

# **ATTACHMENT 4**

**Parliament of the Commonwealth of Australia**

**REVIEW OF THE INQUIRY  
INTO OUTWORKERS IN  
THE GARMENT INDUSTRY**

**SENATE ECONOMICS REFERENCES COMMITTEE**

**JULY 1998**

Commonwealth of Australia

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## ABBREVIATIONS

ABS	Australian Bureau of Statistics
ATO	Australian Tax Office
HCOPC	Homeworkers Code of Practice Committee
ILO	International Labour Organisation
NOHSC	National Occupational Health and Safety Commission
OHS	Occupational Health and Safety
RPS	Reportable Payments System
TCF	Textile, Clothing and Footwear
TCFUA	Textile, Clothing and Footwear Union of Australia
WELL	Workplace English Language Literacy

## REVIEW OF OUTWORKERS IN THE GARMENT INDUSTRY

### Background to the review

1.1 The Economics References Committee conducted an inquiry into outworkers in the garment industry in 1996. The Committee tabled its report titled *Outworkers in the Garment Industry* in December 1996.

1.2 In its report the Committee stated that it would undertake a review of outworking in the garment industry in 12 months' time.<sup>1</sup>

1.3 In November 1997 the Committee held a public hearing to talk with a number of key organisations involved in the garment industry to hear, from their perspective, what developments have occurred since the committee tabled its report. The Textile Clothing and Footwear Union of Australia; Australian Business Chamber; Australian Retailers Association and the Council of Textile and Fashion Industries of Australia all gave evidence at the hearing. (Refer Appendix I) A transcript of the hearing is available at the internet address of <http://www.aph.gov.au/hansard>.

1.4 The Committee also reviewed the government response<sup>2</sup> to its report and as a consequence wrote to the Commonwealth Department of Workplace Relations & Small Business; Department of Industry Science and Tourism and the Australian Taxation Office seeking further information in March 1998. The responses were considered as part of the Committee's deliberations on the report.

1.5 On 11 March 1998 the Textile Clothing and Footwear Union of Australia (TCFUA) forwarded a supplementary submission highlighting recent developments in relation to the Committee's recommendations. The TCFUA together with the Council of Textile Clothing and Fashion Industries of Australia also provided comments on the government response to the Committee's report. In total the Committee received 8 submissions or supplementary information to the review and these are listed at Appendix II.

1.6 On 7 May 1998 the Committee received the report *The Effects of Outsourcing upon Occupational Health and Safety: A Comparative Study of Factory-based and Outworkers in the Australian Clothing Industry* prepared by Dr Claire Mayhew, a research scientist with the National Occupational Health and Safety Commission (NOHSC).

### Review Findings

#### ~~Code of Practice~~

1.7 The Committee congratulates the industry for the development of the Homeworkers Code of Practice. A copy of the Homeworkers Code of practice is at Appendix III. This is a

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1 Outworkers in the Garment Industry Report, p. xvii.

2 The government response was tabled in Parliament on 3 September 1997

major breakthrough for the industry, and it is hoped it will finally lead to the elimination of exploitation of outworkers.

1.8 The agreement is between the Textile Clothing and Footwear Union of Australia; the Council of Textile and Fashion Industries Ltd; the Australian Chamber of Manufacturers and the Australian Business Chamber.

1.9 As at March 1998, 34 retailers and 35 manufacturers and fashion houses had signed the Homeworkers Code of Practice. In 1995 four retailers signed a 'Deed of Co-operation' with the Textile Clothing and Footwear Union of Australia. (refer Appendix IV).

1.10 The Homeworkers Code of Practice is a comprehensive document that provides for:

- accreditation;
- record keeping;
- a lists of contractors;
- accredited companies keeping a check on their contractors;
- a contractual arrangement that signatories cannot give work to outworkers for less than the award; and
- outworkers being defined and treated as employees.

These components form the major part of the clauses contained in the outworkers' award, however, still require additional support to work effectively. According to Mr Nossar, Industrial Officer of the TCFUA:

The code by itself is a piece of paper. The code needs mechanisms to work. It needs the award protections that are already there to remain and it needs the development of a calculation mechanism specifications manual, to turn the estimate of labour required for a particular garment into a mathematical exercise. There is a commitment by the industry parties, the employer parties and the union to developing that calculation mechanism.<sup>3</sup>

1.11 The implementation and success of the code across the whole of the industry can only be achieved if more companies are encouraged to sign the code. As the code is voluntary, according to the TCFUA, it needs to be underpinned by an award that provides in detail the pay and conditions for outworkers employment. If clauses in the award are weakened to the extent that companies who fail to comply with the terms of the code cannot be prosecuted under the award, the code will lose its authority and companies may start to opt out of the code's process.

1.12 In its response to the Committee's initial report, the government stated that it would support a code of practice openly entered into by industry parties, as a way of strengthening industry standards.<sup>4</sup> The governments offer to fund an education program to assist in the

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<sup>3</sup> Evidence p. E939.

<sup>4</sup> Government response to the report of the Senate Economics References Committee on *Outworking in the Garment Industry*, p. 4.

implementation of the code of practice is supported by the Committee, however, more needs to be done by all parties to ensure the code's success.

1.13 Clause 5 of the code provides for the establishment of a Homeworkers Code of Practice Committee, (HCOPC) comprising an equal number of representatives from the TCFUA and a combined group of employers who are party to the agreement. The duties of the Committee include:

- Accreditation of manufacturers;
- Ability to withdraw a manufacturer's accreditation;
- Holding and maintaining the Accreditation Register of accredited manufacturers;
- Confirming a retailer's entitlement to accreditation where it establishes that it is only dealing with accredited manufacturers
- Allocating monies from the Education Publicity and Compliance Fund of the code;
- Settling any disputes that may arise in relation to the operation of this Agreement. This may include the participation of an independent mediator, where agreed;
- Establishing processes and procedures to efficiently deal with issues which come before it, in particular, those which require mediation; and
- Developing standard product specifications through the establishment of an expert working party, which will report to the Code of Practice Committee. Schedule 9 of the code refers to the process for development of this product specifications manual.

1.14 The Homeworkers Code of Practice Committee met in May 1998 for the first time. Its major priority was to prepare a joint submission to the Department of Industry, Science and Tourism seeking funding for the Education, Publicity and Compliance Fund. Some of these funds will be used to develop a Standard Product Specification manual (sewing time manual) as described in Schedule 9 of the code.

1.15 The manual will be used by TCF employers to calculate accurately the payment of wages to outworkers and by HCOPC to audit wages paid to outworkers when a dispute arises. Mr Woolgar, National Secretary of the TCFUA made the following comment in evidence to the Committee:

The home workers code of practice, which we jointly developed, now depends for its future success upon the development of a standard product specification manual, which will jointly facilitate compliance with the code. In addition to developing an industrial engineering database of considerable importance to both industrial productivity and compliance with other existing protective measures for outworkers.

1.16 The Committee supports the development of the sewing time manual as an essential requirement for the successful operation of the code, and recommends the government provide the financial assistance for this initiative.

#### The TCF Advisory Board

1.17 The Committee welcomes the government's appointment of a new TCF Advisory Board to provide industry-based advice to the Productivity Commission. However, the Committee believes a working party or committee should be established within the Board to deal specifically with outworkers issues. A committee that includes expert representatives from government, industry, union and community groups can only assist the government in future policy development. Further, it will demonstrate the government is committed to eliminating exploitation of outworkers and improving the operation of the TCF industry.

#### Government Procurement Practices

1.18 A large number of government departments and agencies are involved in clothing procurement. Currently Australia Post is the only federal government agency to sign a Deed of Co-operation with the TCFUA.

1.19 The government response to the Committee's report gave no indication that it would insist other government agencies should enter into a code or deed of ethical sourcing, as undertaken by Australia Post.

1.20 The Committee notes that government procurement officers are required to use "best practice" when purchasing, and deal only with suppliers who comply with the law. However, how agencies monitor their suppliers to determine if they are complying with the law remains unclear.

1.21 The Committee suggest the federal government follow the lead of the NSW government by directing departments and agencies who deal with clothing procurement to enter into a deed of co-operation along the lines of the NSW code. Departments and agencies should give an undertaking that they will only deal with suppliers who have signed the Homeworkers code of practice. The Textile Clothing and Footwear Union of Australia suggest that the same standard apply to both locally sourced and imported goods.

#### Government Assistance

1.22 The Committee acknowledges the Department of Industry, Science and Tourism's response that it is prepared to fund a one-off education campaign to help implement the Homeworkers Code of Practice. The timing and nature of the campaign will be determined shortly after the department receives the industry submission for funding support.

1.23 The Department of Workplace Relations and Small Business is jointly developing a national compliance and information campaign for outworkers with the Office of the Employment Advocate. The aim of the campaign is to ensure outworkers and employers in the clothing industry understand their rights, responsibilities and opportunities under the *Workplace Relations Act 1996* and the Clothing Trades Award. The Department is



considering using seminars; a national help line staffed by bilingual operators; and a series of publications printed in several languages to disseminate the information.

1.24 The Committee commends the Departments for these two initiatives, which form part of the overall TCF package.

1.25 The Committee recommends that only retailers and manufacturers who are signatory to the agreement should benefit from industry assistance and support. This may encourage the remaining organisations to sign on and thus achieve industry wide agreement to the code.

### Deeming Outworkers as Employees

1.26 In its initial report the Committee stated that one of its major concerns was that outworkers were not recognised as employees by the majority of their employers. The Committee is very concerned that, until some agreement between the parties is found that identifies all outworkers as employees, they will continue to be exploited by questionable middlemen.

1.27 The TCFUA put forward proposed amendments to the *Workplace Relations Act 1996* that would ensure that outworkers were deemed employees and these are listed in Appendix VI.

1.28 The government argues that it is constrained by the constitutional limitation on the Commonwealth to resolve this matter in a timely manner. The Department of Workplace Relations and Small Business states in its recent correspondence to the Committee:

Any Commonwealth legislation seeking to alter the employment status of persons who might otherwise (at common law) not be employees would need to depend on constitutional powers other than the conciliation and arbitration power, such as the Commonwealth's power to legislate with respect to corporations and would be limited in its scope accordingly.<sup>6</sup>

1.29 In response to the Committee report, and following agreement by the States and Territories, the government has listed the matter for consideration at the next Labour Ministers Council meeting.

1.30 The Committee is very concerned about the lack of action in the past 18 months to officially deem outworkers as employees. The problem seems to be one of political will. In the case of the Workplace Relations and Other Legislation Amendment Bill (No. 2) 1996, Victoria had referred several of its industrial relations powers to the Commonwealth. This approach allowed the federal legislation to apply in relation to persons and conduct which would otherwise be outside the scope of the available constitutional powers. For example, freedom of association with respect to employers, employees and independent contractors.

1.31 Outwork is performed predominantly in Victoria, New South Wales, and South Australia; thus the federal/Victoria deeming provisions would clarify the employment status of outworkers significantly. From the perspective of outworkers it is vital their employment

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<sup>6</sup> Letter from the Department of Workplace Relations and Small Business, dated 12 May 1998, p. 1.

status is resolved and resolved quickly. Accordingly it is important that the federal government take immediate action and show some willingness to protect outworkers from further exploitation.

### The Award Review Process

1.32 Schedule 5 of the Workplace Relations and Other Legislation Amendment Act requires awards to be simplified. For this process to occur, the parties involved need to lodge an application during the interim period, which ceases at 30 June 1998. The Act's aim to bring all the industry awards into 20 areas to be known as 'allowable matters'. Outwork is the 20<sup>th</sup> allowable matter and was included in the legislation for the first time. That deliberate additional inclusion, is in the Committee view, a signal of the importance attached to these workers

1.33 The Department of Workplace Relations and Small Business does not normally lodge a submission to the Australian Industrial Relations Commission in relation to applications for the simplification of particular awards. It does, however, intervene on behalf of the Minister of Workplace Relations and Small Business when required. As part of the process to simplify the *Hospitality Industry - Accommodation, Hotels, Resorts and Gaming Award 1995* (the hospitality award), the government detailed its position in respect to S89A2(f) 'Pay and condition for outworkers' matters. However, the Commission did not consider this matter, as outworkers are not covered in the hospitality award.

