation in both NSW and South Australia defines outworkers as employees. For the purposes of the *NSW Industrial Relations Act 1991*, people who perform work outside a factory for the occupier of that factory or a clothing trader, are deemed to be employees of the relevant factory occupier or clothing trader.⁴³ An employer who wishes to engage an outworker must do so under terms which are no less favourable than the conditions provided for under the award and must register the contract with the State Clothing Trades Conciliation Committee through the Industrial Registrar of the NSW Industrial Relations Commission.

2.36 In South Australia, however, the legal status of outworkers is confused by the fact that while the *Employee and Industrial Relations Act* defines outworkers as employees, the *Workers Compensation and Rehabilitation Act* does not recognise outworkers as employees unless they come under an award.⁴⁴

⁴¹ Evidence, p. E 193.

⁴² Evidence, pp. E 652-3.

⁴³ The NSW counterpart of the Federal award is the Clothing Trade (State) Award.

⁴⁴ Evidence, p. E 547.

2.37 The TCF Union emphatically asserts that, regardless of any legislative definitions, an outworker is an employee. As stated by Mr J Riordan, who gave evidence to the Committee on behalf of the Union:

The decision ... was made by the Australian Conciliation and Arbitration Commission in April 1987 ... that outworkers are employees.⁴⁵

2.38 The Occupational Health and Safety Commission supported the Union in its definition of outworkers as employee's, stating in evidence to the Committee that 'the nature of outwork in the industry defies the commonsense understanding of an independent and self-employed person'.⁴⁶

2.39 The Union gave evidence that despite clearly having the employment status of factory worker (that is, an employee), outworkers were frequently misled into believing that they were self employed people operating their own businesses, coerced by intermediaries into registering their own business name, and not given work until they did.⁴⁷

2.40 The Victorian agency Job Watch noted in its submission that from a practical point of view, outworkers invariably operated in a 'quasi' employment state and that this status excluded them from many of the minimum protections, government assistance programs and review and complaints mechanisms usually afforded other employees.⁴⁸ Job Watch argued that the spurious requirement for outworkers to register business names was 'designed purely to enable the employer to avoid obligations in respect of workers compensation insurance, payroll tax and group tax'.⁴⁹

2.41 Similarly, the Australian Chamber of Manufactures noted in its evidence that the various types of outworker arrangements were difficult to define, partly because the homeworkers themselves often arranged their affairs to receive business concessions and thus there was considerable confusion in the industry.

⁴⁵ Evidence, p. E 36.

⁴⁶ Evidence, p. E 87.

⁴⁷ Evidence, p. E 17. In addition, the fact that outworkers believe that they must have their own business name was evident to the Committee during its inspections of outworker homes, where certificates of registration of business name were clearly displayed in the work area.

⁴⁸ Evidence, p. E 476.

⁴⁹ Evidence, p. E 476; see also E 37, 217, 524, 547, 719.

The Chamber received calls on a daily basis for assistance on defining whether a member had a contractor or employee on the books.⁵⁰

2.42 As a way of resolving this confusion, and because it believes that the industry would be unable to absorb all outworkers as employees, the Chamber suggested that it might be possible to retain two streams of home-based workers: one which would encompass separate entities who wished to operate as contractors and a second to provide for people who wished to operate as an employee with all relevant entitlements.⁵¹

2.43 Finally, information provided to the Committee by the Director of the Parliamentary Library Law and Administration group noted that while 'most garment industry outworkers, despite the casual nature of their employment, are covered by relevant federal awards and should be treated as employees, not independent contractors ... there may indeed be some workers engaged in the production of garments who are not employees. These would include persons who are not potentially under the control of any one employer and persons who are not engaged by body-hire agencies under contracts [of their own] ... Large numbers of outworkers will, however, come within the standard definition/understanding of the term 'employee' irrespective of whether they work from home, work for piece-rates or are permanently engaged'.⁵²

2.44 In conclusion, the Committee wishes to emphasise that while most outworkers are and should be considered to be employees, some people who carry out home-based work in the garment industry choose to be contractors and should be considered as such.

The Chain of Garment Production

Parties Involved

2.45 The production of a garment involves a number of stages: designing, cutting, sewing, finishing, pressing, packaging and distribution. Prior to rationalisation of TCF industries, most garments made in Australia were

⁵⁰ Evidence, p. E 319, and see for example letter on p.322.

⁵¹ Evidence, p. E 327.

⁵² Undated letter from B Bennett, Director, Law and Public Administration Group, Parliamentary Research Service, to R Diamond, Secretary, Senate Economics References Committee, p.1.

manufactured wholly within company-owned factories. Recent restructuring, however, has meant that there are now very few garment companies which complete every stage from beginning to end in their own factories. Most companies now contract out at least the sewing stage, while some contract out all stages and do not own any factory premises at all. They are simply a fashion 'Label' which coordinates the various stages. Thus there may be as many as ten parties involved in the manufacture and retailing of one single garment.⁵³

2.46 When contracted by a retailer for a particular garment, the manufacturer in turn contracts out the various stages of production to different parties (outworkers). However, the process of contracting out is most frequently coordinated by an intermediary (a subcontractor or middleman) who collects bundles of cut material from the manufacturer (or a cutting contractor), along with instructions for sewing, and distributes them to outworkers.

2.47 Employers who engage outworkers are required by law to be registered and must provide outworkers with details of the work to be done, the price to be paid, the number of units to be sewn and the completion date.⁵⁴ While this information may be passed on by the intermediary in writing, sometimes it is only given verbally, or not at all. The intermediary then collects the work and passes on the payment from the manufacturer, although there is often some delay in this.

2.48 While the Committee met either informally or formally with individuals and groups representing all stages of the garment chain, from retailers to outworkers, it was unable to arrange any meeting with intermediaries. Nor was any written information received directly from them. Thus evidence about the role and practices of this group remains second-hand and circumstantial, though not necessarily unreliable.

2.49 It is usual for the intermediary to be from the same country of origin as the outworker, the only difference being that the intermediary will usually have better English language skills and may have been in Australia longer.⁵⁵ Sometimes there may be a hierarchy of subcontractors, and outworkers may move up the hierarchy to become intermediaries themselves.⁵⁶ Intermediaries compete for work from manufacturers and often undercut each other in an

⁵³ Evidence, p. E80.

⁵⁴ Evidence, p. E 17.

⁵⁵ Evidence, pp. E 136, 222, 224.

⁵⁶ Evidence, p. E 462.

effort to receive work. These cuts are then passed on to outworkers by the intermediaries who may have a large pool of outworkers to play off against each other in an attempt to 'persuade' them to accept work at lower rates and to complete it in a shorter period of time.

2.50 According to evidence given by the Springvale Indo-Chinese Mutual Assistance Association:

One of the main factors that has enabled the fashion industry to prosper and make huge profits in the last few decades in Australia has been the fact that companies and fashion houses of this industry were able to manipulate the existing outsourcing environment and the fierce competition amongst middle agents for contracts to gain maximum outputs with minimum pay hours at the expense of the outworkers' working conditions and wages.⁵⁷

2.51 While there was some speculation as to the level of knowledge and understanding held by intermediaries of their own responsibilities and the employment rights of outworkers, Ms Debbie Carstens of the community group Asian Women at Work, argued that the intermediaries were fully aware of their responsibilities because they were often able to take advantage of the system to get the best out of it.⁵⁸ Supporting this statement was anecdotal evidence and information received by the Committee informally from outworkers with whom it met which suggested that much manipulation of employment conditions occurred at the level of intermediary.

2.52 Conversely, it was suggested to the Committee that a large take-off of profits happened at the retailing end because the difference between what an outworker was paid for sewing and the retail price of that garment could be considerable.⁵⁹

2.53 However, Mr Phil Naylor, the Chief Executive Officer of the Retailers Council, rejected this assertion⁶⁰ and provided the following break-up of component costs for garment manufacture to emphasise that retailers did not profit from the exploitation of outworkers:

⁵⁷ Evidence, p. E 810.

⁵⁸ Evidence, p. E 223-4.

⁵⁹ Evidence, p. E 191.

⁶⁰ Evidence, p. E 705.

ITEM	COST (\$)
Fabric & accessories	20 - 24
Make up costs	12 - 14
Manufacturer's administrative costs, overheads & profit	7 - 13
Cost of garment to retailer	45
Retailers Costs (Wages, rent, administration, advertising, distribution, interest, etc	40
Average Markdown *	10
Retailer's profit before tax	5
Retail price *	100

* 'In the volatile and competitive retail fashion market, markdowns are a feature. The size of the markdown will depend on the item and how well it is selling (or not selling). ... In this example, a 10% average across the sales of this particular garment has been used. In this example therefore, the average price paid by customers for this garment would have been \$90'.⁶¹

2.54 While it is clear to the Committee that the potential exists for intermediaries to be profiteering through manipulation of the system, and for retailers to be profiting excessively, these views are simplistic and do not take into account the fact that because the chain of garment production is so long, it is easy for responsibility to be passed off to another element at any stage along the chain. This appears both to have occurred inadvertently and to have been deliberately arranged.

2.55 As described by the Australian Catholic Social Justice Council:

The outworker chain can be viewed as a structure of injustice. It provides the means for exploitation to occur. No one group is solely to blame, rather a convergence of factors, labour practices, economic policy and educational disadvantage and manufacturing practice and the retail market have brought about a structural injustice whereby the most disadvantaged suffer.⁶²

⁶¹ Evidence, p. E 703.

⁶² Evidence, p. E 136.

Role of Retail Pricing Policy

2.56 According to the Retailers Council of Australia, the 'retail clothing sector transacts approximately 10% of total retail sales and provides a livelihood for over 5,000 individual retail clothing businesses including department stores, discount department stores and speciality clothing chains'.⁶³ Retailers compete in sourcing products from manufacturers either directly or indirectly through apparel agents.

2.57 However, in the opinion of the Union, retail concentration is very high in Australia with a few large retailers controlling manufacturing. This concentration of ownership, the Union argued, has allowed retailers to 'squeeze their suppliers' prices while also demanding more flexible production and delivery schedules'.⁶⁴ Manufacturers are thus being pressured into strategies which can result in the lowest possible costs for garment production.

2.58 The Retailers Council of Australia, however, refuted the suggestion by the Union that the clothing retail sector was highly concentrated in Australia. In its submission to the Committee the Council stated:

The facts are that there are 5,000 retailers in Australia (operating over 15,000 shops) competing on the one hand, for products from manufacturers and on the other hand, for the patronage of consumers, both local and tourists.

This sector is one that is characterised by small businesses and speciality clothing retailers. Specialist clothing retailers transact about 60% of retail clothing sales in Australia. Specifically they transact 58.4% of women's wear sales (57.6% of men's wear sales). The "major" viz department stores and discount stores transact 37.6% of women's clothing sales (35.4% of men's wear sales). ... The remaining sales (4 to 6%) are transacted by supermarkets and other stores.⁶⁵

2.59 In addition, the Retailers Council argued that the sector was intensely competitive, as indicated by the fact that retail prices and profit margins had actually fallen over the last few years.⁶⁶ The Council rejected the argument, put

⁶³ Evidence, p. E 697.

⁶⁴ Evidence, p. E 13.

⁶⁵ Evidence, p. E 697.

⁶⁶ Evidence, p. E 697.

by the TCFUA, that the retailer dictated the price per garment and that the warehouse then allocated the work to the lowest bidder:

There seems to be, at the very least, some fuzzy and contradictory logic in statements which assert, on the one hand, that a concentration of retail ownership enables retailers to squeeze suppliers, yet, on the other hand, per a response by the TCFUA to a question in the Sydney hearings, which proposes that it is the competitive forces of retailers which force manufacturers to pursue unjust prices. If there was a concentration of retail ownership such that could control the market as asserted one would expect this to make its presence felt in the retail market in forcing up consumer prices. In fact the contrary has been recent industry experience.⁶⁷

2.60 Nevertheless, the Union maintains that while the retailer may be some steps removed from the actual manufacture of a garment, the principal power within the clothing industry still lies within the retail sector.⁶⁸ This premise is based on the argument that when agreeing to purchase clothing from manufacturers, the primary consideration of retailers is price.

2.61 Thus there is immense pressure on the manufacturer to reduce costs in any way possible. The most effective way for a manufacturer to do this is to contract out as many stages as possible to outworkers. As described by the Australian Chamber of Manufactures:

Many manufacturers are under extreme pressure from retailers to meet specific price points and also to meet deliver schedules that are sometimes unreasonable due to late decisions etc. Outworkers provide the flexibility to do this. I believe the demands made on suppliers by retailers, plus the competition of imports, creates the need to work with outworkers.⁶⁹

2.62 Warehouse distributors vie for work from retailers and, having been successful, then allocate the work to the lowest manufacturer, who then allocates the work through a network of contractors, who in turn pass it on to the outworker who will accept the price. Each level seeks to optimise the margin between the level above and below and manufacturers have thus been forced to shift from inside workers to outworkers. Manufacturers who stay with in-house production, providing award wages and conditions, and who pay

⁶⁷ Evidence, p. E 698.

⁶⁸ Evidence, p. E 865.

⁶⁹ Evidence, p. E 317.

factory overheads, are at a disadvantage compared to those manufacturers who have moved to using outworkers.

2.63 Clearly a manufacturer who uses under-paid outwork will have a competitive advantage over a manufacturer who complies with Award requirements (given similar garment quality). According to the NSW Government, its task force on outworkers found that contractors who were complying with award conditions were forced to quote unprofitable prices in order to maintain their market share against competitors who were paying below-award wages.⁷⁰ In this way legitimate employers were being forced out of business by unscrupulous manufacturers who employed outworkers on below-award wages.⁷¹

2.64 The per unit price paid for an item of clothing is dictated by the retailer and may bear little relation to the quality of the end result or the skill and patience required to make it. The unit price paid to the outworker may not necessarily relate directly to the final price for which the garment is sold by the retail store; outworkers are regularly paid only marginally more for a top-of-the-range fashion item than for a cheaper one.⁷²

2.65 The Union argued in its submission that: 'manufacturers and retailers ... have promoted a system of production that is currently allowing them to avoid paying their employees award wages and conditions ... it has allowed them to exploit already vulnerable workers in order to maximise their own profits without proper regard to widely held social justice values'.⁷³

2.66 The Union further asserted that retailers are in a position to threaten manufacturers with going off-shore for production if contract prices are not kept to a minimum. Despite increasing costs for manufacturers, wholesale prices have been held down by retailers. Production times have had to become shorter to give local companies an edge over imports. The result has been that ever decreasing margins and unrealistic deadlines have been passed down the garment manufacture chain to finally reach the most vulnerable group - the outworkers. Thus the Union concluded that: 'by asserting control over the market, major retailers are effectively being supplied with local products -

⁷⁰ Submission No. 38, p. 2.

⁷¹ Evidence, pp. E 35, 117, 134, 317.

⁷² Textile Clothing & Footwear Union of Australia, *op cit* p. 16.

⁷³ Evidence, p. E 9.

bearing the 'Made in Australia' tag - for wages as low as those in China, Indonesia or Vietnam'.⁷⁴

Conclusions and Recommendations

2.67 The Committee concludes that it is impossible to state accurately the number of people involved in home-based garment manufacture in Australia. Estimates provided indicate that there is somewhere between 50,000 and 330,000 people involved in outworking in TCF industries on a full and part-time basis. However, regardless of the absolute number of people involved, the Committee accepts that it is highly likely that the number of outworkers has increased considerably over the last decade. **More importantly, however, the Committee believes that there are sufficient people involved in the industry for concern about them to be warranted.**

2.68 The Committee is concerned that there are increasing numbers of people being employed in areas of home-based work in circumstances where the enforcement of statutory or contractual obligations is difficult with the consequence that vulnerable workers may be exploited by manipulative employers or unscrupulous intermediaries. This appears to be particularly so in the garment industry.

2.69 The Committee received compelling evidence that the employment status of outworkers is confused. While some legislation and certain awards make it clear that some outworkers are employees, the lack of clear national legislation and, more importantly, the actual conditions of employment experienced by outworkers give rise to the belief among many people that outworkers are contractors rather than employees. The Committee believes that, because of the nature of the work undertaken and the circumstances of their employment, most outworkers in the garment industry should be considered to be employees. **Accordingly, the Committee recommends that the Government examine ways to clarify the employment status of outworkers in the garment industry.**

⁷⁴ Textile Clothing & Footwear Union of Australia, *op cit* p. 15.