1.34 The Committee believes the government's interpretation on certain clauses in TCF Awards (in particular clauses 26, 27 and 27A of the Clothing Trades Award) is very narrow and, if implemented, would remove the TCFUA's ability to prosecute companies. The TCFUA's ability to ensure that award conditions apply to Outworkers has already been weakened by the changes introduced in the *Workplace Relations Act 1996* such as the limitation to right of access to employers' premises. The Committee is aware that the parties to TCF awards need to present their respective cases to the Commission and it will be up to the Commission to make a decision in the context of the current Act. However, if the government maintains its current position and insists the outwork allowable matter be restricted to the bare minimum, and if the commission concurs, advances achieved with the Homeworkers Code of Practice will be seriously undermined.

1.35 The Committee recommends that the existing clauses regarding outwork in the TCF awards should remain when the awards are simplified. The government should intervene and support this outcome in order to ensure that mechanisms continue to exist in the award to ensure that award pay and conditions are honoured for outworkers.

### ILO Convention on Homework and Child Labour

#### *Child Labour*

1.36 The Committee notes the government's concerns with the International Labour Organisation Convention 138 that deals with child labour. The government states:

C138's overly prescriptive requirements and its inflexibility have proved it to be an inappropriate means of dealing with the problem of exploitative child labour.<sup>7</sup>

1.37 The Minister for Workplace Relations and Small Business has sought the agreement of States and Territories not to give further consideration to C138 as a new Convention on child labour is likely to be passed at the ILO annual convention in 1999. All but Tasmania has agreed. The federal government added:

Australia has the view that the proposed new ILO Convention on exploitative child labour, which is expected to be adopted in 1999, should be the core standard on child labour.<sup>8</sup>

1.38 The Committee supports this position, however, does not support the government's view that there are "no child labour problems" in Australia.<sup>9</sup> Recent statements received from two young people who have been outworkers for some time indicate that this may be a serious issue in Australia. (Refer Appendix VI) The Committee recommends the government takes a more active role to eradicate this problem.

#### *Homework*

1.39 In its response to the Committee's report the government advised the following in respect to the ILO Convention on Homework:

The Government has certain obligations, in accordance with Article 19 of the ILO Constitution, concerning ILO Convention 177 and Recommendation 184 on Homework which were adopted by the International Labour conference in June 1996. These obligations include the tabling of the texts of the two instruments in the Australian parliament, together with a report on action proposed to be taken in relation to the two instruments. Australia is then required to report to the ILO that it has brought the instruments to the attention of the competent authority. As a federal State, Australia has until December 1997 to fulfil these obligations.<sup>10</sup>

1.40 The government has now advised that it was not able to meet this deadline because it did not complete its consultation with the States and Territories in time. The government also informed the Committee that it would be premature to provide the government's position on C177 at this stage.

1.41 The Committee feels the long delay in dealing with ILO Convention 177 and Recommendation 184 is unsatisfactory and the government should undertake to resolve the matter quickly.

#### *Occupational Health and Safety Issues*

1.42 The Committee reiterates its position that the occupational health and safety of outworkers is still a neglected problem. This important matter will require considerable effort

7 Letter from the Department of Workplace Relations and Small Business, dated 12 May 1998, p. 3.

8 Letter from the Department of Workplace Relations and Small Business, dated 12 May 1998, p. 3

9 Letter from the Department of Workplace Relations and Small Business, dated 12 May 1998, p. 2

10 Government response to the Committee's report, p.11.

by the key parties to introduce appropriate and workable intervention strategies that will improve the working environment for outworkers.

1.43 Dr Claire Mayhew, National Occupational Health and Safety Commission in association with Professor Michael Quinlan, University of NSW recently completed a study on OHS experiences of TCF factory-based workers and outworkers. Their findings revealed a higher instance of overuse injury among outworkers compared to factory workers.

1.44 The study found outworkers worked significantly longer hours and were paid much less than factory-based workers. There was overwhelming evidence that piecework, supported by low wage and a bonus payment system, resulted in short-term as well as chronic injury to outworkers. Outworkers also suffered more instances of occupational violence such as verbal abuse, threats and physical assaults. None of the 100 outworkers interviewed were given any OHS information and preventative advice.

1.45 Asian Women at Work Inc informed the Committee that outworkers not only suffer overuse injuries but also experience secondary health problems such as depression, anger and stress caused by isolation and lack of intellectual stimulus. They see a need for federal and state OHS legislation to be consistent, and to include outworkers in these Acts.

1.46 Dr Mayhew's study identified four strategies that would help reduce the instance of overuse injury and occupational violence against outworkers. These are:

- a) Development of a brochure on OHS in TCF machining work that is applicable for both factory-based and outworkers;
- b) The OHS duty of care responsibilities of middlemen, retailers/wholesalers and manufacturers using outworkers need to be identified, widely publicised and robustly enforced by the jurisdictions;
- c) Outworkers should be paid solely on the award rate without production bonus payments and with the standard benefits such as workers' compensation coverage; and
- d) Adherence to the *Code of Practice on employment and outwork obligations*, developed by the NSW government, and the TCFUA Homeworkers code of practice, is likely to promote improved OHS outcomes through more standardised working conditions.<sup>11</sup>

1.47 The Committee strongly recommends that the National Occupational Health and Safety Commission (Worksafe Australia) examine Dr Mayhew's report with the view of implementing its recommendations in the very near future.

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<sup>11</sup> The effects of outsourcing upon occupational health and safety: *A comparative study of factory-based and outworkers in the Australian TCF Industry*, by Dr Claire Mayhew, Executive Summary. Printed by the National Health and Safety Commission in January 1998.

### Collection of Statistical Data

The Committee notes the practical difficulties with its recommendation that the Australian Bureau of Statistics (ABS) conducts a comprehensive survey, in conjunction with the Australian Taxation Office (ATO), of the number of home-based workers across all industries. However, the Committee still considers the information on the exact numbers of outworkers is essential for policy development, and recommends that the ABS survey scheduled for July 1999 includes specific questions on outworkers.

1.48 In the interim the ABS should liaise with the TCFUA and community groups in contact with outworkers to collect accurate statistical data. The government should be aware that collection of statistical information is a requirement of the ILO homework convention C177.

### English Language Training

1.49 It is very important that English language training is provided to outworkers. Dr Mayhew's study revealed that the majority of outworkers are new immigrants from East Asian countries. 'Middlemen' who speak their own language often dominate outworkers, subjecting them to both physical and mental abuse.

1.50 The Committee acknowledges the government's support of ongoing funding to the Workplace English Language Literacy programs and other language training programs directed at outworkers. It is essential that new migrants be targeted for language training as soon as they arrive in Australia and the classes include information on the industrial relations system and rights of workers in this country.

### Taxation Compliance Issues

1.51 The Committee recommended in its initial report that the Australian Taxation Office (ATO) should take full advantage of the Reportable Payments System (RPS) to investigate taxation avoidance in TCF industries. The government responded that it has accepted the Committee's recommendation in an effort to reduce tax avoidance in the industry.

1.52 In November 1996 the Commissioner for Taxation established a Cash Economy Task Force to examine the cash economy to determine the compliance issues and how they can be addressed by the ATO. The ATO in response to the first report from Cash Economy Task Force created a number of national projects to monitor high risk industries and the clothing industry was identified as one of these high risk industries. Consequently, the ATO expanded its field presence, resulting in a significant increase in participation rates and lodgement figures within the TCF industry.

1.53 The ATO is also aware that the use of "shell entities" in the industry causes many of the compliance problems, and is the main factor for the low participation rate in the RPS. Shell entities are companies with no established business premises, dummy directors and a very short life span. The ATO has been able to contain the problem but is still searching for a permanent solution:

Inroads into the non-compliance within the clothing industry have been made through the introduction of the RPS and extensive field activities. However, given the nature of the industry much remains to be done and the ATO is conscious of

this fact. To this end new approaches to compliance improvement are being sought.<sup>12</sup>

1.54 The Committee is pleased that the RPS is having an impact on reducing non-compliance with taxation laws in the clothing industry. However, the Committee encourages the government to continue to develop ways to assist and encourage outworkers to become part of the legal system without reprisals for past non-compliance.



Senator Jacinta Collins  
Chair

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<sup>12</sup> Letter from the Australian Taxation Office, dated 18 May 1998, p. 2.

## GOVERNMENT SENATORS' ADDITIONAL COMMENTS

Government Senators agree with the general thrust of the report and its general recommendations but would like to make some additional and dissenting comments in relation to specific areas mentioned in the report:

### Government Assistance

The Minister for Workplace Relations and Small Business launched the outworker campaign on 18 June 1998. The bilingual help line will run for eight weeks, seminars have already been conducted for community groups and manufacturer seminars will be held in Melbourne and Sydney in late July. This will be followed up by targeted compliance activity to ensure that manufacturers understand and are complying with their award obligations.

Government Senators do not agree that industry assistance and support should only be provided to retailers and manufacturers who are signatories to the Homeworkers Code of Practice.

### Deeming Outworkers as Employees

It is reasonable for an outworker to make a legitimate choice whether to be an employee or an independent contractor. Deeming provisions would eliminate that ability to choose, therefore deeming provisions in absolute terms are not supported.

It is acknowledged that there are problems regarding coercive or fake independent contract agreements entered into to avoid employment obligations, however, deeming provisions would also affect genuine arrangements. An approach to this problem such as the reverse onus of proof in the *Clothing Trades Award 1982* could be a more acceptable solution.

There are subsidiary problems associated with national deeming because such provisions are of limited worth if not universally applicable, especially for national operators. However, for some issues, benefits through use of the corporations power could be an improvement (eg action taken by the Commonwealth in relation to Australian Workplace Agreements, which are currently available to corporations only (outside Victoria and the Territories and Commonwealth employment) pending complementary State legislation).

In addition, the powers referred to the Commonwealth by Victoria do not extend to legislating with respect to independent contractors generally. The sole power referred in relation to independent contractors is power in respect of freedom of association. Referred powers only deal with specific subjects and are generally limited to 'employees' and 'industrial disputes' (ie employee-related disputes).

Government Senators believe that the issue of deeming provisions requires more than a partial response and it is appropriate that this issue be further considered by the Labour Ministers Council because a coordinated approach is preferred for this issue.

### **The Award review process**

The Committee is aware that the following is an allowable award matter: "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."

Opposition Senators assume that award simplification will result in changes to awards affecting the TCFUA's ability to prosecute companies. This is not an assumption which can be founded on the Government's legislation, nor is it appropriate to pre-empt the Commission's decision on this matter.

Furthermore, the Commission has a statutory obligation to review awards and it is inappropriate that the Committee recommend that it deal with awards in a way which is inconsistent with that obligation.

### **ILO Convention on Homework and Child Labour**

The Australian Government has taken an active role on this issue, and will continue to do so, through its strong support for the development of the new ILO Convention, on the worst forms of child labour.

It is anticipated that the new convention will be adopted in 1999 and should become the ILO's main standard on child labour. It is hoped that, unlike the ILO's current standard on child labour (c.138, the Minimum Age Convention), the new Convention can be widely ratified.

Regarding ILO Convention 177 and Recommendation 184, in accordance with the Government's treaty-making policy, announced by the Minister for Foreign Affairs in May 1996, there are several pre-conditions before ratification of a Convention can be considered. These are:

- Consultation must take place with interested parties. In the case of ILO Conventions, this includes the States and Territories, the ACCI and the ACTU.
- There must be compliance with the provisions of the Convention.

Furthermore, it is usual Australian practice not to ratify ILO Conventions unless the State and Territory Governments have formally agreed to ratification.

It is therefore premature to talk of ratifying ILO Convention 177 without fulfilling these pre-conditions. The Government is undertaking the necessary consultations with a view to determining whether ratification should be pursued.

### **Occupational Health and Safety Issues**

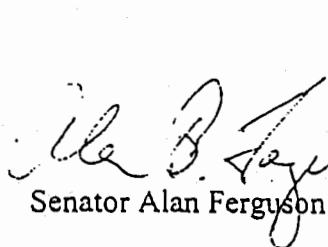
Government Senators recommend that the National Occupational Health and Safety Commission examine Dr Mayhew's report and consider implementing strategies a) and b) in the future.



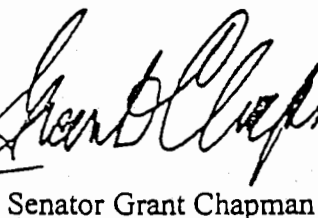
### Additional comments

Government Senators note the claims made by some manufacturers that the uncertainty relating to some of the obligations contained in industry codes and the threat of prosecution by the unions for minor technical breaches of the clothing award are forcing manufacturers to assemble the product offshore.