CHAPTER THREE

EMPLOYMENT CONDITIONS

Award Entitlements and Conditions

3.1 The main award in the clothing industry is the federal *Clothing Trades Award 1982* and its provisions are mirrored by state awards. As employees under the various awards, outworkers are entitled to be paid wages equivalent to factory workers doing equivalent work. *Inter alia*, outworkers are also entitled to:

- regular work as either full-time or part-time workers;
- overtime;
- paid public holidays, annual and long-service leave;
- superannuation; and
- the right to skill assessment and payment according to the level of skill exercised.¹

3.2 The Award provides that employers must pay outworkers and contract workers at a specified piece-rate. This rate is calculated using a formula based on the standard factory rate as follows:

- the employer calculates the time that each garment can be made by a machinist of average skill in a factory;
- the time is then inflated to take into account time spent on ancillary tasks such as unbundling and sorting;
- a price per piece is then calculated by multiplying the number of minutes by the minute rate for a worker performing the same work in a factory.

3.3 The Award provides that outworkers are to be given 38 hours worth of work per week or pay for that amount of work. Any overtime is to be paid at a

¹ Evidence, p. E 16. For a more detailed description of the award see Evidence, p. E 648-650, and 861-865. Note also that there are a number of provisions in the award which do not apply to outworkers including sick leave, meal allowances, amenities and disability allowances.

rate of time and a half. Employers and outworkers can agree that work be carried out on weekends and public holidays and for which the piece-rate doubles.

3.4 The Award also provides for detailed reporting obligations for respondents regardless of whether outworkers are directly employed or are employed through an agent or intermediary.² These details must be given to the outworker when each batch is delivered. Employers of outworkers must be registered with a tripartite Board of Reference representing the Union, an employer organisation and the Australian Industrial Registrar, and must hold a registration number which must be re-issued annually.

3.5 While there is evidence to suggest that there are some reputable companies which try to ensure that outworkers are not exploited,³ it appears that the complex chain of garment production for the most part mitigates against payment of award wages for outworkers. The practice of non-compliance with award wages and conditions is so widespread that it is considered to be the norm.⁴ In addition, a common breach of the award is non-registration as an employer of outworkers.⁵

3.6 As stated by a former Industrial Inspector:

From 1979 until 1984 I was employed as an Industrial Inspector in the NSW Department of Industrial Relations. During that period I conducted several investigations into outwork in the clothing industry. My inquiries revealed widespread non-compliance by employers with their award, statutory leave and workers compensation obligations to their outworkers. ... I continue to be concerned at the widespread underpayment and general gross exploitation of outworkers in Australia.⁶

3.7 There are a number of impediments to outworkers receiving award rates and conditions. The most significant of these is the complex chain of production which sees work passed from retailer to manufacturer to contractor to subcontractor to outworkers. With this system, the exact employer is difficult

² For a detailed list of records required see Evidence, p. E 649.

³ Evidence, p. E 133.

⁴ Evidence, p. E 168, 502.

⁵ Evidence, p. E 667. The Australian Council of Manufactures noted that as of 10 November 1995 only 79 companies had registered that they use outworkers (Evidence, p. E 324).

⁶ Evidence, p. E 712.

to define. Thus it allows everyone in the chain above the outworkers to avoid meeting any obligation that they may have under the Award.

3.8 The Australian Council of Trade Unions (ACTU) argued in its submission that outworkers were generally unable to access collective representation and, despite concerted efforts of the TCFUA, had not yet achieved the protections of the award safety net.⁷ Most outworkers are ignorant of their employment rights, particularly that award conditions are available to them.⁸ In addition, because there is considerable expense involved in enforcing compliance, and because outworkers are unwilling to participate in litigious action for fear of reprisals, or cannot afford to become involved in court action, there are few prosecutions of unscrupulous employers to act as a deterrent to others.⁹ Thus outworkers, for the most part, remain completely outside Australia's system of industrial regulation.¹⁰

3.9 The inability of the Union to secure the widespread payment of award rates for outworkers appears also to be due to pressure from intermediaries for outworkers to establish themselves as separate business enterprises and thus become, by definition, self employed contractors.¹¹ Once outworkers become 'contractors', award conditions no longer apply and entitlements to sick leave, holiday pay, superannuation, accident insurance or worker's compensation are lost. The intermediary may then pay a lower rate to the outworker and take a larger profit themselves. If a manufacturer employs outworkers direct, the use of 'contractors' rather than employees may be a way of reducing production costs.

3.10 In addition, when an outworker becomes a contractor the employer no longer has to provide work on a regular basis, and may use the outworker as need dictates. Consequently outworkers may suffer great discontinuity in the flow of work, having no income at some times while at others being placed

⁷ Outworkers involved in the manufacture of other goods, such as lounges, curtains and blinds, as well as other soft furnishings, are not covered by any award and working conditions are not regulated by commonly accepted occupational health and safety standards (Evidence, p. E 561).

⁸ Evidence, pp. E 21, 252.

⁹ Evidence, p. E 37.

¹⁰ Evidence, p. E 272.

¹¹ Evidence, p. E 37.

under considerable pressure to meet short deadlines. While this may suit everyone else, it places great stress on the outworker.

3.11 It should be noted, however, that at the commencement of the payment process, the original employer (usually the commissioning manufacturer) may have allowed for and paid a fair and equitable rate. It is when this rate is paid to an unscrupulous intermediary that the outworker may receive much less than the original amount allocated. Thus by treating outworkers as contractors, intermediaries are able to evade their legal responsibilities to people who rightfully should be treated as employees but who do not realise the consequences of their altered status.

3.12 However, while the CTFIA noted in its submission to the Committee that the lack of a clear distinction between 'independent contractors' as opposed to 'employees' mitigated against observance of current award provisions, those provisions were in fact not appropriate to the current operating environment of the garment industry. The CTFIA argued that, for example, the seasonal nature of the garment industry made it inappropriate that there be a mandatory award requirement that outworkers be engaged as either permanent part-time or full-time employees with a guaranteed minimum payment, irrespective of the availability of the work. Thus the CTFIA stated: '... if outworkers are prepared to accept work whenever it is available, and provided they are paid at the appropriate rate, and are given reasonable time to complete the work, then this should be allowed'.¹²

3.13 Similarly, the CTFIA argued that it was the view of employers that Award provisions were based on factory employment conditions and that they did not take into account the special characteristics associated with home-based work which could be of benefit to those people. These benefits included the ability to care for children and other relatives in the home while working, the lack of time and expense associated with travel to and from a factory, the relative autonomy in deciding when to work, and the cultural acceptability for some women to work from home rather than in a factory. The CTFIA, however, did acknowledge that there may be countervailing costs associated with working from home such as payments for heating and electricity, and maintenance of machinery.¹³ There may also be costs associated with the purchase of machinery, either outright or on a hire purchase basis from intermediaries.

¹² Evidence, p. E 374.

¹³ Evidence, pp. E 374-5, 391.

3.14 The CTFIA argued that a more appropriate and simpler method of payment was one based on a per garment rate, the determination of which was in turn based on the award rate of pay (as opposed to an hourly rate which is standard in factories) and for which there was an internationally accepted standard (GSD).¹⁴

3.15 The Australian Chamber of Manufactures in its submission pointed out that while outwork is carried out at home, homes have not traditionally been covered by industrial legislation, nor have outworkers always been treated as employees. The Chamber argued that the practice of 'roping-in' businesses under the Federal Trades Award was piecemeal and had a number of associated problems, including the fact that the Award does not cover outworkers working for non-respondents, nor does it apply to intermediaries.¹⁵

3.16 The Victorian Employers' Chamber of Commerce and Industry noted in its submission that an increasing number of Australian clothing companies were moving production offshore because of the lack of flexibility and competitiveness in employment options in Australia. The submission from VECCI was critical of current employment arrangements under the Federal Clothing Trades Award and stated that the current legal obligations for outworkers which were founded on a factory-based award, were inappropriate for home-based work and difficult to achieve. These problems had resulted in lack of compliance by employers who found the system too complex, too inflexible and in some cases unworkable. The main areas of concern to employers were definition of employee, employer and contractor, inflexible award provisions, and the onerous reporting requirements of the award.¹⁶

3.17 In its submission to the Committee, *Done Art and Design* argued that before the widespread enforcement of award conditions was adopted, there should be a substantive analysis of the present industry structure and the impact that technological and market change was likely to have. For example, the submission questioned whether penalty rates and holiday loadings were relevant in home-based work.¹⁷

3.18 In addition to problems associated with award compliance, employer groups and industry representatives argued that if those companies that

¹⁴ Evidence, pp. E 392-403.

¹⁵ Evidence, p. E 318.

¹⁶ Evidence, p. E 412.

¹⁷ Evidence, p. E 118.

compete solely on price were all required to pay award wages and conditions to outworkers, the labour cost component would substantially increase. This would in turn result in higher retail prices. According to the submission from *Done Art and Design*, if faced with significant domestic price increases, the three largest retailers (K-Mart, Target and Woolworths) would most likely increase their proportion of imported garments.¹⁸ Garment manufacturing companies would then only survive if they gain a competitive edge in some other way, either through design superiority, the application of technology to save labour costs, creating stronger links with local suppliers, or creating a niche or 'label' marketing edge.¹⁹

3.19 However, despite all these assertions from employer groups and manufacturers, it was the Union's strong belief that manufacturers could and should pay award rates and that enforcement of the award would not have a significant impact on retail prices.²⁰

Impact of the Workplace Relations Legislation

3.20 The *Workplace Relations and Other Legislation Amendment Act 1996* will potentially affect the employment conditions of outworkers in two main ways. First, provisions relating to 'Australian Workplace Agreements' will allow employers to negotiate individual contracts with outworkers and, second, provisions relating to union right of entry and access to employer records may reduce the ability of the union to police award entitlements.

3.21 Under the new legislation, outworkers may be employed either through the relevant existing Award or through a new individual 'Australian Workplace Agreement' (AWAs). While the new legislation provides that other matters in awards will be simplified to a set of 'allowable matters', awards can maintain provisions regarding the regulation of outworkers as employees.

3.22 Workplace Agreements will be subject to the 'no disadvantage test' and contracts must be scrutinised by an Employment Advocate. With regard to AWAs, the ACTU noted in its submission to the Committee that:

The plight of outworkers in the clothing industry is indicative of the worst aspects of individual contracts of employment. The lack

¹⁸ Evidence, p. E 117.

¹⁹ Evidence, p. E 118.

²⁰ Evidence, p. E 9.

of regulation of outworkers is offensive to the system of collective regulation and undermining of the efficacy of our system.²¹

3.23 The ACTU argued strongly that outworkers should have access to collective representation and collectively negotiated pay and conditions. The Council alleged that not only were there already many impediments to achieving this for outworkers, the proposed changes to the *Industrial Relations Act* would only serve to increase these impediments:

The ACTU is concerned that the government's proposed changes to the Industrial Relations Act will leave many more workers potentially vulnerable to exploitation on the basis of individual contracts, potentially without the protection of an award safety net. The increase in homework in other industries, aside from the clothing industry, could also leave workers generally more vulnerable to these sorts of individual arrangements.

The fact that outworkers are forced to compete in an unregulated labour market and are systematically and illegally denied access to such benefits as minimum wages, workers compensation, superannuation and a healthy and safe workplace, does not bode well for an industrial relations system on the brink of deregulation.²²

3.24 The Act in its final form prevents the entry of union officials to a factory or outworker's premises unless a member of the Union has extended an invitation. In its submission to the Senate Economics References Committee inquiry into the then proposed *Workplace Relations and Other Legislation Amendment Bill 1996*, the TCFUA expressed considerable concern that any reduction in the Union's ability to enforce award obligations would have a detrimental impact on outworkers in the garment industry. As stated in that submission, changes proposed by the legislation relating to right of entry provisions: 'will by themselves completely destroy the ability of the TCFUA to engage in any preventative policing aimed at outwork exploitation'.²³

²¹ Evidence, p. E 270.

²² Evidence, p. E 298.

²³ Submission No 357 (TCFUA) to the Senate Economics References Committee inquiry into the *Workplace Relations and Other Legislation Amendment Bill 1996*, p. 4.

HOW OUTWORK CAN BE EXPLOITED

Outwork may be exploited by garment manufacturing companies directly and indirectly in a number of ways:

- non-payment of award wages, reduced payments for acceptance of cash and complete non-payment of wages in some instances, all of which contribute to a reduction the wages component of garment manufacture;
- non-payment of outworkers for time spent on ancillary tasks (unbundling, learning design, cutting threads, etc);
- costs normally paid by the manufacturing factory borne by outworkers (for example, cotton thread, electricity, machinery repair and machinery leasing costs);
- the deeming of outworkers as 'contractors' resulting in a shift in costs from the manufacturer to the outworker (superannuation and insurance premiums);
- payments in cash and inaccurate record keeping resulting in losses in taxation revenue;
- unregulated hours of work resulting in overwork with consequent health and safety problems among outworkers, the cost of which is then borne by the public sector through Medicare claims and welfare benefits; and
- use of intermediaries to keep the workforce one or more steps removed from manufacturing companies which allows a shedding of responsibilities.

Actual Remuneration

Rates of Pay

3.25 Evidence collected by the TCFUA suggests that the majority of outworkers are not paid according to award requirements. Instead they are paid by a piece-rate which translates to an hourly rate which is considerably less than the equivalent worker would receive in a factory. In fact, as argued by the Union, outworkers are the lowest paid workers in the Australian labour-force.²⁴ To support this statement, Union Outworker Coordinator, Ms Annie Delaney, presented a number of case studies to the Committee (see Case Studies in Boxes).²⁵

3.26 Several community groups who have regular contact with outworkers also gave evidence of the very low rates of pay received by outworkers. For example, the community group Asian Women at Work has a support network for about 50 outworkers, 30 of whom work from their own homes. The remainder work in informal 'factories'. Payment of women in their network was always in cash and often there was no receipt of income. Some did not receive group certificates at all. There were no payments made for superannuation or workers' compensation, nor any other benefits paid.²⁶ It was claimed that when piece-rates were translated to hourly rates (after the work was actually done), these women were receiving as little as \$2.00 per hour.²⁷

3.27 According to the community group Association of Non-English Speaking Background Women of Australia (ANESBWA), the piece-rates system had led to 'excessively long working hours [and] the employment of a concealed army of unpaid "assistants" and to child labour'.²⁸

²⁴ As quoted in Evidence, p. E 152.

²⁵ Evidence, p. E 875-888.

²⁶ Evidence, p. E 215-6.

²⁷ Evidence, p. E 216-7.

²⁸ Evidence, p. E 152.

Problems with Payments

3.28 The Union argued both in its submission to the Committee and in oral evidence that underpayment, delayed payment and, in instances, complete absence of payment were frequently experienced by outworkers.²⁹

3.29 The most common problem was late payment for completed work. While outworkers should be paid on completion of a job, they were often not paid until several weeks or even months later.³⁰ During that time they faced the dilemma of either repeatedly asking for payment, with the risk of getting their supplier off-side, and possibly receiving no more work, or keeping silent and risk not receiving the payment at all.

3.30 Actual rates of pay were further reduced by the fact that piece-rates do not take into account the need for other tasks to be performed, such as unpacking bundles of work, checking numbers, assessing more intricate sections of work, and counting and packing finished garments. In a factory, these tasks are performed by other workers.³¹ In addition, outworkers were often required to provide their own machinery, pay for cotton thread, electricity, and for any mechanical repairs if their machinery breaks down.³²

3.31 Job Watch, a Victorian community legal centre which specialises in employment and training law, noted in its submission that the vast majority of initial contacts to that organisation by outworkers were in relation to money owed for work already performed. Because many outworkers had been deemed to be 'independent contractors' by those people providing the work, under the new Victorian system of industrial relations traditional methods of wage recovery were now not available. The only alternative, civil action, was unrealistic given the prohibitive legal costs usually involved in court action.³³

3.32 Payment to outworkers may be irregular, or may differ between different nationalities or people with different residency status. For example, as stated by Ms Debbie Carstens representing Asian Women at Work:

²⁹ Evidence, p. E pp. 17, 19, 22 & 236.

³⁰ Evidence, pp. E 217, 736.

³¹ Evidence, p. E 153.

³² Evidence, p. E 191.

³³ Evidence, p. E 478-9.

In one particular [informal] factory there were different rates of pay for different people. The people who did not have permanent residency were getting \$6 an hour, the people with permanent residency and therefore eligible for social security benefits were allowed to get \$5 an hour and those who were just cutting the threads off the garments were getting \$3.50 an hour.³⁴

3.33 Another common complaint from outworkers was that completed work was subject to rejection from contractors for no logical reason, or for spurious reasons. Then the garments were either taken away with no payment made at all, or the outworker was required to re-sew the garment, or part of it, with no compensation for the extra time involved. ANESBWA claimed in its submission to the Committee that garments rejected on quality grounds were sometimes subsequently sold at 'flea' markets.³⁵

Hours of Work

3.34 Poor rates of pay lead directly to the need for outworkers to work long hours. In addition, self imposed deadlines or, more frequently, unrealistic deadlines imposed by intermediaries mean that outworkers often sew for an excessive period of time each day and for many days without any substantial break. Long hours spent at machines result in both direct occupational health problems as well as indirect stresses caused by having to complete domestic chores as well.

3.35 In evidence to the Committee TCFUA Outwork Coordinator, Ms Annie Delaney, described how extreme pressure may be applied to outworkers by intermediaries to complete jobs sooner than originally requested:

... [outworkers] state it is not uncommon to be given work to be completed in five days but that next day they begin receiving calls from the [intermediaries] to finish the work earlier. They have often been pressured to complete an order in three or four days and have to go without sleep for at least one day to complete the order. There have been times when they have had to get their children to assist them and work through the night to finish an order. They state also that they know many families who are in the same situation as themselves.³⁶

³⁴ Evidence, p. E 218.

³⁵ Evidence, p. E 154.

³⁶ Evidence, p. E 238.

TCFUA OUTWORKER CASE STUDIES

CASE STUDY 1 - Ms MAI

Mai had been working as an outworker for 5 years. Earlier this year she completed two lots of work for a particular intermediary. At the commencement of the work she had been told that she would be paid in cash.

The first job consisted of sewing vinyl halter neck women's tops. She was to be paid \$3.50 per garment and completed 1757 pieces over 2 months. She reported working 9am to 2am daily seven days a week. Her husband had assisted her after work for 4 hours each night and for 20 hours over the weekend. Mai estimated that it took 2 hours per top to make and that she had three children to look after at the same time.

On completion of the work, Mai expected to be paid \$6149.50. After 'deductions' were made it came down to \$3410.45 and then a further 20% was deducted for payment in cash, leaving a total of \$2739.05. This equated to \$1.55 per garment, or 77 cents per hour. She was owed \$1340 for an earlier job.

After going to the intermediary's 'factory' 15 times on one day she was given two cheques; one for \$2739.05 and one for \$1340.00. Both cheques were pre-dated and were not covered by sufficient funds when presented to the bank. A few days later the intermediary came to her house and presented a cash payment of \$1050 in exchange for the second cheque. The remaining amounts owed were never received and when the Union was asked to intervene, it was found that the contracting 'factory' no longer existed.

(Source: Evidence pp. 875-877) ;

3.36 For those outworkers not being paid under award conditions, there are of course no allowances for superannuation, sick leave, holiday pay, overtime or bonuses for meeting short deadlines.³⁷

TCFUA OUTWORKER CASE STUDIES

CASE STUDY 2 - Mr NGUYEN

Mr Nguyen has been an outworkers for several years. In 1990 he carried out work for an intermediary known to him as Jim. Further work was done for Jim in 1993, although at the latter time Jim had a different company name.

In 1993 Nguyen agreed to sew 810 skirts for \$4 each. When they were finished he was owed \$3240 but was only paid \$2000. Three months later he was approached by Jim to sew 354 pairs of shorts for \$3.00 each. Nguyen said he could only sew half that number (174 were completed) but also agreed to do some zips. He was owed \$702 for this work. At the end of the second job he was then owed a total of \$1942.00.

From 1993 to 1995 Nguyen could not locate Jim his 'factory'. He believed that Jim's company had again changed name and moved. Finally he thought he had traced Jim to a new location and contacted the Union.

When the Union became involved, officials approached Jim but through lack of adequate documentation have been unable to assist in recovering the money.

(Source: Evidence pp. 886-888)

³⁷ Evidence, p. E 16.

Occupational Health and Safety

3.37 By its very definition, and because the people involved mostly belong to the lowest socio-economic group, outwork is almost always performed in substandard physical environments: a small room in a house or small garage. The space is usually cramped and there is often inadequate lighting, ventilation and heating. Noise and dust from cloth are perpetual problems. In addition, the pressure of tight deadlines compounded by the need to care for children and cater to other family needs, results in considerable occupational stress for many outworkers.

3.38 According to the TCFUA, occupational health and safety among outworkers is a much neglected issue. Most employers of outworkers do not provide any form of worker's compensation insurance, nor do they take any responsibility for occupational health and safety. The use of non-award labour contributes to the incidence of workplace accidents due to poor and unsafe working conditions exacerbated by excessive hours of work.³⁸ If injuries occur, outworkers often have no alternative but to resort to social security benefits, which means that ultimately responsibility for their work-related injuries moves away from the private sector, which has employed them, into the public sector.³⁹

3.39 The Working Women's Centre (NSW) argued that there was 'an unacceptable level of employer disregard for the health and safety of workers'.⁴⁰ The National Council of Women of Australia noted in its submission that occupational health and safety standards needed to be addressed urgently before conditions improved and that outworkers needed to be taught their rights and educated in occupational health and safety issues.⁴¹

3.40 A number of submissions described the health problems experienced by outworkers and Ms Debbie Carstens representing Asian Women at Work gave the following evidence to the Committee:

Occupational accidents and illness are reported by the women in our network. Universally people talk about sore shoulders, back, neck and hands. For some of these women that has actually

³⁸ Submission No. 38, p. 7.

³⁹ Evidence, pp. E 17, 39.

⁴⁰ Evidence, p. E 168.

⁴¹ Evidence, p. E 846.

progressed to what we would call repetitive strain injury. They experience severe pain and actually have to stop working because of the pain that they experience. It is not relieved even by rest in some cases.

They also universally talk about sore eyes from the long hours of concentrating on fine work. Others actually report having double vision and a sensitivity to light. There are some people who do not come to our English classes at times because they said they have sore eyes or they cannot read the print of the books we are studying in the class.

Women talk about dry skin on their hands from constantly handling the material. They say that the colour from material leaves a pigment on their hands that is not removed from washing. Also there is a problem with the dusty environment. Some people have developed coughs and the women have talked about their concern as to what other effects the dusty environment might be having on their health.⁴²

3.41 Worksafe Australia provided a detailed submission to the Committee which noted that, in general, Australia carried 'a significant human and economic burden as a result of poor performance in workplace health and safety'⁴³ and that, specifically, awareness about occupational health and safety issues was low in TCF industries.⁴⁴ The submission argued that duty of care for health and safety was clearly defined in formal employment, but it became increasingly less clear in the case of contractors and, more specifically, in the case of outworkers.

3.42 The submission agreed with the classification of outworkers as employees and argued that:

... any attempts to improve the health and safety of outworkers need to address this issue of duty of care and to clearly define where responsibility lies for providing safe and health workplaces and systems of work for outworkers. OHS legislation should acknowledge ongoing employment relationships in the case of outworkers regardless of whether those relationships are considered supplier, contractor or self-employed agent in the same manner as a formal employment relationship.⁴⁵

⁴² Evidence, p. E 219; see also Evidence, p. E 846.

⁴³ Evidence, p. E 84.

⁴⁴ Evidence, p. E 92.

⁴⁵ Evidence, p. E 87.

TCFUA OUTWORKER CASE STUDIES

CASE STUDY 3 - Ms WANG

The Union became involved in Ms Wang's case when she contacted them after she was not paid for one batch of work. The company who employed Wang failed to pay her \$1800 and the Union has not been successful in locating her employer.

Wang reported that she had worked very long hours, up to 18 hours a day, seven days a week, and that she often suffered from pains in her arms, neck and back.

When a Union official visited her home she found Ms Wang's eight year old son working at the machine and was told by the son that he helped his mother because she was so tired.

(Source: Evidence pp. 885)

3.43 With specific regard to the occupational health and safety of outworkers, Worksafe Australia noted that there was little reliable information on the incidence of injury and disease primarily because of the clandestine nature of the workforce. However, studies had indicated that at least some outworkers were aware that their work carries with it significant health and safety problems. The types of problems reported include:

- exhaustion from working long hours;
- stress of meeting deadlines and working alone;
- pain in muscles and joints from repetitive movements;
- strain from heavy lifting;
- sore eyes and headaches;
- reactions to dust and material particles;
- noise from machines; and
- dangers posed to young children operating machines.

3.44 Through its Industry Development Program, Worksafe Australia has given priority to working with TCF industries and has formulated an Industry Development Program which includes an OHS Agreement. Although these

initiatives are not directly aimed at outworkers it is hoped that those people involved in outworking will benefit indirectly through Union contact and through the involvement of retailers and manufacturers in the Program.

3.45 To reduce health and safety problems among outworkers, and to reduce the community cost of those problems, Worksafe Australia made a number of recommendations, including:

That TCF industry parties continue and extend the steps already taken to work co-operatively in order to improve the OHS performance of their industry;

That retailers and contractors in the TCF industry continue and extend the co-operative establishment of agreed minimum standards covering the conditions applied to outworking;

That the TCF Development Authority give consideration to incorporating OHS criteria when determining funding for industry restructuring and training under the *TCF 2000 Development Package*; and

That the TCF Development Authority consider allocating funds under the Authority's Best Practice program ... to develop ... a framework in which to achieve improvements in workplace control over hazards and more appropriate contractual arrangements with outworkers.⁴⁶

3.46 In addition to direct health and safety problems, outworkers also experience secondary health effects, such as depression and anger, caused by the stressful nature of the work, social isolation caused by constantly working at home, and lack of intellectual stimulation.⁴⁷ As described by Ms Carstens:

Isolation of these women is very severe and leaves them very open to exploitation. Some of the women never leave their home if the contractor delivers and picks up things. Working the long hours, they very rarely leave home.⁴⁸

⁴⁶ Evidence, pp. E 91 & 93.

⁴⁷ Evidence, p. E 155.

⁴⁸ Evidence, p. E 219.

Other Problems Experienced

Harassment from Intermediaries

3.47 The TCF Union found in its recent survey evidence that suggested that harassment of outworkers by intermediaries was widespread, with intimidation, and verbal and physical abuse having become regular occurrences in some outworkers lives.⁴⁹ The National Council of Women in a submission to the Committee noted that intimidation and harassment appeared to be an everyday occurrence for some outworkers.⁵⁰

3.48 The Association of Non-English Speaking Background Women of Australia (ANESBWA) noted in its submission that outworkers experienced 'a disproportionately high degree of sexual harassment and race and sex discrimination',⁵¹ although they represented a low proportion of people who made formal complaints to the Human Rights and Equal Opportunity Commission. ANESBWA attributed this to the fact that outworkers usually had poor English language skills and a lack of access to information about their rights.

3.49 Many outworkers are fearful of their employers, the intermediaries. As described by Ms Carstens:

For some of the people in our network, the employer-employee relationship is one of distance and is quite fearful. We have had people say that they are scared to take their case to the union to try to get proper compensation for the work that they do on the basis that the employer will send the gangs after them. In some places they have only a name and a phone number as the contact for their employer.⁵²

3.50 Job Watch noted in evidence to the Committee that, in general, there had been a 'phenomenal increase in workplace violence over the last 12 to 18 months'. Elaborating on this assertion Mr Rod Wee Hee, Coordinator and Public Officer of Job Watch, stated:

⁴⁹ Evidence, pp. E 22, 239, 248.

⁵⁰ Evidence, p. E 846.

⁵¹ Evidence, p. E 150.

⁵² Evidence, p. E 220.

We are starting to receive some most horrific physical, verbal and sexual intimidation cases through our telephone service. It is really having a major impact on the organisation. It comes back down to the unequal power in the employment relationship.⁵³ ... This year to date [16 April 1996] we would have received almost 600 calls in relation to workplace violence of a physical, sexual or verbal nature.⁵⁴

3.51 The South Australian Working Women's Centre noted that outworkers were genuinely afraid to talk about their employment conditions, mainly because of fear of employer reprisal. The Centre made attempts to have some outworkers give evidence themselves to the Committee but were unable to convince any outworker to come forward for this reason.⁵⁵

Confusion and Misinformation

3.52 The TCF Union study which led to its report *The Hidden Cost of Fashion*, noted that many of the outworkers who had used their toll-free phone service expressed fear and confusion about the circumstances of their work. They were reluctant to name themselves, their employers or the companies for which they worked. Misinformation from employers contributed to a large extent to the confusion experienced by outworkers. Some of the callers were upset or distressed and most calls took a considerable amount of time and patience from the bilingual worker to resolve. The main issues arising from the phone survey were:

- fear of intimidation from contractors;
- fear of approaching contractors because they are relatives or people known to the outworker's family;
- fear of loss of job or pay if better conditions requested;
- confusion about the difference between being an employee and being a self-employed contractor (many outworkers believed that registering a business name gave them status as a self-employed contractor);
- fear of sexual harassment;
- lack of knowledge about award rates and conditions, and how to get them;

⁵³ Evidence, p. E 492.

⁵⁴ Evidence, p. E 493.

⁵⁵ Evidence, p. E 550.

- lack of awareness about the LAP program; and
- lack of awareness about rights and responsibilities with regard to social security and taxation.⁵⁶

3.53 The Australian Catholic Social Justice Council stated in evidence that information from various migrant chaplains had indicated that intimidation of outworkers certainly occurred. In Melbourne, for example, the chaplain had 'made it quite clear that he felt people were living under a climate of fear and intimidation' and 'that they were afraid to speak out'.⁵⁷

3.54 Job Watch noted in its submission that:

The operations which employ or engage many of these people provide little or few of the minimum benefits afforded to the vast majority of workers in other industries. They tend to manipulate and coerce the outworkers by providing incorrect or fraudulent information, in relation to social security, taxation and/or immigration laws. Also by threatening and reliance upon outworkers fear of retribution in the form of disclosure to authorities or more fundamentally fear of removal of income.⁵⁸

Impact on Family Life

3.55 Some outworkers who choose to work at home for family or cultural reasons may benefit from that choice. However, excessive time spent on outwork may have a detrimental impact on the families of some outworkers. There are a number of reasons for this. First, the large amount of time spent on garment sewing reduces the amount of time available for family interaction and responsibilities. Second, employment at home invades the dimension of family space and, in what are usually very small houses, physically removes from the home an area which could usefully be used for other family activities. Third, the stresses of over-work detrimentally influences the way in which outworkers interact with their family members.⁵⁹ These impacts are all in addition to any time spent by other family members doing outwork themselves.

⁵⁶ Textiles Clothing & Footwear Union of Australia *The Hidden Cost of Fashion - Report on the National Outwork Information Campaign*. March 1995. p. 13

⁵⁷ Evidence, p. E 139.

⁵⁸ Evidence, p. E 475.

⁵⁹ Evidence, p. E 156.

3.56 As expressed by Ms Jane Tassie of the Dale Street Women's Centre in South Australia:

A lot of women hope to be able to combine the work of parenting and domestic labour and caring for kids with their work. In reality, it was not that easy. Women ended up feeling that they were doing neither job properly, in fact, and that was a real concern for lots of women. I think it is a nice idea but in reality it is very difficult to look after kids and do your work at the same time. They talked about the effect of their work on their family life, and these comments often indicated that women felt guilty, stressed and worried about the impact of their work on their families.⁶⁰

Training and Skill Assessment

3.57 There is currently no formal mechanisms for the training and skill assessment of outworkers. Even in garment manufacturing companies, the Future Strategies Committee Report found:

... little formal activity in regard to training and development. Training tended to be conducted on the job and in an unstructured format. Multiskilling was relatively common, often being developed in response to a shortage of suitably skilled operators or to meet rapidly changing production needs'.⁶¹

3.58 Vocational training and assessment leading to national recognition through the Australian Vocational Training Certificate scheme is currently being developed for TCF industries, especially in the clothing sector. However, as anticipated by the Union, outworkers may experience particular difficulties in accessing the scheme. The Union therefore recommended that 'strategies be developed to ensure their participation in Vocational Training programs'.⁶²

3.59 Associated with the TCF Award is a skill structure and outworkers have the right to be assessed and classified in terms of their work skills. However, as claimed by the Union, outworkers have little or no access to the skill assessment process for a number of reasons. First, they must be aware that assessment is available to them; second, they must have the courage to ask their contractor for an assessment; and third, if they are refused, they must know of

⁶⁰ Evidence, p. E 523.