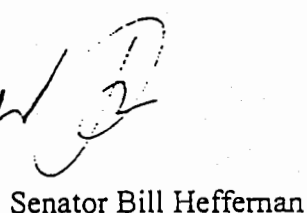
It should also be noted that clothing production is conducted by ethnic minorities in South Western Sydney and areas of Melbourne and these business activities are crucial to the work opportunities of these communities. Given this, it is appropriate to examine whether the code is having the alleged effect of increasing offshore manufacturing of clothing products.



Senator Alan Ferguson



Senator Grant Chapman



Senator Bill Heffernan

## **APPENDIX I**

### **PUBLIC HEARING**

A public hearing was held on: 27 November 1997 in Canberra

### **LIST OF WITNESSES**

#### **Textile, Clothing and Footwear Union of Australia**

Mr Anthony Woolgar	National Secretary
Mr Barry Tubner	Assistant Secretary
Mr Igor Nossar	Industrial Officer
Ms Annie Delaney	Outworker Co-ordinator

#### **Australian Business Chamber**

Mr Timothy Capelin	Chief Manager – Litigation
Ms Samantha Renwick	TCF Industrial Advocate

#### **Council of Textile and Fashion Industries of Australia**

Mr Peter Kreitals	Executive Director
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#### **Australian Retailers Association**

Mr Phillip Naylor	Chief Executive Officer
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## APPENDIX II

### LIST OF SUBMISSIONS OR SUPPLEMENTARY INFORMATION RECEIVED FROM ORGANISATIONS

1	Textile Clothing and Footwear Union of Australia	VIC
2	Council of Textile & Fashion Industries of Australia	VIC
3	Australian Business Chamber	NSW
4	Australian Taxation Office	ACT
5	Department of Workplace Relations and Small Business	ACT
6	Department of Industry, Science and Tourism	ACT
7	Asian Women at Work	NSW
8	Worksafe Australia, National Occupational Health and Safety Commission	NSW
9	Government response to the report from the Senate Economics References Committee on Outworkers in the Garment Industry	ACT

# HOMEWORKERS CODE OF PRACTICE

## CONTENTS:

- Part 1      Retailers agreement
- Part 1A     Retailers agreement for members of the Australian  
Retailers Association (ARA)
- Part 2      Manufacturers, Wholesalers, Warehouses & Fashion  
Houses agreement

## SCHEDULES

Schedules attached to Part 2 of the Code detail the reporting, contract, statutory declarations, letter to homeworkers as all requirements to be fulfilled by signatories to the Code Part 2. The licensing fee and details of the standard product specifications manual (sewing time manual) are in principal agreed to but still to be developed and established. The schedules are integral in the content and working of the Code part 2.

## HOMEWORKERS CODE OF PRACTICE

### PART 1 RETAILERS

#### AGREEMENT between

The Textile Clothing and Footwear Union of Australia and

The Council of Textile and Fashion Industries Ltd and

The Australian Chamber of Manufacturers and

The Australian Business Chamber

#### PARTIES

The TCFUA

The Council of the TFIA

The ACM

The ABC

Individual companies who are signatories to this Agreement.

## STATEMENT OF PRINCIPLES REGARDING HOMEWORKERS WAGES AND CONDITIONS

- 1: The parties to this Statement of Principles believe that homeworkers in the Textile Clothing & Footwear Industry should not be exploited in the wages and conditions they are entitled to by their employer.
- 2: Consequently, the parties agree that employees should not get paid less than the appropriate Award skill level rate or the product rate calculated on the loaded Award skill level rate in the Clothing Trades Award as of March 1997 and as amended by the changes in the wage rates.
- 3: The parties wish to promote the public view that manufacturers conform with these standards. Manufacturers who do conform may be entitled to place on each product manufactured an indication of their compliance.
- 4: The parties wish to promote the public view that retailers who purchase products which conform with this agreement may demonstrate to their customers their commitment by an identifying sign or other indication of compliance.
- 5: Retailers will require their suppliers in their purchase contracts, to undertake to comply with all the laws and regulations, including the payment of the rate specified in 2, relevant to the engagement of homeworkers.

Further, the retailers who are signatories to this agreement will provide quarterly to the TCFUA in writing, the names and addresses of all suppliers given orders to make products consistent with this statement, for sale by retailers.

- 6: It is agreed that the Union shall have the responsibility of enforcing compliance with this Statement of Principles.

Where the Union has cause to believe that there is a case of exploited homeworkers they will inform the manufacturer and relevant retailer.

- 7: The retailer will investigate the case with its supplier, giving a fair opportunity for the manufacturer to demonstrate that it is complying with this statement.

If it is proven that the supplier has not complied, the retailer will act in accordance with its commitment not to sell products which have been produced by exploited labour. This will include cancelling the affected purchase contract and/or terminating the relationship with the supplier.

- 8: It is agreed that the retailers and manufacturers will contribute to a public campaign to tell manufacturers, suppliers and homeworkers the terms of this statement, the obligations of the award and the code of practice.
- 9: Nothing in this agreement shall be construed to take away any legal rights of the parties or any employee and shall not be a basis for discriminating unfairly against any employer which conforms with the agreement.
- 10: This Agreement will be for an initial two (2) year period of operation.

## SIGNATORIES PART 1

Signed by

.....  
on behalf of The Textile Clothing and  
Footwear Union of Australia

Signed by

.....  
on behalf of The Council of The  
Textile and Fashion Industries Ltd

Signed by

.....  
on behalf of The Australian Chamber  
of Manufacturers

Signed by

.....  
on behalf of The Australian Business  
Chamber

APPENDIX - PART 1

The following company has agreed to become a signatory to this Agreement.

SIGNATORIES

Signed by

.....

Name .....

Position.....  
on behalf of the Textile, Clothing and  
Footwear Union of Australia.

Date.....

Signed by

.....

Name.....  
on behalf of  
Company Name .....

Position.....

Date.....



## PART 1A

### AUSTRALIAN RETAILERS ASSOCIATION (ARA) AGREEMENT WITH THE TEXTILE, CLOTHING AND FOOTWEAR UNION OF AUSTRALIA.

#### HOMEWORKERS CODE OF PRACTICE - RETAILERS AND TCFUA

THIS CODE OF PRACTICE RELATES TO THE ELIMINATION OF EXPLOITATION OF  
HOMEWORKERS  
15 AUGUST 1997

1. The parties to this Code believe that homeworkers in the TCF Industry should not be exploited in the wages and conditions they are entitled to by their employer.
2. Consequently, the parties agree that employees should not get paid less than the applicable Award rate.
3. Retailers will require their TCF suppliers, in their purchase contracts, to undertake to comply with all the laws and regulations including applicable Awards, relevant to the engagement of homeworkers.
4. It is agreed that the TCFUA (the Union) shall have the responsibility of enforcing compliance with the Award. However, all parties shall be responsible for ensuring compliance with this Code.

To assist the Union the ARA will compile, from information received from individual retailers, a list of the names and addresses of all TCF suppliers given orders to make products consistent with this Code for sale by those retailers. In accordance with the following procedure the ARA will provide to the Union on request the names and addresses of each retailer on its list dealing with a supplier nominated by the Union:-

- i. The Union will designate an officer from each Branch for contacting the ARA and individual retailers for information.
- ii. The ARA and each retailer will designate a person to be contacted by the designated union officer.
- iii. On being contacted by the designated officer of the Union, the ARA will provide the name(s) and address(es) of the retailer(s) and a contact name of a designated person within each retailer which is listed with ARA as dealing with a supplier named by the union officer.

- iv. The designated union officer may then contact the retailer(s) named for assistance in investigating a breach of the Award. It is recognised that the Union Officer, if he/she is aware that a certain brand is sold by a retailer and is aware of the contact name in that retailers business, may contact the retailer directly.
  - v. The retailer will only act on the Union Officers request for assistance if the Union Officer can reasonably demonstrate to the retailer that there is a suspected breach of the Award.
  - vi. Any names and contacts provided by ARA linking a supplier with a retailer and any information given by a retailer to the Union shall be provided on a confidential basis and is to be used for the sole purpose of assisting the Union in ensuring compliance with Awards.
  - vii. On being satisfied by the Union that there is a provable case of exploitation the retailer will investigate the matter with its supplier giving a fair opportunity for the supplier to demonstrate it is complying with this Code within time lines agreed to between the retailer and the Union.
  - viii. If it is proven that the supplier has not complied, then the supplier will be expected to take the necessary measures to comply with this Code.
  - ix. In the event that the supplier still does not comply, the retailer will act in accordance with its commitment not to purchase products produced by exploited labour and where legally possible terminate the affected purchase contract along with other unfulfilled existing contracts with that supplier (Providing such contracts were entered into before the operative date of this Code). All other contracts entered into after the operative date of this code will include an enabling clause that the retailer will act in accordance with its commitment to this code.
  - x. If there is a dispute between the retailer and the Union as to whether exploitation has occurred the matter shall be referred for resolution under a process to be agreed between the ARA and the Union.
5. The parties may wish to promote the public view that manufacturers conform with these principles. Manufacturers which do not conform with these principles may be entitled to place on each product manufactured an indication of their compliance with this Code. In those instances where the label is a retailer's label, identification must be by arrangement with the retailer.
6. The parties may wish to promote publicly that retailers conform with this Code. These retailers may demonstrate their commitment by a uniform identifying sign or other agreed indication of compliance to these principles.
7. It is agreed that none of the parties to this Code will engage in any negative publicity involving a retailer over a particular issue of exploitation while the retailer is investigating a claim of exploitation and the processes in the Code are being followed.

8. Nothing in this Code shall be construed to take away any legal rights of the parties or any employees and shall not be a basis for discriminating unfairly against any employer which conforms with the Code.
9. The Code shall operate for a period of 12 months from the (agreed date of commencement to be inserted) and shall remain in operation until renegotiated or terminated by either party. The code is to be signed by the TCFUA and the ARA on behalf of their member retailers who have agreed to be party to the code. A list of said retailers will be attached to this code as an appendix.

Signed.....  
(National President of the  
Textile, Clothing and Footwear  
Union of Australia)

Signed .....  
(Chief Executive Officer  
Australian Retailer Association)

## HOMEWORKERS CODE OF PRACTICE

### PART 2

### SUPPLIERS, FASHION HOUSES, WHOLESALERS & MANUFACTURERS.

#### CLAUSE 1- AGREEMENT between

The Textile Clothing and Footwear Union of Australia and

The Council of Textile and Fashion Industries Ltd and

The Australian Chamber of Manufacturers and

The Australian Business Chamber

#### CLAUSE 2- PARTIES

The TCFUA

The Council of the TFIA

The ACM

The ABC

Individual companies who are signatories to this Agreement.

### CLAUSE 3- OBJECTIVES

The objectives of this Agreement include:

- to end exploitation of Homeworkers
- to enable homeworkers to clearly understand their employment entitlements
- to ensure homeworkers receive their appropriate award entitlements and legislative protection
- to establish a system of accreditation for Manufacturers who comply with this Agreement.
- to assist Homeworkers by supporting, consistent with this Agreement, community and industry education securing compliance with this Agreement and promoting its purpose.

### CLAUSE 4 - DEFINITIONS

"Accreditation" means a system of accreditation where by a Manufacturer may indicate that it complies with the terms of this Agreement.

"Standard Product Specifications" means the product specification sheets that display a description and sketch of each of the three possible levels of complexity of a product (or part thereof), the sewing time and the rate to be paid to the Homeworker for sewing each product category as per schedule 9.

"Accreditation Register" means the register of accredited manufacturers held and maintained by the Code of Practice Committee.

"Supplier/Fashion house/ wholesaler" means a party that agrees to manufacture or arrange to manufacture products and /or components thereof.

"Manufacturer" means a manufacturer that manufactures or arranges the manufacture of products.

"Manufacturer" the term manufacturer is used throughout this document where the word manufacturer appears it refers to and is inclusive of supplier, fashion house & wholesaler.

"Contractor" means a person engaged to produce or arrange the manufacture of products.

"Homeworker" means a person who sews products in a private dwelling or in premises other than a registered factory.

"Level of complexity" is the categorisation of each ABS product group into simple medium or complex degree of difficulty in sewing the product.

"Products" means the whole or part of any male or female (including children's) *garment* or any article of wearing apparel. It is the intention of the parties to expand the definition of product to encompass all items manufactured by parties to this Agreement.

"Rate per product" is the rate calculated using the appropriate Award skill level rate under the Clothing Trades Award 1982, loaded for Annual Leave; Annual Leave Loading and Public Holidays X the GSD (or other similar agreed method of measurement) minute value determined for the appropriate level of complexity for the relevant classification of product within the ABS product category.

"Relevant Award" means the Clothing Trades Award 1982 as at March 1997 and as amended from time to time to provide increases in wages and conditions as approved by the AIRC.

"Workers Compensation" means workers compensation as prescribed by the relevant state legislation.

"Relevant Superannuation Fund" means the Australian Retirement Fund, or such other fund as may be agreed to by the TCFUA.

"Standard Statutory Declaration" means a statutory declaration as set out in Schedule 4 and 5 of this Agreement.

The standard statutory declaration in schedule 4 refers to manufacturers who contract only to contractors and do not directly give work to homeworkers.

The standard statutory declaration in schedule 5 refers to manufacturers and contractors who give work directly to homeworkers.

Completion of one or both of these standard statutory declarations is necessary for a manufacturer to acquire accreditation.

#### **CLAUSE 5- CODE OF PRACTICE COMMITTEE**

There shall be a committee comprising an equal number of representatives from the TCFUA and a combined group of employers party to the Agreement. Decisions of the Committee shall be made by a majority vote. The maximum size of the committee shall be six.

The duties of the committee shall be to take whatever steps may be necessary to ensure compliance with this Agreement, including:

- accreditation of manufacturers
- withdrawing a manufacturers accreditation
- holding and maintaining the Accreditation Register of accredited manufacturers
- confirming a retailer's entitlement to accreditation where it establishes that it is only dealing with accredited manufacturers
- allocating monies from the Education Publicity and Compliance Fund
- settling any disputes that may arise in relation to the operation of this Agreement. This may include the participation of an independent mediator, where agreed.
- establishing processes and procedures to rapidly and efficiently deal with issues which come before it in particular those which require mediation.
- Developing standard product specifications (to be a schedule to this agreement, schedule 9 refers to the process for development of this product specifications manual) through the establishment of an expert working party, which will report to the Code of Practice Committee.

\*Where the committee cannot resolve a dispute the matter will be referred to the agreed independent mediator for resolution.

#### **CLAUSE 6- ACCREDITATION**

The Code of Practice Committee shall confer accreditation on a manufacturer which establishes by way of standard statutory declarations (see schedules 4 & 5) that it complies with all of the following criteria:

- The homeworkers who are engaged on the sewing of its products are paid the appropriate rate per product calculated on the appropriate loaded Award skill level hourly rate.

- The homeworkers receive a minimum workload per fortnight which is the equivalent of the number of products that could be sewn in 30 hours, and a maximum workload per fortnight which is the equivalent of the number of products that could be sewn in 76 hours.

The Homeworker cannot be required to work Saturday or Sunday or beyond 7.6 hours in any one day, unless the homeworker chooses to do so.

- The homeworkers are covered by workers compensation.
- The homeworkers receive appropriate superannuation contributions paid on their behalf into the relevant superannuation fund.
- Where work is no longer available for a period, the homeworkers are given appropriate written notice of their termination.
- The maintenance and provision of records in accordance with Schedule 1.
- The provision of a standard letter on union membership in accordance with Schedule 7.

The parties agree that compliance with these criteria is consistent with full adherence to the relevant Award provisions and legislative obligations.

Where accreditation is conferred on a manufacturer, that manufacturer will be entitled to be known as an Accredited Manufacturer and licensed accordingly.

An Accredited Manufacturer shall be entitled to affix to its products a label indicating (in a form of words decided by the Code of Practice Committee) that they have been made by an Accredited Manufacturer.

Any party to the Code of Practice Committee has the right to raise concerns and seek to review the accreditation of any manufacturer at any time.

The Committee may determine to cancel the accreditation of an Accredited Manufacturer provided that the Committee shall give twenty-eight (28) days notice to the Accredited Manufacturer before cancelling its accreditation.

If within the twenty-eight (28) days, the Accredited Manufacturer presents to the Committee reason why the accreditation should not be cancelled, the Committee may rescind its determination.

The Committee will consider a manufacturer's entitlement to accreditation on an annual basis. Re accreditation will be automatic based on the provision of updated standard Statutory Declarations, unless it can be demonstrated that the manufacturer does not have a satisfactory compliance record.

Any party to the Code of Practice Committee has the right to raise concerns regarding incidents of contractual arrangements between retailers and manufacturers which do not enable the appropriate award rate to be paid in accordance with this agreement.

## **CLAUSE 7- OBLIGATION ON ACCREDITED MANUFACTURERS**

A manufacturer is entitled to accreditation only if it complies with this Agreement.

The accredited manufacturer shall, on the request of the TCFUA within 7 days provide the TCFUA all details of the name and address of any homeworker which the accredited manufacturer is using in manufacturing the products.

Each accredited manufacturer who arranges for a homeworker to manufacture products must satisfy itself that the homeworker is receiving:

- the appropriate rate per product based on the appropriate loaded Award skill level hourly rate
- a minimum workload per fortnight which is the equivalent of the number of products that could be sewn in 30 hours and a maximum workload per fortnight which is the equivalent of the number of products that could be sewn in 76 hours.

The Homeworker cannot be required to work Saturday or Sunday or beyond 7.6 hours in any one day, unless the homeworker chooses to do so.

- appropriate workers compensation protection
- appropriate superannuation contributions
- appropriate written notice upon termination
- the standard letter on union membership in accordance with Schedule 7.

Each accredited manufacturer who arranges for a homeworker to manufacture products must satisfy itself that all required records are maintained and are capable of being provided in accordance with Schedules 1 and 2.

Where an accredited manufacturer uses a contractor to make products the manufacturer shall, on the request of the TCFUA within 7 days provide to the TCFUA all details of the name and address of any contractor which the manufacturer is using in manufacturing the products.

Where an accredited manufacturer uses a contractor to make products the accredited manufacturer shall ensure that their contract includes clauses setting out these obligations, as contained in Schedule 3. In addition take whatever steps may be necessary to inform the contractor that the contractor is obliged to afford the homeworkers whom the contractor uses the following:

- payment of the appropriate award skill level rate per product
- a minimum workload per fortnight which is the equivalent of the number of products that could be sewn in 30 hours and a maximum workload per fortnight which is the equivalent of the number of products that could be sewn in 76 hours.

The Homeworker cannot be required to work Saturday or Sunday or beyond 7.6 hours in any one day, unless the homeworker chooses to do so.

- workers compensation coverage
- superannuation contributions
- appropriate written notice upon termination



- the maintenance and provision of records in accordance with schedule 2
- the standard letter on union membership in accordance with schedule 7.

The contractor shall be required to establish to the Manufacturer, through the provision of a signed standard statutory declaration, as per schedule 4 that the contractor is fully complying with these criteria.

Where the manufacturer intends to use a contractor to make products, the manufacturer will ensure that the contractor has completed the standard statutory declaration, as per schedule 4, prior to being given the contract.

An accredited manufacturer shall, within 7 days of engaging a contractor to arrange for the making of products, ensure that the contractor compiles a list of names and addresses of all homeworkers whom the contractor proposes to engage in the making of the products. Upon receiving a request from the TCFUA the accredited manufacturer shall ensure that the list is provided to the TCFUA within 7 days.

At the time of giving work to a contractor, an accredited manufacturer will inform the contractor of the level of complexity of the products to be sewn and the appropriate rate per product which the contractor must pay to the homemaker as per the standard product specification(s).

Where the TCFUA gives written notification to an accredited manufacturer that a contractor is in breach of this Agreement, the accredited manufacturer shall, within 14 days of the notification, investigate the alleged breach and report its findings to the TCFUA and the Code of Practice Committee.

If the accredited manufacturer's report confirms a breach of this Agreement by a contractor, the accredited manufacturer shall cease further commercial dealings with that contractor unless and until the contractor has remedied its breach of the Agreement within 14 days.

If it is shown to the reasonable satisfaction of the Manufacturer that a Homemaker has not been paid in accordance with this Agreement, the Manufacturer must pay that Homemaker the amount due and deduct that amount from the payment otherwise due to the Contractor, where such payment to the contractor is still outstanding.

## CLAUSE 8- LICENSING

The Code of Practice Committee shall register and maintain whatever trademarks, logos or other identification items it deems appropriate to promote compliance with the Award and this Agreement.

The Committee shall enter into a licensing arrangement with any manufacturer who is accredited in accordance with this Agreement to become a licensee.

The Committee shall enter into a licensing agreement with a licensee according to Schedule 8- (Fee Scale) of this Agreement.

A Licensee shall be entitled to:

- affix to their products the registered trademark, logo or other identification;

- affix to their place of business, premises or any other thing the registered trademark, logo or other identification;
- promote their compliance with the Award and their acceptance of this Agreement

#### **CLAUSE 9- ACCREDITATION OF RETAILERS**

A retailer may promote that it is only dealing with accredited manufacturers who do not exploit homeworkers, by seeking accreditation from the Code of Practice Committee. Such accreditation shall be automatic provided the retailer can establish to the Committee evidence that those manufacturers, with which the retailer deals, possess current accreditation.

#### **CLAUSE 10- EDUCATION, PUBLICITY AND COMPLIANCE FUND**

Contributions shall be made to this Fund by the parties to this Agreement on the following basis:

- contributions in kind by the TCFUA;
- contributions from manufacturers, through payment for licenses;
- financial assistance from State and Commonwealth Governments.

All parties agree that they will make representations to the Federal Government for funds to be provided to assist in activities associated with this Agreement.

For the period up to 30 June 1998, direct funds shall be allocated on the following basis:

- the initial \$300,000 shall be paid to the TCFUA for compliance activities in accordance with 1 below;
- the next \$100,000 shall be directed towards education and publicity activities in accordance with 2 below;
- the next \$50,000 shall be directed towards the development of product specification standards and other Code of Practice Committee costs;
- In the event that \$450,000 is not available by 31 March 1999 the parties will have discussions as to the scheduling of payments. The parties will have further discussions as to the allocation of funds, if available funding falls below \$450,000;
- 50% of any additional income, to a maximum of \$400,000, shall be directed to the TCFUA for compliance activities.

#### **1. COMPLIANCE**

The TCFUA shall have the responsibility for enforcing compliance with this Agreement.

Compliance activities, consistent with this Agreement, shall include:

- identifying incidents of non compliance to the Award and/or this Agreement;
- securing compliance through the promotion of this Agreement;
- ensuring the Award compliance by non signatories to this Agreement;
- ensuring compliance with this Agreement by signatories.

The TCFUA will report annually on compliance activities, funded under the Education, Publicity and Compliance Fund.

## **2. EDUCATION AND PUBLICITY**

Education and Publicity activities supported by this Fund will be for the purposes of educating homeworkers, contractors, manufacturers, retailers and the community about the operation and purposes of this Agreement.

### **CLAUSE 11- RECORDS TO BE KEPT**

Any records required to be kept under this Agreement shall be preserved, by accredited manufacturers and their contractors, for a period of 6 years.

The TCFUA may inspect any records required to be maintained under this Agreement.

The TCFUA shall be given copies, if requested, of any records required to be kept under this Agreement.

### **CLAUSE 12 - OPERATION**

This Agreement shall commence on .....and the parties agree to review its operation within 18 months of its commencement.

Accreditation of Manufacturers shall commence on.....

The Agreement shall be reviewed upon any of the parties withdrawing from the Agreement and giving to each other party not less than 3 months written notice of its intention to do so.

### **CLAUSE 13 - AMENDMENT**

This Agreement may be amended by agreement of all the parties to it.

### **SIGNATORIES**

TCFUA

TFIA

ACM

ABC

Individual Companies

## SCHEDULE 1

### RECORDS TO BE KEPT BY THE MANUFACTURER

An Accredited Manufacturer must keep the following records in connection with any order of products from a Retailer and provide them on written request to the TCFUA, within 7 days:

- i) name of the Retailer;
- ii) ACN number, if any, of the Retailer;
- iii) address of the Retailer;
- iv) For Homeworkers used by the Manufacturer for the making of products the following records:
  - Name
  - Address
  - Date of Birth
  - Starting date
  - Notice given
  - Termination date
  - Hours per fortnight
  - Total monies paid (gross, tax (where applicable) net)
  - Tax file number (where applicable)
  - Superannuation payments and fund name.
- v) Contracts, if any, made between the Manufacturer and any Contractors and in relation to each such Contractor;
- vi) the name of the Contractor;
- vii) the address where the work is to be performed and the address of the Contractor, if the work is to be performed elsewhere;
- viii) the date of the Contractor's Contract;
- ix) the date for delivery of the products provided to the homemaker and/or contractor and the date for the completion of the work under the Contract;
- x) product specification
  - a description of the nature of the work to be performed (including construction, seam type, finishing and fabric type) for the work concerned;
  - a description and sketch of the products to be made, including the level of complexity and sewing time;
  - the price to be paid to the homemaker for each item of the garments to be made;
- xi) the number and type of products to be made;
- xii) the date for delivery to the Manufacturer.