⁶¹ TCF Future Strategies Committee *Future Strategies for the Textiles, Clothing and Footwear Industries 1996-2000*. December 1994, p. 9.

⁶² Evidence, p. E 29.

their rights and be able to go to the Union to request assistance with assessment.⁶³

English Language Proficiency

3.60 As noted by the Union, and experienced directly by the Committee, many outworkers have poor English language skills. Mindful of the need to improve their English because of the role it plays in employment options, outworkers have shown enthusiasm for participation in pilot language programs organised specifically for them. The Union has thus recommended that the Federal Department of Employment, Education, Training and Youth Affairs allocate resources to establish English language classes for outworkers which include curriculum development specific to their needs.⁶⁴

3.61 The Queensland Government submission to the Committee noted that a study by the Bureau of Ethnic Affairs had found that there were no appropriate re-training courses which outworkers in Brisbane could access and that outworkers with low levels of English proficiency found it difficult to access both childcare and extra English tuition in order to take up training opportunities. The submission also identified a need among contractors for training in business acumen and negotiating skills.⁶⁵

3.62 A recent research project conducted by the NSW Adult Migrant English Service, which examined migrant women outworkers in the clothing industry, concluded that those women were missing out on training opportunities available to factory counterparts. The study also found that there was a high level of demand for English language and literacy services among outworkers.⁶⁶ As a consequence of these findings, the NSW Government funded an English Language and Literacy Program for Outworkers in the Clothing Industry from August 1994 to December 1995.

Underage Workers (Children)

3.63 The minimum age for admission to regular employment in Australia and that recognised by the ILO is 15 years. However, regulation of part-time

⁶³ Evidence, p. E 16, 46.

⁶⁴ Evidence, p. E 29.

⁶⁵ Submission No. 39, p. 3.

⁶⁶ Submission No. 38, p. 4.

employment of children in Australia varies among the states; in some there is no legal minimum and no effective mechanisms for regulating or ensuring compliance in most industry sectors.

3.64 The extent to which children are used to assist in the manufacture of garments for the fashion industry in Australia is largely unknown. While the number of older children who regularly sew alongside their parents may be low, and while there appears to be no evidence of organised child labour, the number of children of any age that perform ancillary tasks on a casual basis may be quite high.⁶⁷

3.65 Children assist in a variety of ways, from cutting threads from the finished garment to operating industrial sewing machines after school and in school holidays. The Union suggests that the involvement of children is a direct consequence of the short deadlines imposed by intermediaries and the poor rates of pay.⁶⁸ The Union further suggests that some unscrupulous intermediaries may exploit the fact that there are children there to assist in getting the work done.⁶⁹ Elderly people may also become involved in outwork because of the pressure of production schedules.⁷⁰

3.66 In addition to being directly involved in sewing and associated tasks, many children take on an exceptional burden of household chores to enable their parents to work longer hours sewing. Large amounts of time spent working at home may then prevent children from completing their homework and from socialising with their peers.⁷¹

3.67 Deacon Brad Paez of the Footscray Vietnamese Alliance Church gave evidence to the Committee of the indirect detrimental consequences for youth of high levels outworking among Vietnamese women:

The "losers" of this system are the youth who feel alienated from their families - or caged up by a lifestyle which demands their willing participation, dividing them between school, home and friends. ... most youth accept these tensions for the sake of the

⁶⁷ Evidence, p. E 59-60, 183, 188, 299, 904.

⁶⁸ Textiles Clothing & Footwear Union of Australia *The Hidden Cost of Fashion - Report on the National Outwork Information Campaign*. March 1995. p. 20.

⁶⁹ Evidence, p. E 60.

⁷⁰ Evidence, p. E 21.

⁷¹ Evidence, p. E 504.

family unit; I doubt if anyone would ever complain to a Senate inquiry on behalf of Vietnamese youth, as such an action would bring shame on the families involved.

Therefore I would urge you to consider the consequences for children through your inquiry. The evil of outworking as far as the Vietnamese in our church is concerned is NOT financial exploitation, but the TIME it takes from children's lives, their education, and, indeed, their community life.⁷²

3.68 As noted by Job Watch, child employment in general in Australia has not been subject to any detailed investigation or research, and thus there is little understanding of the issues. Job Watch asserts, however, that 'any comprehensive research and/or study into child employment would find similar abuses [to those reported in the media relating to outworkers] of child labour across a number of industries'.⁷³ Citing evidence from other studies of work carried out by school students which showed that 42% of Year Seven students surveyed had done some form of paid work, Job Watch argued that this level of employment could not be dismissed as 'hobby work' or for 'pocket money'. According to Job Watch, the issue of child labour in the garment industry is of serious concern, as is the issue of child labour across all industry sectors and should not be seen in isolation.⁷⁴

3.69 Job Watch also emphasised the need for research into child labour practices, particularly in the areas of wages and conditions, impact on education both in the classroom on at home, occupational health and safety issues, including rest and recreation, and moral well-being.⁷⁵

3.70 Finally, the peak garment association, the Council of Textile and Fashion Industries of Australia (CTFIA), was particularly concerned that young people not be involved in outwork. In its submission to the Committee the CTFIA stated:

While any form of exploitation is unacceptable, the involvement of children in any form of labour, other than limited domestic help within the home, is particularly abhorrent and totally at odds with Australian community norms. The Council ... is absolutely committed to supporting any steps taken to ensure that appropriate

⁷² Evidence, p. E 460.

⁷³ Evidence, p. E 480.

⁷⁴ Evidence, p. E 480-481.

⁷⁵ Evidence, p. E 452.

homeworking arrangements are put in place to make it completely unnecessary for children to be involved in homeworking.⁷⁶

TCFUA OUTWORKER CASE STUDIES

CASE STUDY 4 - THE NGUYEN FAMILY

The Nguyens have been working as outworkers for 7 years, having been unemployed for their first few years in Australia. Over the last five years they have never received rates equivalent to the award have had to rely on their daughters to assist them with work over the last five years. Their average working day is 12-14 hours a day, seven days a week.

The Nguyens have four children aged between 18 and three years old. The children work at the machines sewing from the age of 13. Before this age, they help with ancillary tasks - turning garments out, folding, sorting, bundling and cutting threads. The children assist for an average of three hours at night and up to 10 hours a day on the weekend. On average the children work 35 hours per week.

It is not uncommon for the Nguyens to be given work to be completed within five days but the following day they receive calls from the intermediary to finish the work earlier. They have often been pressured to finish the order in 3-4 days and have had to go without sleep for at least one day to complete the order. They have been threatened in various ways and have been told that they will not receive any money at all if they do not complete their job early.

The Nguyens state that it is not uncommon for intermediaries to withhold payment for several orders as a form of intimidation and harassment. They are then perpetually worried about whether they will receive payment for completed jobs.

(Source: Evidence pp. 880-882)

⁷⁶ Evidence, p. E 370.

3.71 The Committee recognises that many children voluntarily assist parents in the running of a family business, particularly in the rural and retailing sectors, and that in many instances the children of outworkers may assist their parents in the home with garment manufacture to a similar level of involvement. It is those instances where children work excessive hours, to the extent that their schooling or health suffers, or to the extent that their presence becomes a means of exploiting outworkers by intermediaries, that are of concern to the Committee.

The Question of Exploitation

3.72 Some outworkers are paid award conditions but many are not and the Union believes that 'the overwhelming majority of outworkers in the clothing manufacturing industry are unfairly and improperly exploited by the non observance and/or non payment of award and statutory entitlements and benefits'.⁷⁷

3.73 There are a number of factors which make outworkers vulnerable to exploitation and these include the following.⁷⁸

- The fact that outworkers work in their own homes makes them isolated. This means that it is hard for them to get or receive information about relative conditions of their work. Because they are alone, outworkers are vulnerable to harassment. Often the intermediary is a person of their own nationality who may behave in a manipulative and harassing manner.
- The system whereby contractors, and sometimes intermediaries deliver and collect work can result in ignorance about where the work comes from, and thus who should be paying them.
- The chain from retailer to outworker is often so long that getting details from a retailer about exactly who has made the garments is often impossible.
- Because some outworkers receive so little, they may be on government welfare benefits as well and this leaves them vulnerable to blackmail, and unable to take action when payments for work are not forthcoming. It also means that intermediaries may coerce outworkers into accepting lower rates for future work.

⁷⁷ Evidence, p. E 857.

⁷⁸ Evidence, p. E 15.

3.74 ANESBWA concluded its submission with the statement that outworkers presented a 'picture of marginalisation, exploitation and entrapment for one of the most disadvantaged and vulnerable groups of our society'.⁷⁹ The Working Women's Centre commented: 'the social and community isolation of recently arrived NESB women makes them easily incorporated into the illegal economy'.⁸⁰

3.75 However, some outworkers themselves do not see the conditions under which they work as exploitative. In speaking of the Vietnamese community in Footscray, Deacon Brad Paez said in evidence to the Committee:

... they do not use it as slavery in any sense at all. Ninety per cent of the Vietnamese in our church would never view this system as slavery because of the advantages of child care, of relatives looking after children, of the family being together. Many a time they have said to me, 'What else are we going to do.' They have had no education, or perhaps as much as year three, in Vietnam; their English is not sufficient to be employed in nearly all jobs; and they do not trust the Vietnamese factory owners because they could easily be dismissed. So they set up at home where they feel comfortable.⁸¹

3.76 Industry representative stressed to the Committee that the conditions of employment agreed upon by employer and outworkers were not necessarily exploitative but were often the preferred options of both parties. Indeed, the Australian Chamber of Manufactures argued that if the technical aspects of the award are applied to the conditions under which homeworkers were paid, then there may be a technical breach of the award, but that the application of the award to home work was not necessarily appropriate. In fact, when all conditions of employment were taken into account, some outworkers may in fact be better off than factory workers.⁸²

3.77 Finally, on a macro-economic scale, the Australian Catholic Social Justice Council was critical in its submission of current competition policy doctrine that placed great emphasis on the needs of the market while neglecting the needs of the individual:

⁷⁹ Evidence, p. E 157.

⁸⁰ Evidence, p. E 168.

⁸¹ Evidence, p. E 463.

⁸² Evidence, p. E 342.

Economic policy must take into consideration its social impact. Whereas competition is a good thing it cannot be at the expense of exploitation of workers nor at the expense of excessive unemployment.⁸³

3.78 While the Australian Catholic Social Justice Council insisted that award wages should be paid to all outworkers to eliminate exploitation, it noted that if this occurred, the greater degree of competition forced on the industry may ultimately result in a very small, up-market industry within Australia, and the problem of exploitation would be pushed offshore.⁸⁴

Conclusions and Recommendations

3.79 Through the availability of the various clothing trades awards mechanisms exist for outworkers to be paid wages equivalent to factory employees. However, the structural complexities of the garment manufacturing chain, and resultant ease with which various parties can shed responsibility, mitigates against full award compliance.

3.80 The Committee notes that the *Workplace Relations and Other Legislation Amendment Act 1996* will change the circumstances under which outworkers may be employed by providing for individual Workplace Agreements with scrutiny of such agreements available through the Employment Advocate. It is the Committee's view, however, that in accordance with the nature of outwork and past experience in the industry, it is probable that most outworkers will not be required to sign any contract and will continue to be employed in the same manner as they have been in the past.

3.81 In addition, powers of inspection (right of entry provisions) previously delegated to the Union, will be curtailed. The Committee is concerned that these changes to industrial relations law have the potential to adversely affect the conditions under which outworkers are employed. The Committee concludes that for both these reasons alone outworkers need extra employment protections as outlined in later conclusions and recommendations.

3.82 However, Government Members of the Committee believe that the strengthening of penalties for breaches of awards and the proactive role to be played by both the Office of the Employment Advocate and the Awards

⁸³ Evidence, p. E 135.

⁸⁴ Evidence, p. E 135.

Management Section of the Department of Industrial Relations concerning outworkers, under the new *Workplace Relations Act 1996*, will improve outworker protections.

3.83 While some employers do comply with award conditions, it was clear to the Committee that at least some outworkers are employed under extremely stressful circumstances. Problems experienced include: low piece-rates which translate to low hourly rates; impossible deadlines for completion of work; late payment, underpayment, non-payment for completed work and rejection of work; physical and verbal harassment from intermediaries; substandard working environments; and worries associated with combining work with family responsibilities. These stresses are compounded by the lack of English language skills and inadequate training. The final outcome for some outworkers is clearly exploitation.

3.84 The Committee notes that occupational health and safety of outworkers is a neglected issue. Although the magnitude of occupational and secondary stress induced health problems is not known, the Committee is concerned that because outworkers are treated as 'contractors' rather than as employees, the ultimate cost of accidents and illness among them may be being borne by the public sector. **The Committee endorses the recommendations made by Worksafe Australia (Paragraph 3.45).**

3.85 Evidence shows that children are involved in outworking and the Committee concludes that there is sufficient evidence to suggest that some children are involved to an unreasonable extent. **The Committee believes that the situation endured by exploited children will only be ameliorated through an improvement in the employment conditions experienced by their parents. Having regard to Australia's international and national obligations to protect children from exploitation, the Committee suggests that Government consideration of this matter is warranted.**

3.86 In addition, the Committee is concerned that outworking under exploitative conditions may be having a detrimental impact on the educational opportunities and social environment of children of migrant outworkers, and on their family life generally.

3.87 The Committee notes that while some outworkers, because of differing life experiences or expectations, do not see exploitative employment conditions to be necessarily undesirable, these circumstances should not be allowed to continue.

CHAPTER FOUR

GOVERNMENT INVOLVEMENT

4.1 In addition to legislation directly relating to circumstances of employment (awards and agreements), there are a number of ways in which government can be involved in, and may influence, the employment conditions experienced by outworkers. These include ensuring compliance with award provisions (DIR inspectorate), taxation matters and the reportable payments scheme, social security benefits, the Labour Adjustment Program, and implementation of the ILO Convention on Homework. There are also various way in which state governments and local councils can influence the employment conditions experienced by outworkers.

Award Compliance (Enforcement)

4.2 Awards are legally binding and breaches can be prosecuted in a district, county, local, magistrates or industrial relations court. Inspectors appointed under federal or state legislation can initiate a prosecution or can assist an individual to undertake legal action, although this is usually only carried out after attempts have been made to bring about voluntary compliance. Inspectors have the power to enter business premises to certify that compliance is occurring. In doing this they may inspect time and wages books, work, machinery, material and documents, as well as interview employees.

4.3 The proactive role that the Union plays in enforcing award conditions is entirely dependent upon the clauses of the various relevant Awards which require, inter alia, that employers register their identity, that they notify the appropriate industrial registry about the destination of all clothing work, and that they record all names and addresses of people who receive work. The Union currently has powers to enter an employer's premises to ensure that awards and agreements are being observed and to inspect both the relevant employer records and the circumstances of the disbursement of work¹. These

¹ These provisions are contained within clauses 26, 27, 27A, 29 and 30 of the Clothing Trades Award 1982, clauses 27, 40 and 42 of the Textile Industry Award 1994, clauses 31, 33

provisions will change, however, with the implementation of the *Workplace Relations and Other Legislation Amendment Act 1996*, as discussed earlier (Paragraph 3.24).

4.4 In addition to an increase in non-compliance by industry participants in recent years, the role of the Department of Industrial Relations Inspectorate has moved away from proactive activities and has become solely reactive. That is, the Inspectorate does not carry out investigatory work unless it has been prompted by a complaint, and it receives very few complaints from outworkers.² This is due to a number of factors:

- the secretive nature of outworker employment;
- the absence of written contracts;
- fear among outworkers of reprisals from subcontractors;
- low levels of English literacy resulting in an inability to register complaints;
- ignorance of employment rights; and
- low levels of union membership.

4.5 Thus the low number of complaints received, combined with reduced funding for inspectorate activities, means that government inspectorates do not now play a strong role in enforcing award provisions. Considerable criticism of this decline was made in evidence to the Committee.³

4.6 The TCFUA noted that in NSW over the last decade the inspectorate role has changed from one of proactive investigation to one of simply following up on complaints. In addition, when complaints are made to the Federal Department of Industrial Relations, it now appears that the complainant is referred to the Union for assistance.⁴

4.7 The Working Women's Centre (NSW) argued in its submission that the activities of government inspectorates with regard to ensuring compliance were

and 41 of the Footwear Manufacturing and Component Industries Award 1979, and in corresponding provisions of the counterpart state awards.

² Evidence, p. E 647.

³ See for example Evidence, pp. E 168, 224, 549.

⁴ Evidence, p. E 256.

'totally inadequate'.⁵ When questioned in evidence about the response rate for complaints Ms Alcorso, representing the Centre, stated:

In Sydney it can take up to three or four months to get a complaint handled by the State inspectorate ... With anti discrimination complaints there is a similar picture. It takes longer. If there is sexual harassment or some matter like that being faced by an outworker, certainly, with the anti-Discrimination Board, it could take eight months. With the Human Rights Commission, it could take two years for the complaint to be investigated. So these are not timely remedies at the moment.⁶

4.8 The community group, Asian Women at Work, supported the strengthening of award policing and argued that existing protections should not be removed by the proposed Workplace Relations legislation.⁷

4.9 However, in stating its own position the Department of Industrial Relations noted that, in addition to the fact that a very low number of complaints were received from outworkers, it was Departmental policy to secure compliance through voluntary action in the first instance. This approach was successful such that most complaints (c.95%) were resolved through mediation rather than through prosecution and it was for this reason primarily that the number of prosecutions was low.⁸

4.10 In relation to response time for investigation of complaints, the Department of Industrial Relations provided the following supplementary information with regard to the federal Clothing Trades Award. In the first half of the financial year 1995/96, one third of the complaints received were finalised within three months. As at 31 March 1996, the Department had 26 complaints relating to the award on hand. Of these 12 (46%) were less than 3 months old; 10 (39%) were 3-6 months old; 4 (15%) were 6-12 months old; and no cases were over 12 months old.

⁵ Evidence, p. E 168.

⁶ Evidence, p. E 196.

⁷ Evidence, p. E 224.

⁸ Evidence, p. E 657.

Taxation

4.11 Taxation is a major issue for outworkers, particularly as there is considerable confusion as to whether they are employees or self-employed.⁹ If outworkers are employed under a contract of service, their employer is required by law to deduct PAYE tax from wages earned. Because the chain from retailer through manufacturer to contractor and on to outworkers is often complicated, identifying the party responsible for tax deduction and payment is also difficult.

4.12 In the minds of outworkers, taxation compliance is complicated by other matters (such as late payments and eligibility of deductions) and is made more complicated by the system of provisional tax. Declarations of total tax liability by outworkers are also complicated by the link between tax file numbers and social security payments. Outworkers who have been coerced into applying for social security benefits may be unwilling to declare home-based income because of the possibility of being charged with fraud.

4.13 The TCF Union media campaign found that outworkers were particularly concerned about their tax status and may need to be 'brought into the formal economy without being penalised'.¹⁰ This, the Union proposed, would involve some sort of retrospective taxation amnesty for outworkers.

4.14 In the soft furnishings area of outwork Mr David Kirner, CFMEU Assistant Secretary, explained to the Committee that tax avoidance was widespread throughout the industry, not just at the level of outworkers:

... evasion and avoidance of taxation exists within this industry. We believe that government failure to establish minimum standards of award entitlement, and therefore employment practice, has led to the expansion of the cash economy in this area, resourced by social security payments and widespread avoidance practices, including non-declaration of income. As you would be aware, most union members are PAYE taxpayers. They are obviously concerned about the level of avoidance and evasion that goes on because they actually do believe that they foot the bill.

At an employer level our industry is advising us. As we go through work places, employers indicate to us that they are suffering significantly at the hands of companies who they do not

⁹ Evidence, p. E 505.

¹⁰ Textiles Clothing & Footwear Union of Australia *The Hidden Cost of Fashion - Report on the National Outwork Information Campaign*. March 1995. p. 19.

believe are paying appropriate taxation throughout working rings and so forth. They are advising the union that additional tax evasion is occurring on a consistent basis with respect to the following taxes - sales tax, payroll tax, workers compensation payments, effective group tax and company tax. The wage income and taxation reporting systems which are currently in place are obviously inadequate and consistently abused.¹¹

4.15 Finally, however, it should be noted that while many outworkers appear to not fully understand their responsibilities with regard to taxation, some are well apprised of them. At one outworker home in Melbourne visited by the Committee during inspections, members were shown current provisional tax notices for husband and wife, both of whom stated that they earned all their income through garment sewing as self-employed 'contractors'.

Reportable Payments System

4.16 The Reportable Payments System (RPS) was introduced by the Australian Tax Office on 1 December 1994. The System was designed specifically to capture non-complying taxpayers in industries with high levels of tax evasion and it was initially applied to the fishing and clothing industries. It has been estimated by the Tax Office that tax evasion on the clothing industry is between \$80 and \$100 million.¹²

4.17 The RPS System is an income reporting system which draws on elements of the PAYE, PPS and Tax File Number (TFN) provisions of income tax legislation. Under the scheme, Payers are required to report details of all payments annually to the Tax Office, including the name, address and TFN of the Payee as well as the amounts paid.¹³ Payers must send any amounts deducted to the Tax Office where they are credited for assessment against the TFN quoted.

4.18 Payees may quote their TFN to their Payers using a Reportable Payments Declaration form which is then sent to the Tax Office for verification. If the TFN is not provided then the Payer must deduct tax at the highest marginal rate

¹¹ Evidence, p. E 561-2.

¹² Evidence, p. E 595.

¹³ Note: The RPS system defines industry participants who make reportable payments as *Payers* and those who receive reportable payments as *Payees*. Some participants may be both *Payers* and *Payees*.

(currently 48.4%). The System does not distinguish between particular types of payees such as outworkers.

4.19 In terms of the clothing industry, this means that all garment wholesale companies should have reported to the Tax Office all payments made to manufacturing companies or to individuals involved in the making of their garments. The System applies to all parts of the garment manufacturing process, including designing, cutting, pattern-making, sewing, clipping, making-up and embroidery.¹⁴ Thus a retailer who buys and sells ready to wear clothing and has no involvement in the manufacturing process will not be reportable whereas a retailer who contracts a company to manufacture the clothing will be reportable. For four years prior to the introduction of the System, all major clothing companies (some 150) were audited to establish a production expenditure norm.

4.20 All company returns for the System had to be lodged by August 1995 and the first full year for reporting was the 1995/96 year. Research by the Tax Office indicated that there were some 18,000 entities who would potentially have obligations as payers and up to 70,000 entities who would have obligations as payees. By the end of June 1996, the Tax Office had registered some 6168 payers and identified 22,026 payees in the clothing industry who had indicated that they had obligations under RPS. By the end of September 1996 these figures were 6695 and 24,657, respectively.¹⁵

4.21 When questioned about the discrepancy between the ATO's estimate of about 70,000 payees (outworkers) and the some 25,000 who had so far registered, the ATO responded that the previous strategy used to increase participation rates was based on field work to identify and register industry participants with RPS Payer obligations. In the light of results so far achieved, and the shortcomings of the method used, the ATO had recently modified its strategy and was now concentrating on an 'extensive examination of industry participants to determine who they pay and and/or who they are paid by'.¹⁶ This information was then followed up with a site visit. Since the introduction of RPS in the fishing and clothing industries, additional revenue attributable to it has been estimated at \$77 million.

¹⁴ Note: Footwear is outside the scope of RPS and payments made of a private nature are also outside the scheme.

¹⁵ Evidence, p. E 595, and Letter received from the Australian Tax Office 27 November 1996.

¹⁶ Letter to Committee dated 4 December 1996 from David Butler, First Assistant Commissioner, Australian Tax Office, p.2.

4.22 Mr George Napper, managing Director of My Garment Company, described the System as ultimately 'inescapable'¹⁷

[The] distributor or label owner shows the merchandise to the retailer who places an order. That order is then assembled and goes to a cutting company. The payment to that cutting company is reported to the tax office and the tax office has a record of the payment to the cutting company. When the cutting company distributes it back to the distributor who then passes it on to the manufacturing companies, all of that is reportable. Every line of that process and every payment is accumulated within the tax office under either an ACN number if it is an incorporated company or a tax file number if it is an individual. If it is a company it is recorded under its tax file number and its ACN number.

With all of those bona fides as to those companies, it is the responsibility of the payer to verify that and that goes in a report. So from the very first payment you make it goes off to your tax office, it is progressively recorded over a period of a year, at the end of the year we make our submissions and the government is fully aware of what the ongoing payments were and the tax liability.

At 30 June this year all the returns have to be in for all those processes to the tax office by 30 August. At that time, parliament will have access to all the information. It will have access to the amount of money, who it was paid to, who it was paid to by whom, who received it, how much, how much was their total income, what was their tax liability and how many they were.

4.23 Mr Napper suggested to the Committee that the System could be extended to apply along the full length of the garment manufacture process so that companies could be required to report individual Workcover policy numbers or superannuation policy numbers. The mechanism was there in existence: it was now up to the Government to make use of that mechanism to regulate the outworker sector.¹⁸

4.24 Noting that most people working as outworkers in the garment industry were relatively recent migrants, the Welfare Rights Centre was critical of the Reportable Payments System on the basis that there had been insufficient information made available to community groups to educate outworkers on

¹⁷ Evidence, p. E 71.

¹⁸ Evidence, p. E 77.

how the System would work.¹⁹ The Welfare Rights Centre also expressed concern about the data matching system between the Australian Tax Office (using the Reportable Payments Scheme) and the Department of Social Security if the System was altered to use names, which among Vietnamese people, for example, could be very similar or the same, instead of tax file numbers.²⁰

Social Security Benefits

4.25 Some outworkers receive social security benefits, either because they move into outwork from benefits and fail to cease taking the benefits or, as alleged by the TCF Union and others, because they are coerced into it by unscrupulous intermediaries.²¹ In this scenario, potential outworkers are told by intermediaries that because the rates of pay for sewing are so low, they will need to receive social security benefits in addition to their outworking income; in other words, that they must register for benefits before they will receive any work. However, once the outworker is receiving welfare benefits, the intermediary is then able to use this information as a lever to coerce the outworker into accepting even lower rates of pay or completing jobs sooner than originally requested.

4.26 In estimating the number of people who may be involved in fraud of this type, the Union stated in evidence to the Committee:

If one takes the assessment of the Department of Social Security as being reliable, it would seem that 7½ per cent of outworkers may be receiving social security benefits to which they are not entitled, either in whole or in part. If the Tax estimate is correct, there are about 4,000 beneficiaries of social security benefits who should not be getting part or perhaps all of it.²²

4.27 In response to representations made by the Union, the Department of Social Security declared an amnesty for garment industry outworkers so that their level of benefits could be re-appraised without penalty. The amnesty operated for 6 months from 1 December 1996 to 31 May 1996 and was advertised widely in a variety of ways including extensive use of ethnic media

¹⁹ Evidence, p. E 202.

²⁰ Evidence, p. E 210.

²¹ Evidence, pp. E 156, 169, 754.

²² Evidence, p. E 898.

and multilingual leaflets.²³ According to information provided by the Department, as at mid-June 1996, 33 people who worked in the clothing industry had applied for the amnesty.

4.28 A number of witnesses before the Committee were critical of the results of the amnesty. Among them was Ms Debbie Carstens of Asian Women at Work who commented that the amnesty had the potential to bring many outworkers into the formal employment sector but that there had been a lack of clear information given to community workers about the amnesty and a lack of information put into community languages. In addition, there had been insufficient time for outworkers to find out about the amnesty and take action. The lack of time was particularly significant because it took considerable time for information to filter through the outworkers network and for outworkers to overcome their fear of interacting with government agencies. They also had to overcome the misinformation provided to some of them by their 'employers'.²⁴

4.29 The Working Women's Centre commented in its submission:

In regard to the DSS, women need a genuine motivation to come forward and in our view the current amnesty does not focus sufficiently on the fate of the women who come forward. Simply inviting women to come forward to do the right thing, or to avoid the threat of future legislation is unlikely to succeed. Threats are unlikely to work as many outworkers have a social situation that is so desperate that one more threat won't make much difference.²⁵

4.30 The Welfare Rights Centre (NSW) also criticised the amnesty in evidence to the Committee, stating that the campaign had been a failure due to poor publicity:

It seems to us that there has been inadequate funding, a sum of only some \$15,000 for the national campaign. The campaign itself has been rather unsophisticated and tardy in its production of multilingual material to publicise the amnesty. Those factors are - part of the reason for a very low take up.²⁶

4.31 A related issue is that of the time period during which new migrants are ineligible to apply for welfare benefits. Currently, migrants to Australia must

²³ Evidence, p. E 629.

²⁴ Evidence, p. E 224-5, see also Evidence, p. E 156, 525, 743.

²⁵ Evidence, p. E 171.

²⁶ Evidence, p. E 201.

wait for a 6-month period before applying for social security benefits. However, the Government is currently considering extending this period to two years. The Welfare Rights Centre, in evidence to the Committee, noted that if such a provision were introduced, it may force many new migrants who became desperate for finance into exploitative employment situations such as underpaid outworking in the garment industry.²⁷

4.32 In addition to the amnesty, the Department of Social Security commenced a data matching project linking welfare recipients with the Reportable Payments System established by the Australian Tax Office. Preliminary results for TCF industries, provided to the Committee just before completion of this report, are as set out in the following table.²⁸

Reviews Selected	1872
Reviews Completed	874
Downwards Variations (including cancellations and suspensions)	69 (7.9%)
Suspensions/Cancellations	51 (5.8%)
Overpayments Raised	156 (17.9%)
\$ Amount	275,000

Labour Adjustment Program (LAP)

4.33 The Labour Adjustment Program was established to assist employees retrenched from TCF industries as a result of restructuring to find alternative employment. It applies only to people employed before July 1994.

4.34 Outworkers have had a low participation rate in programs such as LAP and evidence was given to the Committee that this was for two main reasons:

²⁷ Evidence, p. E 207.

²⁸ Source: Letter dated 26 November 1996 from Ian Carnell, First Assistant Secretary, Compliance, Fraud & Teleservice, Department of Social Security.

first, lack of knowledge that such programs were available; and second, previous political experience and social backgrounds, often involving refugee status, that have made outworkers wary of becoming involved in any government sponsored activity for fear of reprisals for past breaches of taxation or social security entitlements.²⁹

4.35 However, the importance of the LAP program was outlined in evidence to the Committee by Ms Carstens who stated:

The only thing that really has been going for our network outworkers who are Chinese women and have gained permanent residency recently is that some of these women have applied for the labour adjustment program, which has allowed them to get retraining to enter into the formal work force in other areas. This has been really positive. The women who have had access to that program have improved their English rapidly and their confidence is improving. I really believe they will get out of that industry very quickly and into something more constructive as a result of that program. It is a very good program that is being offered.³⁰

4.36 In its submission, the Union expressed concern that people employed after July 1994 were ineligible for inclusion in the program and that some retrenched clothing workers had been excluded from the program on the basis that they had found short-term work outside the industry. The Union thus recommended that the LAP program continue unrestricted to factory workers and outworkers.³¹

ILO Convention

4.37 Conditions experienced by people performing paid work at home have been of concern to authorities in other countries and on 28 June 1996 delegates to the 83rd Conference of the International Labour Organisation (ILO) voted to adopt a Convention on Home Work, supplemented by a Recommendation.

4.38 The Convention and Recommendation calls on signatories to establish guidelines on health and safety and hours of work for home-workers, including

²⁹ Evidence, p. E 916-917; see also Textiles Clothing & Footwear Union of Australia *The Hidden Cost of Fashion - Report on the National Outwork Information Campaign*. March 1995. p. 21.

³⁰ Evidence, p. E 226.

³¹ Evidence, p. E 28.

precautions that should be observed by employers and outworkers to avoid hazards associated with the work, to ensure adequate training is provided, and to ensure that delivery times do not preclude adequate daily and weekly rest periods.³²

4.39 In evidence to the Committee a number of organisations urged that Australia support the convention and to be a leading nation in its implementation.³³ The Convention was passed in June. However, Australia abstained from voting. If Australia were to sign the Convention, the Government would then have to adopt, implement and periodically review a national policy on home work aimed at improving the situation of homeworkers, in conjunction with the most representative organisations of employers and workers. The national policy on home work would promote, as far as possible, equality of treatment between homeworkers and other wage earners taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise.³⁴

4.40 In contrast to the views held by community groups, employer groups argued in evidence to the Committee that the international regulation of home work through an ILO Convention was premature and inappropriate. The submission from the Victorian Employers' Chamber of Commerce and Industry outlined these concerns:

While Employers are sympathetic to the need to protect the most vulnerable groups of workers in society, we have grave reservations about the content, scope and practicability of this instrument to achieve the level of protection appropriate to those who actually need it.³⁵

4.41 Specific criticisms about the Convention and its Recommendation also included concerns that:

³² Evidence, p. E 91.