## **SCHEDULE 2**

### **RECORDS TO BE KEPT BY THE CONTRACTOR**

A Contractor must keep the following records in connection with any order of products from an Accredited Manufacturer and provide them on written request to the TCFUA within 7 days:

- i) name of the Accredited Manufacturer
- ii) address of the Accredited Manufacturer
- iii) the Contract between the Manufacturer and the Contractor
- iv) the date of the Contract
- v) For homeworkers used by the Contractor for the making of the products the following records:
  - Name
  - Address
  - Date of Birth
  - Starting date
  - Notice given
  - Termination date
  - Hours per fortnight
  - Total monies paid (gross, tax (where applicable), net)
  - Tax file number (where applicable)
  - Superannuation payments and fund name;
- vi) Contracts, if any, made between the Contractors and any other Contractors and in relation to each such Contractor;
- vii) the name of the Contractor;
- viii) the address where the work is to be performed and the address of the Contractor, if the work is to be performed elsewhere;
- ix) the date of the Contractor's Contract;
- x) the date for the giving out of the work and the date for the completion of the work under the Contract
- xi) the number and type of products to be made

xii) product specification

- a description of the nature of the work to be performed (including construction, seam type, finishing and fabric type) for the work concerned
- a description and sketch of the products to be made, including their level of complexity and sewing time
- the rate per product to be paid to the homeworker for each item of the products to be made

xiii) the date for delivery to the Manufacturer

xiv) evidence of payments made to individual homeworkers

xv) evidence of appropriate superannuation contributions to the ARF

xvi) evidence of payment of appropriate workers compensation premiums

### SCHEDULE 3

#### UNIFORM CLAUSES FOR INCLUSION IN CONTRACTS BETWEEN MANUFACTURERS AND CONTRACTORS

- It is a term of this Contract that any contractor must act in accordance with, observe and do nothing to undermine the Agreement between the TCFUA, and .....
- It is a term of this Contract that any homeworkers used in the manufacture of products referred to in this Contract shall be covered by the provisions of the Agreement between the TCFUA, and ..... designed to eliminate exploitation of homeworkers.
- The Contractor must, in addition to his obligations under the Agreement, make and retain for not less than 6 years and make available for inspection by the TCFUA and/or .....at times reasonably required by the TCFUA and/or .....person authorised by the ..... the records specified in Schedule 1 of the Agreement.
- If a Contractor breaches any provisions of the Agreement, .....shall cease further commercial dealings with the Contractor unless and until the Contractor has fully remedied the breach of the Agreement within 14 days.
- If it is shown to the reasonable satisfaction of ..... that a Homeworker has not been paid in accordance with this Contract, .....must pay that Homeworker the amount due and deduct that amount from the payment otherwise due to the Contractor where such payment to the Contractor is still outstanding.
- In observing its obligations under the Contract, the Contractor must observe the relevant provisions of any applicable Federal or State Acts and the Award.

## SCHEDULE 4

### STANDARD STATUTORY DECLARATION FOR MANUFACTURERS WHO GIVE WORK TO CONTRACTORS.

#### STATUTORY DECLARATION

I, .....(Full name)

of .....  
(address)

do solemnly and sincerely declare as follows:

I am the ..... of ..... Pty Ltd  
(position)

company address .....

I have put in place with every contractor this company engages either to manufacture products or arrange the manufacture of products by engaging homeworkers a uniform clause in our standard contracts as set out in Schedule 3 of the "Homeworkers Code of Practice".

Each of the contractors who supply our company with goods has completed a Statutory Declaration as in Schedule 6 of the "Homeworkers Code of Practice".

The Statutory Declaration completed by each contractor has been provided to me and are available for inspection on written request by the TCFUA within 7 days.

All new contractors from this day on will be supplied with and asked to fill in a Statutory Declaration as set out in Schedule 6 of the "Homeworkers Code of Practice".

The names, addresses and dates of engagement of contracts with people I presently supply work to is listed at Attachment 1 to this Statutory Declaration.

And I make this solemn declaration by virtue of the Statutory Declarations Act 1959 (Cth) and subject to the penalties provided by that Act for making of false statements in Statutory Declarations, conscientiously believing the statements made in this declaration to be true in every particular.

.....  
Signature of person making the Declaration

Declared at ..... in the State of .....

on this ..... day ..... of ..... 199



Before me

.....  
Signature of person before whom the Declaration is made.

.....  
Title of person before whom the Declaration is made.

**SCHEDULE 4  
ATTACHMENT 1**

Name	Address	Date of Contract	Contact Person	Phone Number
------	---------	------------------	----------------	--------------

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. On the left side, there are two circular punch holes, one near the top and one near the bottom, indicating it was designed to be part of a binder or folder. The paper appears slightly aged or off-white.

(If there is insufficient space to list all contractors please photocopy this sheet).

## SCHEDULE 5

### STANDARD STATUTORY DECLARATION FOR MANUFACTURERS/CONTRACTORS WHO GIVE WORK DIRECTLY TO HOMEWORKERS.

#### STATUTORY DECLARATION

I, .....(Full name)

of .....  
(address)

do solemnly and sincerely declare as follows:

I am the ..... of .....Pty Ltd  
(position)

I supply work directly to homeworkers.

I have read and examined the contents of the "Homeworkers Code of Practice" between the Textile Clothing and Footwear Union of Australia and my company ..... dated .....

I have paid to each of these homeworkers (doing the work referred to above) the appropriate rate per product as defined at Clauses 3 and 9 of the "Homeworkers Code of Practice" (referred to above)

I have provided to each of these homeworkers, (referred to above) the minimum workload per fortnight defined at Clause 9 of the "Homeworkers Code of Practice" as referred to above.

I have ensured that each of these homeworkers is fully insured for workers compensation insurance in accordance with the requirements of the relevant Workers Compensation Act.

I have paid to the Australian Retirement Fund superannuation contributions on behalf of each of these homeworkers with the requirements of the Clothing Trades Award 1982, or appropriate award.

I have kept (in regard to each of these homeworkers) records in accordance with Schedule 2 of the "Homeworkers Code of Practice", and I will provide these records to other parties in accordance with Schedule 2 of the "Homeworkers Code of Practice".

I have provided to each of these homeworkers the standard letter (dealing with Union membership) contained in Schedule 7 of the "Homeworkers Code of Practice".

And I make this solemn declaration by virtue of the Statutory Declarations Act 1959 and subject to the penalties provided by that Act for the making of false statements in Statutory Declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Before me

Title of person before whom the Declaration is made.

## SCHEDULE 6

### STANDARD STATUTORY DECLARATION FOR MANUFACTURERS/CONTRACTORS WHO RECEIVE WORK FROM ANOTHER MANUFACTURER/CONTRACTOR AND THEN SUPPLIES WORK TO HOMEWORKERS.

#### *STATUTORY DECLARATION*

I, .....(Full name)

of .....  
(address)

do solemnly and sincerely declare as follows:

I am the ..... of .....Pty Ltd  
(position)

I have received work from ..... Pty Ltd. Orders to complete work to be  
supplied to homeworkers.

I have read and examined the contents of the "Homeworkers Code of Practice" between the  
Textile Clothing and Footwear Union of Australia and ..... Pty Ltd,  
dated .....

I will hereafter pay to each of these homeworkers (doing the work referred to  
above) the appropriate rate per product as defined at Clauses 3 and 9 of the  
"Homeworkers Code of Practice" (referred to above)

I will hereafter provide to each of these homeworkers, (referred to above) the minimum  
workload per fortnight defined at Clause 9 of the "Homeworkers Code of Practice" as referred  
to above.

I will hereafter ensure that each of these homeworkers is fully insured for workers  
compensation insurance in accordance with the requirements of the relevant  
Workers Compensation Act.

I will hereafter pay to the Australian Retirement Fund superannuation contributions on  
behalf of each of these homeworkers with the requirements of the Clothing  
Trades Award 1982, or appropriate award.

I will hereafter keep (in regard to each of these homeworkers) records in accordance with  
Schedule 2 of the "Homeworkers Code of Practice", and I will provide these records to other  
parties in accordance with Schedule 2 of the "Homeworkers Code of Practice".

I will hereafter provide to each of these homeworkers the standard letter (dealing  
with Union membership) contained in Schedule 7 of the "Homeworkers Code of Practice".

I will hereafter only terminate the services of any of these homeworkers after providing to them the appropriate written notice upon termination in accordance with the requirements of the Clothing Trades Award 1982, or appropriate award.

And I make this solemn declaration by virtue of the Statutory Declarations Act 1959 and subject to the penalties provided by that Act for the making of false statements in Statutory Declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Signature of person making the Declaration

Declared at \_\_\_\_\_ in the state of \_\_\_\_\_  
on this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_

Before me

Signature of person before whom the Declaration is made.

Title of person before whom the Declaration is made.

## SCHEDULE 7

Dear Homeworker

A landmark Agreement has recently been reached between the Textile Clothing and Footwear Union and your employer that is designed to eliminate the exploitation of homeworkers in the fashion industry.

This Agreement was achieved through your employer working cooperatively with the union to develop a framework that will ensure you receive your appropriate award entitlements and enjoy the legislative protection of workers compensation coverage and superannuation contributions.

Your employer considers that the Agreement is an important initiative and welcomes the Union's positive approach in working towards a lasting solution to end exploitation.

The Textile Clothing and Footwear Union of Australia (TCFUA) is the union which represents homeworkers in this industry.

Should you wish to join the TCFUA, an application form for membership is attached for your convenience.

As your employer, I support TCFUA and you joining that union and you will not be discriminated against if you do so.

The Agreement is presently being implemented. You will soon receive information on how its operation will benefit you.

Yours sincerely

**SCHEDULE 8**  
**LICENSING FEE**

The fee to be paid by Accredited Manufacturers for licensing consistent with this agreement is:

\$2,000 per annum.



## SCHEDULE 9

### STANDARD PRODUCT SPECIFICATIONS MANUAL

Process for development of the Standard Product Specifications Manual.

The Homeworkers Code of Practice Committee (HCOPC) agrees to a process which will entail HCOPC agreeing to a number of actions in the development of a Standard Product Specifications Manual which will be used as a basis by the TCF employers for the payment of wages to outworkers, and for the HCOPC to use as a tool to assess accuracy of wages paid to outworkers in any dispute situation. These actions are:

1. Develop a submission for Federal Government funding for the development of the Standard Product Specifications Manual.
2. Acquire a "General Sewing Data" (GSD) software program and employ a consultant to undertake a GSD study of TCF products covered by the Homeworke Code of Practice.
3. Employ a consultant to undertake a Time and Motion Engineering study of TCF products covered by the Homeworkers Code of Practice, and to develop standard product specifications for each product using data acquired through "GSD" and "T&M" studies.
4. Consultant will trial draft standard product specifications both in an in-house situation using machinists and technology in a number of factories, as well as trailing them with a number of outworkers working with their technology in their private dwellings.
5. The draft standard product specifications will then be refined and presented to the HCOPC for endorsement.
6. A library of information will be developed by the consultant to form the Standard Product Specifications Manual for final endorsement by the HCOPC.

## SIGNATORIES PART 2

Signed by

.....  
on behalf of The Textile Clothing and  
Footwear Union of Australia

Signed by

.....  
on behalf of The Council of The  
Textile and Fashion Industries Ltd

Signed by

.....  
on behalf of The Australian Chamber  
of Manufacturers

Signed by

.....  
on behalf of The Australian Business  
Chamber

**APPENDIX - PART 2**

The individual company that has agreed to be a signatory to this Agreement.

**SIGNATORIES**

Signed by

.....  
on behalf of the Textile, Clothing and  
Footwear Union of Australia.

Name.....

Position.....

Signed by

.....  
on behalf of

Name.....

Company Name.....