³³ Evidence, pp. E 276, 301 (ACTU), E 92 (Worksafe Australia), E 171 (Working Women's Centre, NSW), E574 (CFMEU), E 525 (Dale Street Women's Health Centre). Support for the convention was also expressed in the TCF Future Strategies Committee Report *Future Strategies for the Textiles, Clothing and Footwear Industries 1996-2000*. December 1994, p. 16.

³⁴ The Home Work Convention 1996, Articles 3 & 4.

³⁵ Evidence, p. E 416.

- the definition of home worker was wider than appropriate;
- the definition of employer was loose and potentially misleading;
- the definition of an intermediary was ambiguous;
- it would result in competing interests of health and safety on the one hand and respect for privacy on the other, with privacy possibly becoming subordinated to public safety; and
- the administrative costs of the development and maintenance of registers which would most likely have to be borne by employers.³⁶

State Government Action

4.42 Two submissions were received by the Committee from state governments (NSW and Queensland) which outlined action that had been taken to address problems associated with garment industry outworkers.

New South Wales

4.43 Since 1993 the NSW Government has conducted three separate task force inquiries into the clothing industry and has established a Clothing Industry Strategy Group which had the objective of examining methods by which Government could facilitate industry self-regulation through on-going education. One result of the Strategy Group has been the production of a 'plain English' information booklet for outworkers which was translated into Vietnamese. It success has led to a proposal to translate it into other relevant languages, such as Chinese.³⁷

4.44 The NSW Government submission noted that while its task force has had considerable contact with industry workers, outworkers were highly reluctant to seek assistance from Government agencies and no complaints had been lodged by outworkers with the Department of Industrial Relations. The NSW Government concluded that: 'general enforcement activities alone are inappropriate in attempting to locate and assist outworkers'.³⁸

4.45 The NSW Government submission also outlined a number of other proposals to assist outworkers:

³⁶ Evidence, p. E 416-420.

³⁷ Submission No. 38, p. 3.

³⁸ Submission No. 38, p. 4.

- in conjunction with the TCFUA, carry out an educational program aimed at employers in the industry to increase awareness of responsibilities relating to award compliance;
- in conjunction with the TCFUA, carry out an educational program aimed at outworkers to inform them of their employment rights and to overcome barriers which impede them from seeking Government assistance to obtain their legal entitlements;
- in conjunction with the TCFUA, employer associations, retailers and designers, promote self regulation through Deeds of Cooperation; and
- carry out monitoring of issues and trends in the industry and facilitate information exchange.

Queensland

4.46 Following concern about outworkers highlighted in the TCFUA report, *The Hidden Cost of Fashion*, the Queensland Government's Bureau of Ethnic Affairs formed a reference group to identify problems confronting outworkers in Queensland and to develop strategies to address them. From this, the Vietnamese Outworker Assistance Group (VOAG) was formed with representatives from the Women's Health Centre, the Bureau and local Vietnamese communities.

4.47 On finding that outworkers did not have access to information about the employment entitlements, VOAG produced a pamphlet in both English and Vietnamese and distributed it through relevant community groups. Feedback from the pamphlet revealed that outworkers were very concerned about social security and taxation issues and that they did not feel able to pursue training courses.

Contravention of Local Council Regulations

4.48 Finally, the Committee notes that the use of homes and garages for outwork may contravene local council regulations.³⁹ Normally, regulations prohibit 'sweatshop' activities in residential areas and registration of domestic premises is required if they are to be used for business purposes. However, in the case of home-work it is often difficult for councils to make a distinction in practice between a small sewing business being run from within a home and a

³⁹ Evidence, p. E 61, 253, 768.

house (or more often a garage) that is being used as a 'sweatshop'. For example, while the City of Greater Dandenong Council defines a 'Home Occupation' operation as one where there is no more than one non-resident working at the house, finding out exactly who is working in the house may prove difficult, if not impossible in practice.

4.49 The City of Greater Dandenong Council receives complaints from residents on a regular basis that 'sweatshops' were being operated in residential areas. The Council follows up such complaints with an inspection and while some complaints are found to be valid, some are not.⁴⁰ Problems associated with the operation of 'sweatshops' in residential areas include noise from machinery and noise associated with the loading and unloading of vehicles, particularly late at night and early in the morning, and the use of electrical fittings adapted to take a capacity far in excess of normal residential loads which caused interference with television reception.⁴¹

Conclusions and Recommendations

4.50 The Committee concludes that enforcement by government agencies of compliance with award wages and conditions has declined considerably in recent years, being more reactive than proactive, and that this in itself has contributed to an increase in the level of non-compliance. However, the Committee acknowledges that the level of non-compliance in TCF industries is exacerbated by an unwillingness on the part of outworkers to report non-compliance and to have government agencies involved in the circumstances of their employment.

4.51 The issues of taxation obligations and eligibility for welfare benefits are of concern to some outworkers, particularly those who may have been coerced into infringement of taxation obligations or welfare entitlements, although the degree to which such infringements are occurring is not clear. As evidenced by the introduction of the Reportable Payments System and the Social Security amnesty for outworkers, these issues are clearly also of concern to the relevant government instrumentalities.

4.52 The Committee strongly believes that the Australian Taxation Office could take greater advantage of the Reportable Payments System to fully investigate taxation avoidance in TCF industries. The Committee notes that

⁴⁰ Evidence, p. E 769-770.

⁴¹ Evidence, pp. E 559, 775, 777-8.

an important additional benefit of the Reportable Payments System is that it will assist in identifying all parties involved in the garment manufacturing chain, particularly those at the level of intermediary. In addition, the Committee notes that information gained from the Reportable Payments System is able to be used by the Department of Social Security to investigate welfare benefits fraud.

4.53 The Committee concludes that the Social Security amnesty for outworkers has been of limited success because of the difficulties associated with conveying information to outworkers and with their reluctance to become involved with government agencies. The Committee believes that the amnesty had merit. **The Committee recommends that the Government consider reinstating an amnesty for outworkers for a period to allow community groups sufficient time to communicate with outworkers and to persuade them of its benefits. The Committee further recommends that funding from the TCF 2000 Development Package be made available for community groups to inform outworkers of the amnesty.**

4.54 The Committee notes that despite a low participation rate, the Labour Adjustment Program has been of benefit to a number of people in TCF industries who would otherwise have continued to be employed as outworkers in undesirable circumstances. The Committee believes that more outworkers would benefit if the cut-off date for prior employment was extended from July 1994 to some appropriate date in the future. **The Committee therefore recommends that the government consider extending the cut-off date for prior employment of the Labour Adjustment Program to a date in the future to be determined in consultation with the TCF Union.**

4.55 The Committee notes that Australia has not become a signatory to the ILO Convention and Recommendation on Home Work, but that the Government is currently undertaking consultations with the states, the Australian Chamber of Commerce and Industry and the ACTU with a view to presenting a report to Parliament on this matter by the end of June 1997. **The Committee will review the Government's position in relation to the ILO Convention on Home Work in 12 months time.**

CHAPTER FIVE

INDUSTRY CO-OPERATION

Union Action (TCFUA)

5.1 In recent years the Textiles, Clothing and Footwear Union of Australia (TCFUA) has initiated a number of actions aimed at improving the conditions under which outworkers are employed. The more significant of these are: the National Outwork Information Campaign and associated Report (*The Hidden Cost of Fashion*); a Statement of Cooperation between the Union and the Council of Textile and Fashion Industries of Australia (CTFIA); and negotiations with individual companies to sign Deeds of Cooperation. In addition to these specific actions, the Union had worked for many years to achieve employer compliance with award wages and conditions for outworkers.

Ensuring Payment of Award Rates

5.2 The TCF Union has been concerned with the regulation of outwork for over 75 years and during this time the Union has tried a number of strategies to improve their position in the workforce. Prior to 1985, the Union tried to persuade employers to licence outworkers, and to only use outworkers when those outworkers could prove that circumstances necessitated them working from home. These efforts failed because employers did not encourage outworkers to get licences. Furthermore, the very many unlicensed outworkers then considered themselves to be 'illegal' employees thus were reluctant to approach the Union for help.

5.3 In 1987, Federal and State TCF Awards were extended to outworkers and individual contractors. These Awards stipulated that no outworker could work for less than was set out in the award. However, because of difficulties of enforcement, the requirement that outworkers be employed under award conditions has largely been ignored by unscrupulous contractors. In addition, because of the isolation of outworkers, many have been unaware of their entitlements.

Government Funding for Outworker Projects

5.4 Under the previous Labor Government, a grant was made available to the Union through the Department of Industry Science and Tourism for continued work on problems relating to outworkers. The total grant was to be \$400,000. Of this, \$100,000 had been paid prior to the March 1996 election. However, upon taking up office, the new government cancelled the grant and requested that any monies not spent be refunded.¹

5.5 In evidence to the Committee the Union stated that the grant was very important and called for its reinstatement. The Union further recommended that a designated allocation be made in the Department of Industrial Relations budget for the Union to implement strategies designed to eliminate the exploitation of outworkers.²

5.6 In this context, the Committee notes that the Future Strategies Committee Report of 1994 had commented on 'the concerns of the TCFUA regarding outworkers, particularly in relation to exploitation and equity'³ and had consequently recommended:

... that the Union program for informing outworkers of their entitlements should continue to be adequately resourced by the Government.⁴

5.7 In the recent Government Budget (August 1996), an amount of \$400,000 was identified as part of the TCF 2000 Development Package to be used for projects relating to outworkers.

Voluntary Agreements - Deeds of Cooperation

5.8 Over the last few years, the Union has promoted the idea of deeds of cooperation between retailers (or another principal) and suppliers which would ensure that outworkers were employed under no less favourable terms and conditions than contained in the award. The Standard Industry Deed developed by the Union is a common law agreement and promotes the concept of best

¹ Evidence, pp. E 38, 45, 851, 919.

² Evidence, p. E 27.

³ TCF Future Strategies Committee *Future Strategies for the Textiles, Clothing and Footwear Industries 1996-2000*. December 1994, p. 16.

⁴ *ibid.*

practice. Under the Deed, the principal is responsible for calculating the terms of payment to the supplier and for ensuring that the supplier observes the contract. If the retailer becomes aware of any breach of the Deed, they must take action to remedy the situation and inform the Union of the outcome. The retailer must give preference of employment to TCF Union members. In return, the Union recognises the retailer as a best practice employer.

5.9 Under the Deed, the principal agrees to:

- keep records of contracts and allow access by the Union;
- send details of suppliers to the Union every three months;
- calculate the time it would take to make an item when calculating rates of pay;
- enter a specific form of contract with intermediaries who are in turn obliged to ensure that award conditions are met; and
- investigate breaches of contracts by intermediaries, report these to the Union and take steps to remedy any breaches.

5.10 Although there is a standard Deed, agreements being reached with individual companies differ from each other in contractual detail, particularly with regard to enforcement, reporting requirements and any union preference provisions.⁵

5.11 The Union has had discussions with a number of individual companies about improvements to conditions and pay for outworkers making their products. At the time of publishing its report, *The Hidden Costs of Fashion*, the Union considered that, with a couple of exceptions (noted below), it had had little success in the initiation of voluntary agreements.⁶ However, a number of retailers have now entered into voluntary agreements, as proposed by the Union to ensure that outworkers who sew garments for them, either directly or indirectly, are paid under award conditions.⁷

5.12 Agreements have also been reached between the TCFUA and *Country Road*⁸ and *Australia Post* and an agreement is expected to be signed by *Just*

⁵ Evidence, p. E 656.

⁶ Textiles Clothing & Footwear Union of Australia *The Hidden Cost of Fashion - Report on the National Outwork Information Campaign*. March 1995. p. 18.

⁷ Evidence, p. E 13.

⁸ However, it should be noted that *Country Road* has stated that by early 1997 all its garments will be produced in manufacturing environments without outworkers. Press Release *Country Road* 22 August 1996.

Jeans and the NSW Government shortly.⁹ However, while many retailers are proving to be cooperative, some are not.¹⁰

5.13 Further to these voluntary agreements, the Union recommended in its submission to the Committee that the Federal Government promote Ethical Sourcing Agreements by ensuring that companies which are beneficiaries of government assistance (such as Work Place and Quick Response programs) be required to source their supplies from companies which have signed such agreements. In addition, the Union recommended that preference be given in awarding Government contracts to companies who have entered into Ethical Sourcing Agreements.¹¹

5.14 Although the federal Department of Industrial Relations supported this initiative 'to the extent to which they operate as a voluntary code of conduct',¹² it is the view of the Department that it would be difficult for the Union to enforce the agreements under common law.

Done Art and Design Agreement

5.15 *Done Art and Design* is a design and marketing business and all manufacturing is carried out by contract manufacturers. The agreement signed with the TCFUA in early December 1995, and witnessed by the then NSW Premier, Mr Bob Carr, requires the company to ensure that all persons employed in the manufacture of garments are employed under award conditions, whether they are employed in a factory or work elsewhere.

5.16 This agreement, however, simply formalised a practice that the company had used for many years. Eight years ago the company agreed to inform the TCFUA of the name and address of all makers. In addition, the company has always required makers to sign individual agreements through which the contracting company must show proof of having a registered factory premises, pay award wages as a minimum, and not to send work outside without informing *Done Art*.

⁹ Evidence, p. E 38.

¹⁰ Evidence, p. E 839.

¹¹ Evidence, p. E 26.

¹² Evidence, p. E 656.

Target Australia Agreement

5.17 The signing of a Deed of Cooperation by *Target Australia Pty Ltd* with the TCFUA on 28 July 1995 was based on the belief that exploitation of workers is not acceptable and that all suppliers and manufacturers should abide by their legal obligations in the employment of outworkers. Prior to signing the agreement, all *Target* suppliers were notified in writing and were required to respond confirming that they were not involved in the exploitation of outworkers. The main points in the Deed include:

- a definition of 'exploitation' which is linked to the Federal Clothes Trade Award 1982;
- agreement with the Union to assist through the provision of information relating to contracts (ie. suppliers, qualities, costs);
- specifies the duration of records to be kept, and conditions for delivery to the TCFUA;
- the Union will inform *Target* of any alleged exploitation and provide any material supporting the allegation, and a process for resolving whether exploitation is happening and action to be taken;
- if a supplier is engaged in exploitation *Target* will take all reasonable action to remedy the exploitation and possibly terminate the contract.¹³

5.18 *Target Australia Pty Ltd* uses a standard contract with suppliers in its sourcing of merchandise which states, inter alia:

- that it expects suppliers to comply fully with legal requirements of the countries in which they operate and be alert to any signs that a production process involves exploitation or represents a danger to health, safety or the environment; and
- that exploitation of children is particularly unacceptable and *Target* will not do business with suppliers who fail to share this view.¹⁴

¹³ Evidence, p. E 439; the full draft Deed of Cooperation is given at Evidence, pp. E 441-449.

¹⁴ Evidence, p. E 440.

Corporate Action

Independent Company Contracts

5.19 Many garment manufacturing companies already require contractors to complete documentation relating to award compliance whenever work is distributed.¹⁵ However, as pointed out by the Australian Chamber of Manufactures, despite the best efforts of garment manufacturers it is very difficult to monitor the activities of subcontractors and it would require considerable administrative work to maintain detailed records of the extent of outwork.¹⁶

Voluntary Industry 'Homeworkers Code of Practice'

5.20 In evidence to the Committee, the Council of Textile and Fashion Industries of Australia (CTFIA) put forward a draft proposal for a voluntary 'Homeworkers Code of Practice'.¹⁷ The aim of the code is to achieve the elimination of the exploitation of outworkers. Its basic tenet is that all parties in the garment manufacturing and retailing chain be accredited. Retailers would therefore only deal with manufacturers who have been properly accredited and, in turn, manufacturers would only deal with contractors and subcontractors who are themselves properly accredited. The strength of the Code lies in the ability of retailers and manufacturers to apply commercial sanctions to parties further down the chain if they do not comply with the provisions of the Code.¹⁸

5.21 Others elements of the proposed Code include:

- the Code covers all parties operating within the garment manufacturing and resale chain;
- the Code is underpinned by cascading contractual arrangements and accreditation;
- accurate records will be kept by all parties and must be made available upon request to retailers and the TCFUA;

¹⁵ See for example, Evidence, p. E 334-5, p. 345.

¹⁶ Evidence, p. E 318.

¹⁷ Evidence, p. E 822ff.

¹⁸ Evidence, p. E 396-7.

- the system of payment to homeworkers is calculated as a rate per garment based on the Clothing Trades Award 1982 (GSD - general sewing data¹⁹);
- where there is a failure or unwillingness to adhere to the Code, the arrangements contained in Clauses 26, 27 and 27A of the Award will apply;
- there will be an organisation responsible for accreditation and review (the actual organisation has yet to be decided);
- consumers will know that a garment had been made by labour paid according to agreed rates through an appropriately worded 'swing tag'.

5.22 In seeking endorsement of the Code, the CTFIA has held a number of meetings with the Union and with the Retailers Council of Australia. It has also received support in principle for the proposal from some of the larger garment retailers.²⁰ Just prior to the publishing of this report, however, negotiations on the Code were complicated by the introduction of further amendments proposed by the Retailers Council which were not acceptable to the Union.²¹

5.23 In conjunction with the Code of Practice, the CTFIA recommended that the Government provide assistance and financial support for an education program to inform homeworkers of their entitlements and employers of their responsibilities.²²

Conclusions and Recommendations

5.24 The Committee notes the cancellation of the grant by the current Government to the Textiles Clothing and Footwear Union of Australia for outworker related activities. The Committee believes that the grant made by the previous Government to the Union for outworkers activities had already resulted in a number of beneficial outcomes. The Committee recommends to the Government that in evaluating proposals for expenditure from the

¹⁹ For a description see Evidence, p. E 894-5.

²⁰ Evidence, p. E 836 and 827, respectively.

²¹ Letter dated 29 November 1996 from Ms Lidia Jerkovic, Assistant National Secretary, TCFUA, and telephone conversation with Mr Michael Iaccorino, CTFIA, 5 December 1996.

²² Evidence, p. E 366.

TCF 2000 Development Package, consideration be given to the need for outworker projects similar to those carried out recently by the Union.

5.25 The Committee endorses the approach taken by the Union in promoting and establishing Deeds of Cooperation between the Union and garment retailers, manufacturing companies and government purchasers of clothing. **The Committee recommends to all government agencies involved in clothing procurement that they consider whether outworkers are used in the manufacture of that clothing and, if so, whether they are able to enter into such Deeds of Cooperation.**

5.26 The Committee notes that a number of companies, including Target, Ken Done and Country Road have become signatories to voluntary Deeds of Cooperation which aim to ensure that outworkers are employed under proper terms and conditions. The Committee endorses this approach and congratulates those companies which have participated in such voluntary agreements.

5.27 The Committee believes that the draft voluntary industry 'Homeworkers Code of Practice' originally promoted by the Council of Textile and Fashion Industries of Australia could be an important step in changing the circumstances under which outworkers are employed. **The Committee fully endorses this approach and encourages all parties involved in garment manufacture to become parties to such a Code.**

CHAPTER SIX

OPTIONS FOR FUTURE REGULATION

Types of Regulation

6.1 There are two broad ways to improve conditions under which outworkers perform their work: government legislation and programs, and voluntary action by industry, unions and community groups. Although different in their formulation and application, these mechanisms should not be seen to be mutually exclusive and a combination of both types may ultimately be required to adequately protect outworkers from exploitation.

6.2 When considering methods of reducing outworker exploitation, two major observations arise from the evidence: first, that a coercive approach has generally not been successful;¹ and second, any system devised must have a top down rather than a bottom-up approach. That is, it must move from the 'visible' to the 'invisible' and incorporate a greater level of accountability among retailers and manufacturers.² For any system to work 'it must rely on the agreement and proper compliance of the "visible" participants in the process ... the retailers and usually the designers/suppliers who own the labels'.³

Legislative Action

Sale of Clothing Legislation

6.3 With the exception of legally enforceable awards, there is currently no federal or state legislation that regulates the manner in which outworkers are employed. In its submission to the Committee the Union recommended that to guarantee wage and social justice for outworkers, 'Sale of Clothing' legislation be enacted. Such legislation would make it an offence to make an agreement for outworkers to be employed under conditions less than the relevant award, and would include substantial penalties for non-compliance. The new

¹ Evidence, p. E 339.

² Evidence, pp. E 506, 676, 901.

³ Evidence, p. E 693.

legislation would become part of the *Trade Practices Act*. The Union also recommended that complementary state legislation be enacted and that all state legislation define outworkers as employees.⁴

6.4 In contrast to the views expressed by the Union, employer groups did not support legislative regulation. The Victorian Chamber of Commerce and Industry, for example, argued that in the light of the fact that current award provisions were restrictive and were not providing the solution to outworker exploitation, further legislation was unlikely to do so either.⁵

6.5 While supporting the concept that all parties should be involved in finding and implementing a solution to the problem of exploitation of outworkers, the Retailers Council of Australia, argued that the retail industry 'cannot, nor should not be expected to provide, or be, the solution'.⁶ The Council rejected the notion proposed by the Union that all retailers could participate in a 'policing' role:

Given the nature of the retail clothing sector, characterised by thousands of small retail shops, it is patently obvious that individual retailers do not have the resources to carry out the role proposed by the TCFUA nor should they be expected to carry out that policing role. This is an impossible suggestion at the best of times but given the current trading trends in the clothing sector when most retailers are battling to stay in business, let alone concern themselves with issues extraneous to their direct business activities, it is totally inappropriate and inequitable to foist such an imposition on the retail industry.⁷

Increased Retail Prices and Loss of Jobs

6.6 The Victorian Employers' Chamber of Commerce and Industry expressed concern that if increased regulation of home-based employment resulted in increased labour costs for manufacturers, there would be a consequent but unsustainable increase in retail prices for clothing. The end result would be a further move to off-shore manufacturing and, ironically, a further decrease in

⁴ Evidence, pp. E 25, 39, 45, 49, 859-60, 890; and supported by the ACTU in its submission, Evidence, p. E 275.

⁵ Evidence, p. E 423.

⁶ Evidence, p. E 698.

⁷ Evidence, p. E 699.

employment options in TCF industries with the ultimate loss of jobs for many outworkers.⁸

6.7 The TCF Union rejected this concept. It argued that the pressure to have a quick response time for women's fashion, for example, would ensure that such garments continued to be manufactured locally. What would happen, the Union suggested, was that retailers would be forced to pay higher prices to their suppliers who would then be required to pay higher rates to outworkers.⁹

6.8 When questioned on the possibility of retail price increases resulting from increased regulation, the CTFIA stated that initially it was assumed that there would be significant increases but that on further examination it was decided that, although some increase was anticipated, it would not be prohibitively large.¹⁰

Labelling

6.9 Garment labelling is used in a number of ways to provide information to potential consumers and purchasers of clothes. In the absence of legislation requiring relevant labels, consumers remain unaware of the conditions under which any garment bearing the "Made in Australia" label is manufactured, be it in a factory by a worker paid under award conditions or by an outworker employed under exploitative arrangements. Thus suggestions were made to the Committee in several submissions that it was now time for a 'fair trade label' to be introduced, either voluntarily through peer pressure, or compulsorily through trade practices legislation.¹¹

6.10 Mr Paul Stewart-Day, in particular, argued that all Australian made garments should bear a label which would indicate that workers involved in that garment's manufacture had been paid according to their legal entitlements. He advocated a heading such as 'PAID RIGHT' followed by a brief explanation that workers who had made the garment had been paid in accordance with their legal entitlements. Such labelling would not need legislative backing but could

⁸ Evidence, p. E 429.

⁹ Evidence, p. E 13.

¹⁰ Evidence, p. E 838.

¹¹ Evidence, p. E 137, 171, 715-8, Submission No. 38, p. 7.

be introduced voluntarily by retailers through a code of practice that would be administered by a secretariat.¹²

6.11 In supporting the concept of labelling, the Australian Catholic Social Justice Council noted that 'such campaigns as the ozone free/green/ecological labels have proved that consumers are prepared to pay more for an ethically sound and good quality product'.¹³ The Council argued that it was now appropriate for garments to carry a label indicating that their manufacture was free from outworker exploitation.

6.12 The success of such labels, however, appears to depend on the extent to which consumers place importance on the information contained in the label. According to the Council of Textile and Fashion Industries of Australia this in turn depends to a large extent on publicity given to the message contained on the label.¹⁴

6.13 However, the contrary view was put to the Committee by Mr Harold Scruby, a consultant to TCF industries, that labelling would not be effective:

I am trying to get away from this idea of labelling. I think labelling could be a catastrophe. It has all sorts of problems in terms of the manufacturing side. I guess it could be open to a lot of fraud. In the enforcement, labelling would be, I think, a disaster.¹⁵

6.14 The Retailers Council of Australia also questioned the efficacy of using labelling as a way of addressing problems associated with the exploitation of outworkers. In evidence Mr Phil Naylor, Chief Executive Officer, stated that: 'In our experience, labels, especially promotional labels like 'Australian Made' and so forth, do not have a lot of persuasive power'.¹⁶

¹² Evidence, pp. E 715-718.

¹³ Evidence, p. E 137.

¹⁴ Evidence, p. E 832.

¹⁵ Evidence, p. E 675.

¹⁶ Evidence, p. E 709.

Other Government Action

National Outwork Committee

6.15 In its submission, the Union recommended that a National Outwork Committee be established under the auspices of the Department of Industrial Relations which would include representation from industry, unions and appropriate departments and authorities and which would have responsibility for the initiation and funding of projects relating to outwork.¹⁷

6.16 The Queensland Government noted in its submission that there was reluctance among migrant communities to deal with both government agencies and the Union, especially when initiatives were developed without their involvement. The submission thus recommended that an independent, non-government body be funded to assist outworkers address their needs.¹⁸

Statistics

6.17 Because information about the number of people involved in outworking is not accurate, and because such information is essential for policy development, the Union recommended that the Australian Bureau of Statistics undertake a national survey of outworkers. Such a survey would ascertain the prevalence of home-based work across all industries.¹⁹

6.18 Both the Australian Chamber of Manufactures²⁰ and the Dale Street Women's Health Centre²¹ recommended data collection by the Australian Bureau of Statistics to obtain information on homeworkers, more general research on the extent of home-based work, the forms of work being undertaken, and the working conditions experienced, including occupational health and safety issues.

¹⁷ Evidence, p. E 27.

¹⁸ Submission No. 39, p. 2.

¹⁹ Evidence, p. E 27.

²⁰ Evidence, p. E 327.

²¹ Evidence, p. E 507.

Inspectorate Activities

6.19 In noting that government inspectorate activities had declined in recent years, several submissions to the Committee recommended that more resources be devoted to the surveillance of award compliance. These submissions included the ACTU, which recommended 'the development of an effective and appropriate system of inspections to regulate outwork'.²²

6.20 In support of increasing compliance enforcement, Mr Paul Stewart-Day, a former NSW Industrial Inspector, recommended that 'adequate numbers of government investigators be appointed to exclusively police the clothing industry' in conjunction with large increases in penalties for non-compliance with award and other statutory obligations.²³

6.21 However, as argued by TCF industries consultant Mr Harold Scruby:

It has been, is and will remain virtually impossible to solve the problem through "sweatshop" raids and inspections. Close down one operation, it will open the next day under a new name.²⁴

English Language Programs

6.22 The Federal Government has committed funds to three projects targeting English language and literacy skills among outworkers (two projects are in Victoria and there is one in NSW). Two of these projects are managed by the TCFUA.

6.23 However, in view of the widespread and chronic lack of English language skills among migrant outworkers, a number of submissions to the Committee called for increased efforts to be made to provide language proficiency classes to enable outworkers to both negotiate contracts for outwork more successfully, and to enable to move on to more satisfactory employment (Paragraph 3.60).²⁵

²² Evidence, p. E 273.

²³ Evidence, p. E 713.

²⁴ Evidence, p. E 692.

²⁵ See for example Evidence, p. E 146, 171, 507.

Government Involvement in Deeds of Cooperation

6.24 In its submission to the Committee, the NSW Government suggested that the federal Government could reinforce the move to industry self-regulation by requiring that, as a condition of eligibility for government funded assistance programs, prospective recipients or suppliers be signatories to deeds of cooperation or codes of practice which govern the use of outworkers labour.²⁶

Government Procurement Policy

6.25 The various federal and state governments in Australia, through procurement of specialised clothing, are able to implement policies that reflect a commitment to purchase clothing that is supplied by companies which can provide a guarantee that only award-paid labour has been used in the manufacturing process.

6.26 As noted in the submission from the NSW Government, the State Department of Public Works and Services is currently undertaking a review of NSW Government Procurement and Disposal Guidelines which will include criteria to ensure that 'desirable conditions are fostered in the supplying firms and the general industry'.²⁷

Corporate Action

6.27 A number of the larger garment companies in Australia expressed concern about the possible exploitation of outworkers and were generally willing to address the present situation.²⁸ A number of companies already have terms and conditions in their contracts with sub-contractors and suppliers which forbid exploitation of outworkers. However, because the structure of outwork involves many parties, such contractual conditions are difficult if not impossible for retailers or manufacturers to police, especially if there are several intermediaries.

6.28 The Retailers Council of Australia noted in its submission that while retailers could not enforce laws they could, and many already do, contractually

²⁶ Submission No. 38, p. 6.

²⁷ Submission No. 38, p. 6.

²⁸ See for example, Evidence, p. E 133.

require suppliers to comply with laws and regulations regarding people involved in the manufacturing process. However, the RCA submission also pointed out that most retailers were very much removed from the actions of suppliers and were for the most part unable to have any influence over the actions of suppliers, or their contractors or subcontractors: 'It grossly oversimplifies and inaccurately sets the relationship between retailers and the many parties in the manufacturing sector to suggest otherwise'.²⁹

6.29 Furthermore, the RCA argued that while the voluntary codes of conduct being entered into by several of the large retailers with the Union may influence the circumstances under which some outworkers were employed, because there were thousands of small retailers (which carried out the majority of clothing sales in Australia), it would be a 'self defeating exercise' to expect that many outworkers, particularly those being exploited, would be identifiable.³⁰

6.30 Despite these statements, the RCA supported a strategy whereby Government would properly enforce employment laws, coupled with an approach by the fashion industry such that each element in the retailing and manufacturing chain would obtain contractual undertakings from the previous level that all employment laws and regulations were being followed.³¹ However, the RCA did not support the proposal to have an organisation register accredited participants or any form of auditing by an outside agency. Instead, each element in the chain would have the ability to impose sanctions, primarily through cancelling contracts³²

"Oz-Legit" Proposal

6.31 In a submission to the Committee Mr Harold Scruby, a consultant to TCF industries, proposed a system of accreditation similar to that of the Australian Quality Assurance System.³³ The key components of the system, which Scruby nominally named 'Oz-legit', were:

²⁹ Evidence, p. E 700.

³⁰ *ibid.*

³¹ Evidence, p. E 704.

³² Evidence, p. E 707.

³³ Evidence, pp. E 693-4

- agreement in principal by major purchasers of outworkers products (retailers) that they will only purchase garments from accredited organisations;
- agreement by suppliers to have their manufacturing and supply systems audited;
- agreements by retailers to have their purchasing systems audited;
- determination by the auditor as to whether garments were manufactured under award conditions; and
- expulsion from the system of suppliers found to be not in compliance (after fair warning).

6.32 Under this scheme, initial funding for the system would come from state and federal governments, with follow-up funding coming from participants.

Role of the Union

Information and Advocacy Service

6.33 Through its Outwork Information Campaign the Union has made comprehensive efforts towards educating outworkers of their employment rights, informing employers of their responsibilities in using outworkers, and alerting the general public to the possibility that exploitation of labour may have occurred during the making of garments that they wear. However, as outlined in its report *The Hidden Cost of Fashion*, these efforts are just the beginning of a process which would finally see all outworkers receiving rates and conditions equal or better than that stipulated in the award.