Position.....

## APPENDIX IV

Retailers and Manufacturers who have agreed to take responsibility for the labour behind their labels.

Retailers who signed a 'Deed of Co-operation' with the Textile Clothing and Footwear Union of Australia in 1995/96:

Australia Post	Country Road Pty Ltd
Ken Done & Associates	Target Australia Pty Ltd

Retailers who signed the Homeworkers Code of Practice

Just Jeans	Najee	Table Eight
Jacqui E	Review	Anthea Crawford
Witchery Fashions	Jag	General Pants Co.
Sportsgirl/Sportscraft	Saba	
Cue		

Retailers who have signed the Homeworkers Code of Practice through the Australian Retailers Association (ARA)

Coles Supermarkets	Kmart	Maggie T
Myer Grace Bros	Fosseys	Westco Jeans
Katies	David Jones	Brian Rochford
Sussan	Suzanne Grae	Gowings
Lowe's Manhattan	Big W	Paddymade
Woolworths	Rockmans	Roger David
The Clothing Company	Best and Less	Fashion Fair
General Pants		

Manufacturers and Fashion Houses who have signed the Homeworkers Code of Practice

Sara Lee Intimates	King Gee Clothing Co.	Paddymade
Sports Fashion Group	Peter Weiss	Conarge
Hot Gossip Clothing	L.A. Shirts Australia	Sunny Textile Industries
Lisa T-Shirts	Sportsgirl/Sportscraft Grp	Neater Fashions
Time Sportswear	Depict Knits	Pacific Brands
Cue Design	Depict Distributors	Bonds Industries
Review	Stafford Group	Berlei
General Pants Co.	S.&R. Fashions	Holeproof
Time Sportswear	House of Stitches	Jockey/Red Robin
Ivorie Australia	Anthea Crawford	Candy Footwear
Turning Point Aust.	Sheridan Aust.	Pelaco
Clothes Scene	Casco Blu	Dimension Clothing

## APPENDIX V

### SUGGESTED AMENDMENTS to *Workplace Relations Act 1996* Amendments highlighted in Bold

#### Section 4(1) "Definitions"

- (\*) "employee" includes:
  - (a) any person whose usual occupation is that of employee; and
  - (b) any person (not being the occupier of a factory) who performs outside a factory, for the occupier of a factory or a trader who sells TCF products by wholesale or retail, any work in the TCF trades for which a payment or rate is fixed by an award (in which case the occupier or trader is taken as the employer);

but does not include a person who is undertaking a vocational placement.

- (\*) "employer" includes:
  - (a) a person who is usually an employer; and
  - (b) an unincorporated club; and
  - (c) the occupier of a factory or a trader who sells TCF products (by wholesale or retail) who gives out any work in the TCF trades (for which a payment or rate is fixed by an award) directly to a person (not being the occupier of a factory) who performs that clothing work outside a factory.

#### S.170 VQ Effect of AWA on awards and agreement:

S.170 VQ (1) [Award] During its period of operation, an AWA operates to the exclusion of any award that would otherwise apply to the employee's employment, except in relation to any award concerning the giving out of work to be performed outside a factory (in which case an AWA does not operate to the exclusion of such an award).

This subsection has effect subject to subsections (2) and (3).

S.170 VQ (4) [State award or agreement] - During its period of operation, an AWA operates to the exclusion of any State award or State agreement that would otherwise apply to the employee's employment, except in relation to any state award concerning the giving out of work to be performed outside a factory (in which case an AWA does not operate to the exclusion of such a State award).

S.170 VR Effect of AWA on other laws.

170 VR (1) [Conditions in State law] Subject to this section an AWA prevails over conditions of employment specified in a State law, to the extent of any inconsistency.

- (2) [Provisions operating subject to State law] Provisions in an AWA that deal with the following matters operate subject to the provisions of any State law that deals with the matter:
- (a) occupational health and safety;
  - (b) workers compensation;
  - (c) apprenticeship;
  - (d) the giving out of work to be performed outside a factory;
  - (e) any other matter prescribed by the regulations.

S.285B Investigating suspected breaches of Act etc

285B (1) [Application of section] This section applies if a person who holds a permit in force under this division suspects that a breach has occurred, or is occurring, of:

- (a) this Act; or
  - (b) an award, an order of the Commission, or a certified agreement, that is in force and binds the organisation of which the person is an officer or employee.
- (2) [Entry of premises] For the purpose of investigating the suspected breach, the person may enter, during working hours, any premises where employees work who are members of the organisation of which the person is an officer or employee, or any premises from which work is being given out to be performed outside those premises.
- (3) [Inspection of documents etc] After entering the premises, the person may, for the purpose of investigating the suspected breach:
- (a) require the employer of the employees to allow the person, during working hours, to inspect and, if the person wishes, to make copies of any of the following that are kept by the employer on the premises and are relevant to the suspected breach:
    - (i) any time sheets; or
    - (ii) any pay sheets; or
    - (iii) any records relating to the giving out of work to be performed outside those premises; or
    - (iv) any other documents, other than an AWA, an ancillary document or a document that shows some or all of the content of an AWA or an ancillary document; and

S.285D Conduct not authorised under sections 285B and 285C

(2) [Notice must be given] A person is only entitled to enter premises, and exercise powers, under section 285B or 285C if the person has given the occupier of the premises at least 24 hours notice of the person's intention to do so, unless work is

being given out from those premises (to be performed outside those premises) in which case a person is entitled to enter those premises and exercise powers under section 285B or 285C without giving any prior notice of the person's intention to do so.

## APPENDIX VI

### STATEMENTS FROM TWO CHILD OUTWORKERS

#### Statement No.1

When asked how I feel about my parents being outworkers, I feel very bitter and angry that my parents are outworkers. Growing up with tow little sisters and one little brother and one older brother, I feel very disappointed and disadvantaged with my parents working seven days a week, 20 hours a day without one day off no matter what day it is, Christmas or New Years Day.

With my parents working so much and my brother in Year 12, I started looking after my little brother and sisters a lot. After school I would go and pick them up at school and we would walk home, not having enough money to spend on a bus or train ride home. I would them make them do their homework or have a shower, then I help my parents to sew. We would always be quiet at home because we were scared to make too much noise and distract my brother from doing his homework.

I would make dinner around 6 O'clock and we would eat it except my parents would keep on sewing. Then they would go play some quiet game or something while I helped my parents again. Around 9 O'clock they would go to bed, since we didn't have a TV I wouldn't have to tell them to turn it off. They would go to bed without me telling them to and during the time they were asleep I would bring my parents dinner. It was exactly the same thing I had except it was cold and they didn't want me to heat it up because it would make the gas bill bigger and since we didn't have a microwave they would eat it just like that. During the time they ate their dinner I would help them sew the clothes.

Sometimes my little brother and sisters wouldn't see my parents for a whole week unless they went out to the garage to see them but then my parents would tell them to get out of the garage and do their homework. Soon we needed to buy more stuff for my brother such as his textbooks and his calculator so I would help my parents more to get more money and soon my little brother and sisters had to walk home from school by themselves while I helped my parents.

There were times when I would sew till 5am and go to sleep then wake up at 7am to make my little brother and sister's breakfast and lunch and then I would go to school.

During mid-year of my Year 11, I decided to quit school completely and stay home and help my parents sew and find more money to send my brother to University. After I quit school I helped my parents everyday and they started to accept more work and I would sometimes not sleep for a couple of days to help my parents. I feel really



sorry for my little brother and sisters because my parents never have time to spend with them at all and they know never to disturb them.

My little brother and sisters never go out because they are expected to go home straight after school and are beginning to help them sew, cut or iron. My youngest sister is eight and does some small jobs.

I think it is a great injustice because they are just little children eight, ten and twelve years of age and are needed to help our parents sew, cut or iron. The same age as when I began helping to sew. So they have enough money to pay the bill and buy food. I quit school two years ago and I don't think I will ever go back because my parents need me too much at home.

TANG - 17 years, March 1998

#### Statement No: 2

As a child my family and I lived in poverty in Vietnam till we immigrated to Australia. I thought we would be better off in Australia than in Vietnam, but then we couldn't pay all the bills with my mother and father began working as outworkers.

They started sewing a lot and soon I didn't see my parents much except when they asked me to help them because they couldn't finish all their work.

Soon whenever I had spare time I would be in the garage sewing and helping them sew the hems and iron the dresses and shirts or whatever their bosses would give them to sew. I was in Grade 6 when I began doing this work.

After a few months I would stay up till 2am to help them out and wake up around 5 am to help them sew because we never seem to have spare money to buy the things we needed. Every month my parents would dread the bills coming so they accepted more work and soon I would come home straight after school to help sew.

Sometimes if we were really desperate I would stay home the whole day and help them. On those days my parents would always worry how my school work was suffering and what bad parents they were. I always tried to comfort them by saying that I was doing fine and would do my school work during the spare times I had.

In reality I didn't have any spare time and I would always have bags under my eyes and felt really tired. Recess was a time when I would try to get some sleep or do my work. My friends knew what I was going through because they were going through the same things so that sometimes we would compare how much sleep we got.

This year I am in Year 12 and I wonder if I going to pass this year because now we aren't getting paid a lot because the boss keeps telling us about how we have sewn the garments wrong and refuses to pay us. My parents and I know that there is nothing wrong with the garments but my parents are too scared that their boss would find a problem and fire them. Then we won't have any money to pay the bills and we might

be forced to go back to Vietnam. So now my parents are accepting more work everyday and we've got less time to do it in.

I just hoped that I could pass my V.C.E. and get a decent job because I didn't want to end up like my parents being outworkers and being paid next to nothing.

LINH - 17 years March 1998

# **ATTACHMENT 5**

**'Home sweat home':**

**Preliminary findings\* of the first stage of a two-part study of outworkers in the textile industry in  
Melbourne Victoria**

**January- June, 2001**

**by**

**Christina Cregan**

**Department of Management**

**Melbourne University**

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22 November 2001

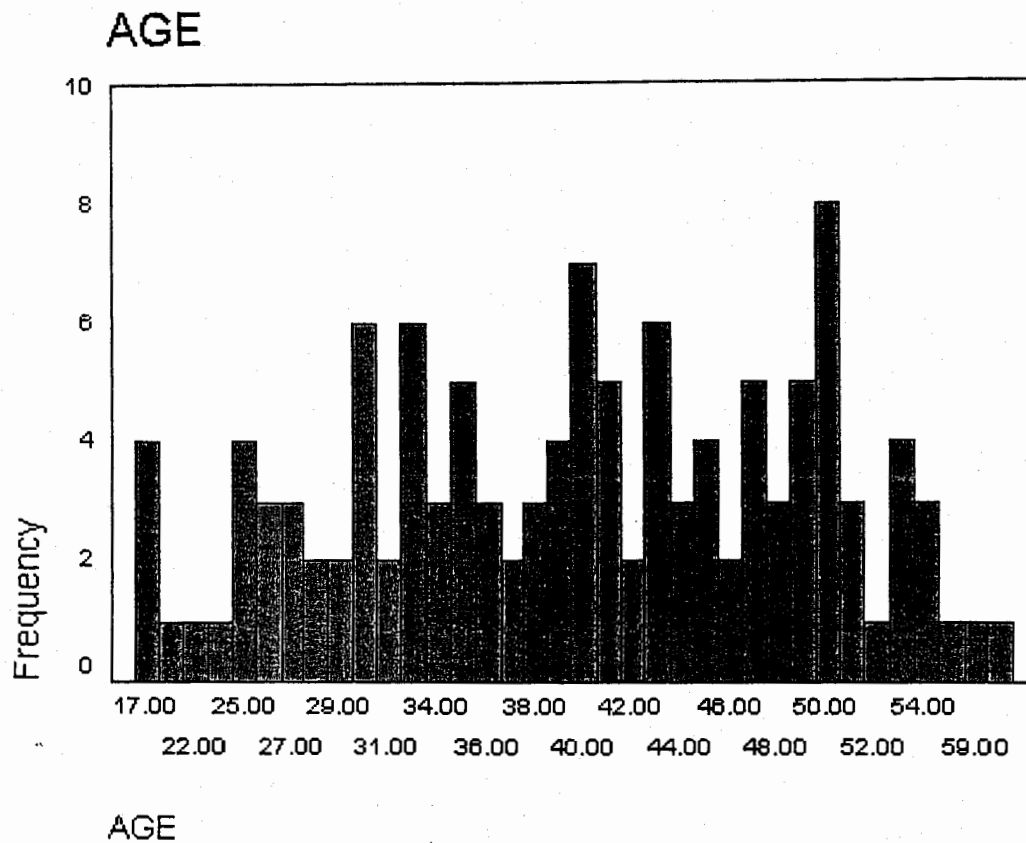
\* All numbers and percentages in this report refer to the number who answered the question. Because this was an administered survey, there were few missing cases.