6.34 As part of a set of future strategies, the Union recommended that an information and advocacy service be established to enable outworkers to be better placed to demand award or equal conditions. In addition, the Union recommended that a specific allocation be made in the Department of Industrial Relations budget to enable the Union to continue to inform outworkers of their rights and responsibilities, and to advocate on their behalf.³⁴

6.35 In support of the need for better information, the Victorian organisation Job Watch noted that there was general confusion among outworkers as to whether they were employees or contractors and that, in general, the level of

³⁴ Evidence, p. E 27.

knowledge of common law contract and industrial relations was extremely poor.³⁵

Other Action Suggested

Clothing Co-operatives

6.36 The Springvale Indo-Chinese Mutual Assistance Association (SICMAA) has formulated a proposal, outlined in its submission to the Committee, for the formation of a Community Based Clothing Co-operative. As proposed by SICMAA, the cooperative would employ outworkers and deal directly with major customers for contracted work. With assistance from government instrumentalities, such as the Department of Employment, Education, Training and Youth Affairs, the Department of Social Security, the Australian Tax Office and the Department of Immigration, a factory would be set up by a local non-profit organisation (such as SICMAA) and outworkers within the local community would become members of the cooperative. Other elements of the scheme include access to English language training, gender equity and best practice policies, mutual support for workers, and the encouragement of individual and collective responsibility.³⁶

6.37 As argued by SICMAA, the project would have many advantages for both outworkers and garment companies:

- set-up costs would be kept to a minimum as outworkers would bring to the business their own machinery;
- elimination of the intermediary level would increase incomes to outworkers;
- working conditions would be improved through the use of factory premises;
- retailers would be certain that their products were ethically 'clean';
- the scheme would create employment;
- government instrumentalities would provide accurate information about rights and responsibilities (such as tax and DSS information);
- legal working conditions would be adhered to thus providing workers with correct entitlements with regard to matters such as compensation cover and superannuation;

³⁵ Evidence, p. E 489-491.

³⁶ Evidence, pp. E 806-819.

- workers would have more regular hours of work, thus allowing for time for family needs.³⁷

6.38 In a supplementary submission to the Committee, the Australian Catholic Social Justice Council supported, as a 'good outcome', the formation of cooperatives or small businesses owned and managed by the workers themselves.³⁸

Combined Approach

6.39 A number of submissions to the Committee suggested that because the problems associated with the use of outworkers in the garment industry involved a number of parties, a collaborative and coordinated approach was required.³⁹ As suggested by ANESBWA, the approach taken to resolving outworkers problems should be a joint one because all groups involved had limited resources; because there were so many aspects to the problem, finding solutions to it should also be multifaceted.⁴⁰

6.40 The Dale Street Women's Health Centre in South Australia also argued that there was a need to coordinate the activities of the state Employee Ombudsman and Department of Industrial Affairs, the federal Departments of Industrial Relations and Social Security, the Australian Taxation Office, and other key organisations.⁴¹

Childcare

6.41 The Union recommended in its submission to the Committee that 'further action needs to be taken to improve accessibility of child care to outworkers' and that 'this should include resources to improve the cultural relevance of child care services'.⁴²

³⁷ Evidence, p. E 807.

³⁸ Evidence, p. E 146.

³⁹ See for example, Evidence, p. 304.

⁴⁰ Evidence, p. E 195-6.

⁴¹ Evidence, p. E 507.

⁴² Evidence, p. E 29.

Recognition of Qualifications

6.42 The Union recommended that 'strategies to streamline the recognition of overseas qualifications need to continue to be refined'.⁴³

Groundwork by Community Groups

6.43 Asian Women at Work argued that regardless of changes that were made to legislation or to the structure of the industry, work by union or community groups with individual outworkers was extremely important:

As long as you have a group of women who do not know what their rights in Australia are and do not know what their entitlements are and what access they should have to systems, that group will continue to work in this industry. It does not matter how much legislation is in place to protect them, if they do not know about it, they will not access it. So I stress that education is very important: actually spending the resources to get alongside these women and move them out of the industry.⁴⁴

Education of the Industry

6.44 The Victorian Employers' Chamber of Industry and Commerce noted in their submission that there was a need within the garment industry for education about contractual obligations and in particular the distinction between employees and independent contractors. The Chamber also saw a need for cultural issues to be taken into account in educating employers.⁴⁵

6.45 In addition, the Chamber recommended that funding for TCF Industry development should be targeted at improving management skills, especially in small businesses, and encouraging the development of cooperative cultures, partnerships and best practice models.⁴⁶

6.46 The NSW Government pointed out in its submission to the Committee that:

⁴³ Evidence, p. E 28.

⁴⁴ Evidence, p. E 226.

⁴⁵ Evidence, pp. E 414, 423.

⁴⁶ Evidence, pp. E 415, 423.

Industry regulation and self-regulation cannot be successful alone - it must be coupled with an emphasis upon industry education, provided in large part by government, in order to improve knowledge [of] the rights and responsibilities of stakeholders, and to increase awareness of the role that can be played by Government agencies.⁴⁷

6.47 The submission stressed that the key issues which needed to be addressed relative to industry education and training, were lack of literacy, often to the extent of complete lack of basic English skills; outworkers fears about government agency activities; and the sparsity of reliable employment records in the garment industry.⁴⁸

Clearing House

6.48 The Victorian Employers' Chamber of Commerce and Industry recommended in their submission the concept of a 'clearing house' or cooperative which would coordinate production for a number of retailers and manufacturers to improve quality, efficiency and the organisation of labour, and possibly as an outworker employment agency. Such a structure would eliminate the need for intermediaries and would provide greater regulation of allocation of work and delivery times.⁴⁹

Conclusions and Recommendations

6.49 There are two basic ways in which actions can be taken to improve conditions under which outworkers perform their work: legislative and voluntary. The Union has proposed legislative action through the enactment of 'Sale of Clothing' legislation. In contrast to this, both the Union and the Council of Textile and Fashion Industries of Australia have promoted voluntary deeds of co-operation or an industry 'Homeworkers Code of Practice'.

6.50 Mindful of the arguments put forward by both parties, the Committee concludes that voluntary action should be supported in the first instance, and in particular that the 'Homeworkers Code of Practice' proposed by the Council of Textile and Fashion Industries of Australia should be fully embraced by all parties involved. Should voluntary action fail to have any effect, then

⁴⁷ Submission No. 38, p. 1.

⁴⁸ Submission No. 38, p. 6.

⁴⁹ Evidence, pp. E 415, 423, 431-2.

legislative action may need to be considered. The Committee recommends that an industry 'Homeworkers Code of Practice' should be adopted by all participants in the garment retailing and manufacturing process. The Committee regrets that further progress has not been made towards establishing a voluntary Code and undertakes to review progress towards voluntary regulation in a further 12 months.

6.51 In attempting to resolve the problems faced by outworkers, quite a number of recommendations were made to the Committee by various government, industry and community groups. It is clear from the number of suggestions that a combined and coordinated approach is needed. Of those recommendations made, the Committee endorses and recommends the following actions.

6.52 The Committee endorses the concept of labelling garments. While there is the possibility that labelling may have no effect, there does not appear to be any detrimental impacts associated with labelling, and there is a good chance that it will have a positive impact in highlighting the issue of outworkers exploitation, especially if it is made compulsory through trade practices legislation. The Committee recommends to the garment industry that it voluntarily adopt an agreed label declaring that the employment conditions under which the garment was made complied with legislative requirements.

6.53 Because the problem of outworker exploitation is multifaceted, the Committee sees merit in having a National Outwork Committee, coordinated at government level, which would include representatives from industry, unions, community groups, and government agencies. The Committee recommends that the government investigate the concept of a National Outwork Committee which would have responsibility, *inter alia*, for the initiation and allocation of funding for projects relating to outwork.

6.54 There is insufficient information about the number of outworkers involved in garment manufacture, and in other areas of home-based processing. The Committee recommends that the Australian Bureau of Statistics conduct a comprehensive survey of the number of home-based workers across all industries. The ABS should carry out this survey in conjunction with the ATO and information gained from the Reportable Payments System on the number of outworkers.

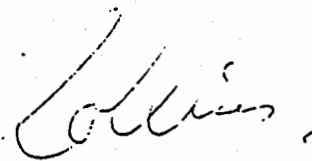
6.55 The English language skills of many outworkers are frequently poor or inadequate. This reduces their ability to negotiate contracts and to understand

the conditions under which they are employed. Notwithstanding existing programs, the Committee believes that there would be merit in all governments reviewing programs for English language education with a view to increasing access for outworkers. **The Committee recommends that the Government review federally funded arrangements for English language education with a view to increasing accessibility for migrants involved in outwork.**

6.56 A contributing factor in the shedding of responsibility along the garment manufacturing chain appears to be ignorance among participants as to their own rights and responsibilities, and those of other parties. There is a need for increased levels of industry education in areas of award compliance, industrial relations, taxation compliance, and management skills. **The Committee recommends that the government review educational arrangements in TCF industries for industrial relations and small business management.**

6.57 The Committee believes that because a multifaceted approach is needed to eliminate exploitation of outworkers in the garment industry, the Government should move quickly to allocate funding identified in the TCF 2000 Development Package specifically for projects relating to outworkers, including those recommendations given above.

6.58 The Committee undertakes to review in 12 months time outworking in the garment industry, with particular reference to the recommendations contained in this report.



J A Collins

Chair

APPENDIX I

LIST OF SUBMISSIONS RECEIVED FROM ORGANISATIONS AND INDIVIDUALS

No.	Submission	State
1	Deacon Brad Paez	VIC
2	English translation of Chinese letter	QLD
3	Unidentified Turkish migrant	VIC
4	Mr D Hampshire	VIC
5	Ms Shona Kennealy, Hamilton Hill	WA
6	Mr Peter Prior	VIC
7	My Garment Company P/L	NSW
8	<u>Confidential</u>	NSW
9	Done Art and Design	NSW
10	Australian Catholic Social Justice Council	NSW
11	Federation of Ethnic Communities' Councils of Australia, Inc	ACT
12	Dale Street Women's Health Centre	SA
13	Australian Chamber of Manufacturers	VIC
14	National Council of Women of Australia	WA
15	Dept of Employment, Education & Training	ACT
16	Worksafe Australia, National Occupational Health and Safety Commission	NSW
17	Child Rights Advocate, Save the Children Australia	VIC
18	Target Australia Pty Ltd	VIC
19	Job Watch Inc, Victoria	VIC
20	Australian Council of Trade Unions	VIC
21	Textile Clothing and Footwear Union of Australia	NSW
21a	Textile Clothing and Footwear Union of Australia	NSW
22	Council of Textile & Fashion Industries of Australia	VIC

22a	Council of Textile & Fashion Industries of Australia	VIC
23	Asian Women at Work	NSW
24	Association of Non-English Speaking Background Women of Australia	NSW
25	Welfare Rights Centre	NSW
26	The NSW Working Women's Centre	NSW
27	Victorian Employer Chamber of Commerce & Industry	VIC
28	Mr Paul Stewart-Day	NSW
29	Mr Harold Scruby	NSW
30	Retailers Council of Australia	NSW
30a	Retailers Council of Australia	NSW
31	Department of Social Security	ACT
32	Australian Taxation Office	ACT
33	Department of Industrial Relations	ACT
34	City of Greater Dandenong	VIC
35	Ernest Healy	VIC
36	The Uniting Church in Australia, Social Responsibility and Justice	NSW
37	Springvale Indochinese Mutual Assistance Association Inc	VIC
38	Government of New South Wales	NSW
39	Bureau of Ethnic Affairs, Dept. of Premier and Cabinet, Queensland Government	QLD
40	Country Road	VIC

APPENDIX II

LIST OF PUBLIC HEARINGS, BRIEFINGS AND INSPECTIONS

Public Hearings were held as follows:

10 April 1996	Sydney
16 April 1996	Melbourne
18 April 1996	Adelaide
11 June 1996	Canberra
12 June 1996	Melbourne

Briefings and inspections were conducted as follows:

11 April 1996 Sydney

Morning: (Accompanied by officials of the TFCUA)

- . Kenwall Clothing Factory (Brookvale)
- . Outworker Premises (Punchbowl)
- . Outworker Premises (Bankstown)
- . Outworker Premises (Cabramatta)

17 April 1996 Melbourne

Morning: (Accompanied by officials of the TFCUA)

- . Factory Premises (Yarraville)
- . Outworker Premises (North Sunshine)
- . Outworker Premises (Footscray)
- . Outworker Premises (Footscray)
- . Outworker Premises (Broadmeadows)

Afternoon: (Organised by the Australian Chamber of Manufactures)

- . Diamond Cut (Fairfield)
- . The Clothing Factory (Burwood)
- . Crestels Pty. Ltd. (Brunswick)

LIST OF WITNESSES

10 April 1996 - Sydney

Textile, Clothing and Footwear Union of Australia

The Hon Joseph Riordan

Mrs Lidia Jerkovic

Mr Anthony Woolgar

Assistant National Secretary

National Secretary

My Garment Co. Pty Ltd

Mr George Napper

Managing Director

Worksafe Australia

Dr John Toohey

Mr Robert Johnston

Director

Senior Project Officer

Done Art & Design

Mr Chris McVeigh

Managing Director

Australian Catholic Social Justice Council

Mr David Rose

Deputy Chief Executive Officer

**Association of Non-English Speaking Background Women of
Australia (ANESBWA)**

Ms Sevgi Kilic

Ms Raquel Carvajal

Chairperson

Project Officer

Working Women's Centre

Dr Caroline Alcorso

Director

Welfare Rights Centre

Mr Michael Raper

Ms Linda Forbes

Director

Policy Officer

Asian Women at Work

Ms Debra Carstens

Coordinator

16 April 1996 - Melbourne

Textile, Clothing and Footwear Union of Australia

The Hon. Joseph O'Riordan

Ms Annie Delaney

Mr Igor Nossar

Ms Mary Scherma

Mr Barry Tubner

Outwork Coordinator

Industrial Officer

Organiser

Assistant Secretary

Australian Council of Trade Unions

Ms Susan Kenna

Ms Elana Rubin

Research Officer

Industrial Officer

Australian Chamber of Manufacturers

Mr Robert Auricchio

Mr Paul Johns

Mr Mark Quirk

Senior Human Resource
Counsellor

National Manager,
Human Resources

Council of Textile and Fashion Industries of Australia

Mr George Innes

Mr Timothy Todhunter

Director

President

Victorian Employers Chamber of Commerce and Industry

Ms Angela Emslie

Mr Peter Maguire

Manager

Senior Employee Relations
Consultant

Target Australia Pty Ltd

Mr Garry Laver

Mr Peter Thompson

General Manager

National Employee Relations
Manager

Footscray Vietnamese Christian and Missionary Alliance Church

Mr Bradford Paez

Deacon ;

Job Watch Inc.

Mr Rodney Wee Hee

Coordinator/Public Officer

18 April 1996 - Adelaide

Dale Street Women's Health Centre

Ms Jane Tassie	Director
Ms Christine Gates	Outworker Project Officer

Working Women's Centre Inc. of South Australia

Ms Kaz Eaton	Director
Ms Michelle Hogan	ex-Project Officer

Textile, Clothing and Footwear Union of Australia, SA Branch

Mr Stephen Brennan	Joint Secretary
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United Trades and Labour Council of South Australia

Ms Judith Elton	Assistant Secretary (Women)
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**Construction, Forestry, Mining and Energy Union, Furnishing
Trades Division**

Mr David Kirner	Assistant Secretary
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Soft Furnishing Industry Association of Australia

Mr Lloyd Winter	National Training Officer
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11 June 1996 - Canberra

Australian Taxation Office

Mr John Leonard	Project Officer
Mr Vincent Mitchell	National Program Manager

Department of Social Security

Mr Ian Carnell	First Assistant Secretary
Mr Rodney Elmes	Assistant Secretary
- Mr Hank Jongen	Assistant Secretary

Department of Industrial Relations

Dr Marilyn Sernack	Acting Senior Legal Advisor
Mr Jim Walker	Senior Advisor

Harold Scruby Consultancies Pty Ltd

Harold Scruby	Executive Director
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Australian Retailers Association

Mr Phillip Naylor

Chief Executive Officer

Mr Paul Stewart-Day

12 June 1996 - Melbourne

**Uniting Church of Australia, Social Responsibility and Justice
Committee**

Ms Debra Carstens

Member

Reverence Louis van Laar

Social Justice Educator

City of Greater Dandenong

Mr Andrew Ostrowski

Town Planning, Liaison and
Enforcement Officer

**Mr Ernst Healy, Associate Researcher, Centre for Population and
Urban Research, Monash University**

Springvale Indochinese Mutual Association Inc.

Ms Danielle My-Hanh Le

Community Business Employment
Project Coordinator

Mr Phong Nguyen

Coordinator

Council of Textile and Fashion Industries of Australia

Mr Donald Dyer

Chairman, Homeworker Working
Group

Mr Timothy Todhunter

President

National Council for Women of Australia

Ms Elisabeth Newman

National Health Convenor

Textile, Clothing and Footwear Union of Australia

Hon. Joseph Riordan

Mr Kevin Boyd

National President

Mr Igor Nossar

Industrial Officer

Mr Brendan Soraghan

National Industrial Officer

Mr Barry James

Assistant Secretary