These are the preliminary findings of the first part of a two-stage survey of textile outworkers that was conducted in Melbourne, Victoria in the early part of 2001. Initially, the Textile, Clothing & Footwear Union of Australia was approached in order to make direct links with outworkers so the latter could be trained as interviewers in the project. 8 outworkers contacted another 111 outworkers. The sample of 119 took part in an intensive study that involved an administered questionnaire and open-ended discussion. Each interview lasted about 3 hours. The investigation was conducted in Vietnamese or English, as appropriate, and involved Vietnamese, Cambodian, Thai and Australian-born outworkers. 115 of the outworkers were female. The project involved strict academic methods of enquiry, following ethical guidelines and involving translation and back-translation..

119 workers were surveyed The majority of the outworkers were women. There were 114 females and only 5 men. 110 were born in Vietnam and 105 of these were educated there. Four were born in Cambodia, three in Thailand, and two in Australia. The majority had completed secondary education and nearly a sixth were graduates.

Primary	15	13%
Secondary	81	68%
Tertiary	17	14%
Other	1	1%
	114	

Their ages ranged from 17 to 64. They were widely spread across the age groups. The average age was 39. The age group with the largest number of workers (eight of them) was 50.



All of them came to Australia from 1979 onwards, some arriving each year, the last in 1999. Although 10% came in 1983, the majority – about 60% - arrived from 1988 to 1995. At the time of the survey, over 80% had been outworkers for at least 5 years. The average length of time in outwork for this sample was seven and a half years, though a few had done this kind of work for more than 15 years. This was their living, although only about a tenth said they wanted to be an outworker all their lives.

Their level of English was poor. With regard to each of the categories of speaking, writing, listening and reading, only about ten per cent said they were fluent, while around a half said they were poor. In fact, most had attended English classes.

### *The family*

82 (70%) were married and all to someone of the same ethnic background.

Of these,

-56 did outwork with partner together in home

- 24 had partners who were not involved in outwork

- 1 in Vietnam, 3 not in work

- 19 employed - 13 in factory work (only 1 in clothing), 2 shop work, 1 office work, 2 professional,  
- 17 full-time, 1 part-time

72 had children. 66 had pre-schoolers or pupils at school. 10 were solo-parents. 16% of all parents had one child, 49% had 2, and 35% had 3.

In only 12 cases did the household have any other money than that provided by the couple. Household income ranged from \$140 per week to \$900. There was one outlier of \$1500. The highest number of families (17) was in the \$500 a week group. Unsurprisingly, almost all the outworkers (106) said the family could not manage without their wages.

### *Why working at home*

It was quite clear that most wanted to do work for pay outside the home. There was a distinct minority, however, who wanted to look after their children mainly unencumbered by paid work. The respondents were asked: If you had a real choice of the kinds of jobs that you think you could get, what would you like to do most?

Group 1

Work outside the home in another industry	43	38%
Work in a clothing factory	33	30%
Take on training to do other work	5	

Group 2

Not work for pay – look after household	24	20%
Paid work in home	7	

Those who preferred not to be doing homework were asked what prevented them doing what they preferred. They could give as many reasons as they wished. Again, two groups were apparent. The ranking of reasons in each group was as follows.

Group 1

Cannot get work outside the home	49
English not good enough	46
Not understand Australian systems	25
Have experienced racism in outside work	24
Have experienced racism in public	22
Cannot drive	20
Not have enough confidence	20
Cannot afford childcare	19
Husband wants me to stay at home	17
Family wants me to stay at home	14
Family does not have car	13
Afraid of public transport	11
No childcare available	8
Family gets more income	3

Group 2

Fit work around my family duties	30
Want to look after children myself	27
Enjoy being in control of work pace	20



### *Friends and social life*

These workers did not live in isolation. Two thirds said they knew some neighbours. Over 80% knew other people in Melbourne and over 90% knew other outworkers - between 1 and a dozen - with a few knowing lots of them. Yet they lived in their own ethnic world within Australia. These acquaintances were clearly mainly people of their own race. At home and with friends, most of them used their own language. They were asked how they found out news about Australia and the world. This is the ranking of the responses.

Radio – own language	111
Newspaper – own language	82
Friends	54
Husband	31
Children	21
Radio/TV – English language	19
Newspaper – Australian	15

In 30% of the families, no-one spoke fluent English; in the remainder, it was generally the children. It was the whole family in only 10% of cases.

### *The work*

Mainly work was found through friends (70%), followed by newspaper ad (15%). Only 7 of them felt they could gain other work easily, though 54% said they did not know. Two fifths had worked in a clothing factory and most of these preferred to work there than at home.

They were asked whether the work came direct from the factory or via another person.

Factory	53	45%
Agent	65	55%

In just over half of the cases, the sex of the individual they dealt with was male, in 35% female, the rest, both. In the great majority of the cases the language used in the transaction was their own.

114 owned their own machine, which was mainly kept in the garage or the bedroom. Slightly more learned to sew in their own country than in Australia. They were mainly taught by friends or self-taught. Almost all received no training from their employer.

A sizeable minority (45%) said they enjoyed sewing for work. A fifth admitted to working less well than they could because of the pressure of work. Two-thirds would have preferred to work more carefully. Only 20% sewed for pleasure in their spare time.

They were asked 'What best describes your current attitude to your work?

I like it	15
I neither like nor dislike it	26
I don't like it but I just have to do it	64
I don't like it and I don't see	
How I'm going to be able to cope	7
I don't like it and I'm going to get	
training to do other work	3
I don't like it and I'm going to get	
training and help other outworkers	2

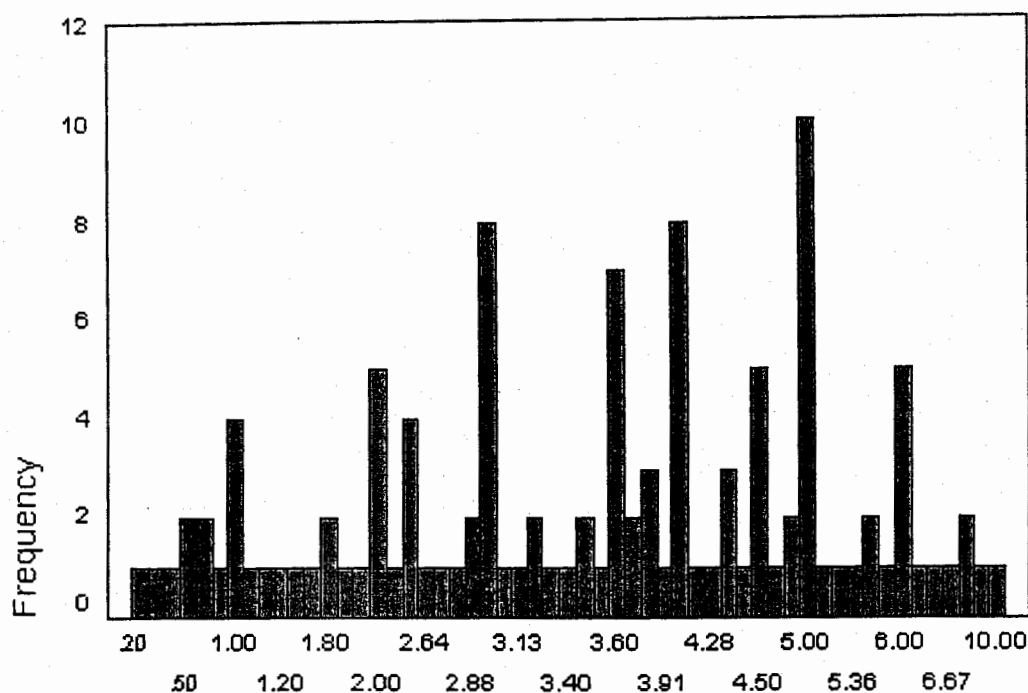
They were asked if they had any legal knowledge about their rights at work. Slightly less than half said they had. They gave the source of their knowledge as the following:

Radio – own language	75
Newspaper – own language	45
Friend(s)	44
Union	41
Husband	17
Children	8
Employer	6
Accountant	6
Radio/TV – English language	5
Newspaper – Australian	4
Other	7

### *Pay*

The payment system was piece-rate. They were asked what they were paid for each garment they were currently sewing and it ranged from twenty cents to \$5.35. There was one outlier of \$9.50. The largest group – 15 – was being paid 50 cents, the next – 12 – \$2.00, then 8 at \$4.00 and 6 at \$5.00. The garments took between 3 and 90 minutes to sew. From the information they gave, it was possible to calculate their hourly pay. The average rate was \$3.60 per hour. The highest was \$10, while several earned below a dollar.

## INCHOUR



## INCHOUR

They earned per week between \$60 and \$500, the largest group – 23 – earning \$300, with 17 on \$250, 16

On \$200 and 15 on \$350. In 105 cases, these wages were used only for essential expenses. They were asked the following questions about their pay. They were clearly very vulnerable.

	Yes	No
Usually offered regular work?	26	89
Wages paid on time?	28	88
Know pay before start job	62	53
Employer set finishing time	113	5
Paid different from agreed price	60	46
Paid holidays	3	115
Sick pay	1	114
Paid public holidays	2	113

Wages ever been unpaid	62	54
Why?		
Employer unfair – said quality was poor	32	
Employer unfair – gave no reason	29	
Employer unfair – said work was late	19	
Other	12	
Your fault – quality was poor	3	
Your fault – work was late	2	
Employer rewarded you for speed	2	
Employer rewarded you for high quality	2	

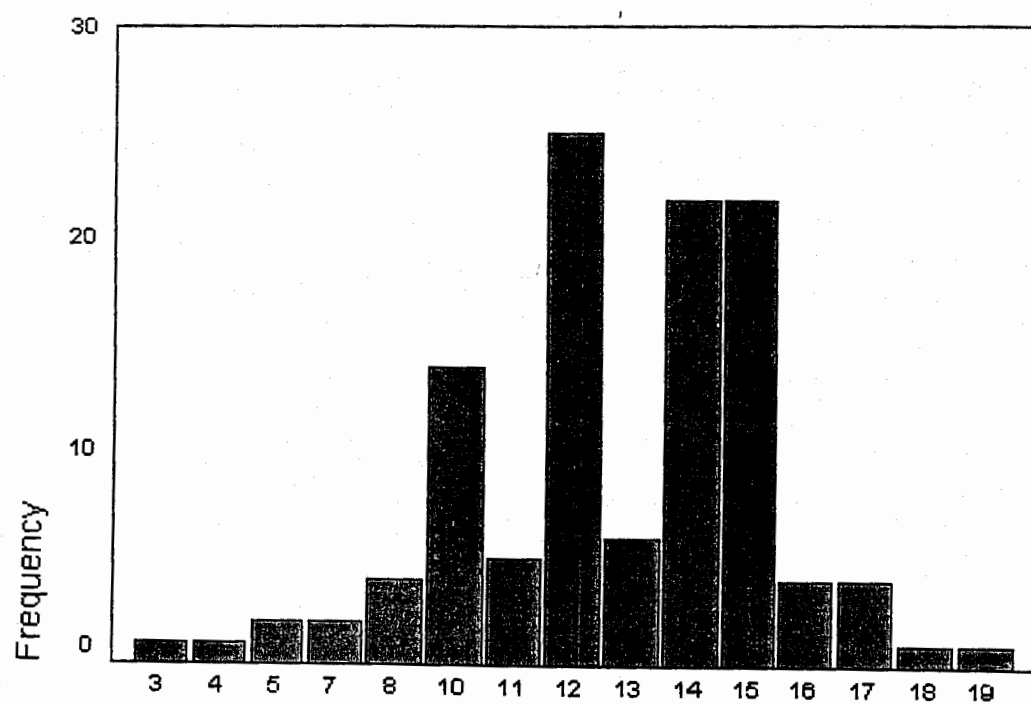
Resistance was low. Fewer than 10% had ever kept back work to ensure pay. One said she did this 'when I began outworking'. Only a fifth had ever tried to negotiate the price of the job, and in most cases the negotiation was carried out by the woman herself.

Pay was only delivered in 20% of the cases by the employer. It was more likely to be picked up by the husband than the wife, maybe to guarantee payment..

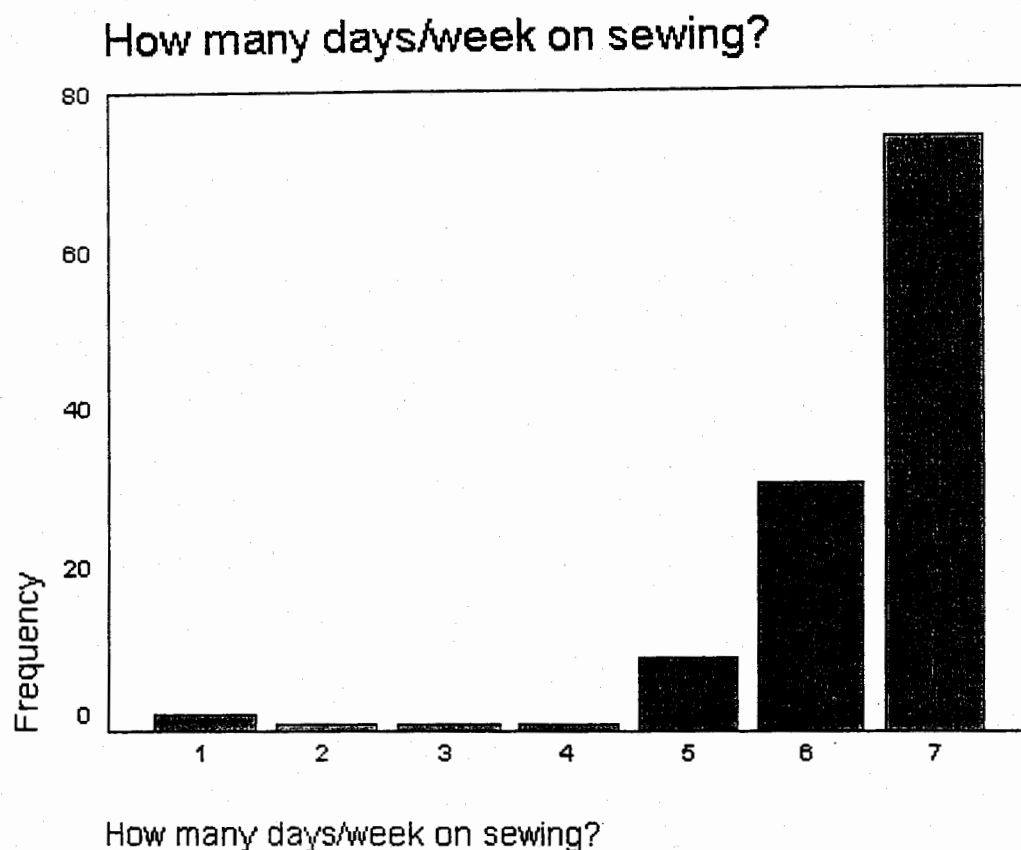
### *Hours*

The hours a day spent on sewing ranged between 3 and 19. The largest group – 25 – worked 10 hours, the second largest – 22 – were in the 14 and 15 hour bands. Three-quarters spent between 2 and 4 hours a day on household duties. 74 – 62% spent 7 days a week sewing, with a further 26% on 6 days.

How many hours/day on sewing, etc?



How many hours/day on sewing, etc?



They were asked how many hours a week they spent on themselves. The largest group – 27 – said none.

The next – 21 – said 2 hours. The next group consisted of students.

Almost all of them wanted regular work, ranging from 20 to 52 hours a week. There was an outlier of 98.

This person worked those hours and clearly relied on that money. The largest group – 30 – wanted 40 hours, the next – 24 – 30 and 11 wanted 50. It is interesting that two groups emerge again. One is prepared to work very long hours. The other wants part-time work to fit round family duties.

The work consumed their lives.

	Yes	No
Do you work in the school holidays	105	8
Do you work on Saturday	104	10
Do you work on Sunday	100	15
Do you work on public holidays	105	13

In about 70% of households, other family members helped:

	<i>regularly</i>	<i>sometimes</i>	<i>only when necessary</i>
Husband	47	9	8
Children	6	18	13
Mother	7	-	9
Father	5	-	5
Everyone at home	5	5	7
Neighbour	1	-	10
Friend	1	1	27
Other	2	2	10

In 90% of the cases, the work was delivered and picked up by the worker or partner, usually the worker.



### *Improvements*

The outworkers were asked the following question. How important is each of these to you for your life as an outworker to be improved?

		<i>Very important</i>
Factory owners to be made to follow law		113
Higher piece rates		109
Regular & prompt payment		109
Paid the same as factory workers		106
Guaranteed regular hours each week		105
Superannuation paid by employer		97
Paid public holidays		97
Paid sick leave	97	
Workcover paid by employer		94
Understanding my legal rights		93
Four weeks paid holiday each year		91
Retailers to sign outworker code	80	
Training to get other work in the future		74
English classes		70
Knowledge about legal rights at work		55
Flexible work – only when I want it		54

### *Policy implications of the preliminary set of findings*

This empirical study gives weight and substance to the claims of the TCFUA and outworker groups who have reported that these workers are among the most disadvantaged in the Australian labour market. The preliminary findings demonstrate unequivocally that outworkers in the clothing industry do not own a business. These are low-income earners. Because they are not classified as 'employees', they fall outside the award system and are particularly vulnerable to exploitation. An outstanding characteristic of this investigation was the fear of the outworkers. Even though their wages are so low and their hours of work so long, they were frightened that they would lose their job if they talked about it. Many more were

contacted but refused to talk.

The clear policy implication from these findings is that state and federal governments should intervene to ensure that outworkers will be covered by awards and legislation in state and federal jurisdictions.

Moreover, Australian women consumers should have deep concerns about the female 'sweated' labour that makes their clothes.



Workers rated a range of issues as 'very important' including:

- 95% - factory owners be made to follow the law.
- 92% - higher piece rates.
- 92% - regular and prompt payment for their work.
- 88% - guaranteed regular hours of work each week.
- 82% - employer pay superannuation.
- 82% - receive paid public holidays and paid sick leave.
- 79% - Workcover paid by the employer.
- 67% - retailers join the homeworkers' code of practice.
- 77% - receive 4 weeks paid annual leave.
- 78% - learn and understand about their legal rights.

### **Policy implications of the preliminary set of findings**

This is novel Australian research in a difficult area. It requires painstaking, careful work. It will provide evidence to the academic community of a group of workers who have remained largely 'invisible'.

This empirical study gives weight and substance to the claims of the TCFUA and outworker groups who have reported that these workers are among the most disadvantaged in the Australian labour market.

The preliminary findings demonstrate unequivocally that outworkers in the clothing industry do not own a business. These are low-income earners. Because they are not classified as 'employees', they fall outside the award system and are particularly vulnerable to exploitation. An outstanding characteristic of this investigation was the fear of the outworkers. Even though their wages are so low and their hours of work so long, they were frightened that they would lose their job if they talked about it. Many more were contacted but refused to talk.

The clear policy implication from these findings is that state and federal governments should intervene to ensure that outworkers will be covered by awards and legislation in state and federal jurisdictions.

The Australian federal and state governments, the union movement and the community at large should not ignore these findings.

In particular, Australian women should have deep concerns about female 'sweated' labour that makes their clothes.

\* All percentages refer to the number who answered the question. Because this was an administered survey, there were few missing cases.

## Summary of research findings "Home Sweat Home"

The report "Home Sweat Home" provides the preliminary findings of a 3 year project that commenced in 1998. The project is being directed by Dr Christina Cregan, Senior Lecturer in the Department of Management at Melbourne University.

Dr Cregan approached the Textile, Clothing & Footwear Union of Australia. She wanted to make direct links with outworkers so the latter could be trained as interviewers in the project.

8 outworkers contacted another 111 outworkers. The sample of 119 took part in an intensive 2-stage study that involved an administered questionnaire and open-ended discussion. Each interview lasted about 3 hours. The investigation was conducted in Vietnamese or English, as appropriate, and involved Vietnamese, Cambodian and Australian outworkers. 115 of the outworkers were female. The project was supervised by Dr Cregan and involved strict academic methods of enquiry, following ethical guidelines and involving translation and back-translation..

Part one questionnaire findings are now released. The following are key points from the preliminary results.

- Outworkers reported earning an average hourly rate of pay of \$3.60.
- The highest rate was \$10.00 - one individual. Lowest rates were less than 50 cents.
- Three-quarters said they had experience of wages not being paid on time, nearly half (46%) of unpaid wages.
- The vast majority -89% - said the family could not manage without their wages.
- The average number of hours worked per day was more than 12 hours.
- About three-quarters (74%) reported working in the range of 12-to 19 hours a day.
- Well over half (62%) reported working 7 days per week with a further 26% working 6 days per week. Only a small minority (12%) worked less than this.
- About two thirds of outworkers (65%) said they did not like their work. Most of these were resigned to working because "I just have to do it". The next largest group, 22%, stated "I neither like it nor dislike it" and the smallest group, 13%, said they liked their work.
- The main reasons that were given for doing this work was that they could not get a job outside the home (70%) and that their English was not good enough to get other work (63%).
- About two-thirds (68%) % reported relying on other family members to help. In 54% of cases, this was the husband/partner. In 31% of cases, the children assisted. Sometimes, neighbours and friends helped.
- The vast majority reported that they worked routinely during the school holidays (93%), on Saturdays (91%), Sundays (87%) and on public holidays (89%).

**Kathryn Fawcett**

**From:** Kathryn Fawcett  
**Sent:** Friday, 22 July 2005 5:00 PM  
**To:** 'Michael@aunde.com.au'; 'melissav@aunde.com.au'  
**Subject:** Final Memorandum

Dear Mike/Melissa

Please find attached final version of Memorandum of Agreement 2005.

We will respond re the attachment shortly.

Kind regards



Final Memorandum  
of Agreement ...

Kath Fawcett

Kathryn Fawcett  
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TCFUA  
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# **ATTACHMENT 6**

**ETHICAL CLOTHING TRADES COUNCIL –  
OUTWORKERS LAWFUL ENTITLEMENTS  
COMPLIANCE REPORT**

**November 2004**



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## Executive Summary

The information contained in this report illustrates that outworkers are not currently receiving their lawful entitlements. The level of compliance of the clothing industry in relation to outworkers receiving their lawful entitlements remains extremely low and in many instances non-existent. Across the Victorian clothing industry, outworkers are systematically denied their lawful entitlements, very often to a level of extreme exploitation.

During September and October 2004, the Textile, Clothing and Footwear Union of Australia (Victoria Branch) inspected 151 companies and interviewed 18 outworkers and collected a number of relevant cases studies

On the basis of the company inspections and interviews conducted with outworkers, the key findings of this report are that:

In a vast majority of cases

- Outworkers are not receiving award rates of pay;
- Outworkers are not receiving award entitlements such as annual leave, long service leave, overtime, public holidays ;
- Outworkers are being forced into sham contractor and company arrangements as a systematic method of employers avoiding legal obligations to employees;
- Outworkers are not receiving superannuation;
- Outworkers are not being identified as employees for purposes of WorkCover;
- Companies are not keeping transparent and correct work records;
- Companies who give out work are not registered with the Board of Reference.

Only one company was found to be fully compliant with their legal obligations to outworkers. The highest level of non-compliance with the lawful entitlements of outworkers was found in companies that were neither signatories to the Homeworkers Code of Practice nor respondents to the *Clothing Trades Award 1999*.

While no particular section of the industry was completely compliant with obligations to outworkers lawful entitlements, slightly higher levels of compliance was found within companies that were respondents to the *Clothing Trades Award 1999*. Within a context of virtually universal non-compliance, the highest levels of compliance was found within companies that made for companies that had been prosecuted by the TCFUA for breaches to the *Clothing Trades Award 1999* and/or were signatories to the Homeworkers Code of Practice. Being a respondent to the *Clothing Trades Award 1999* has not been found to guarantee compliance with the legal obligations of outworkers.

Based on the extensive level of non-compliance in the industry with obligations to ensure outworkers receive their lawful entitlements it is recommended that:

### **Recommendation 1**

The Minister makes a mandatory Code of Practice for the purpose of ensuring that outworkers receive their lawful entitlements in accordance with Division 2 of the Outworkers Improved Protection Act 2003

### **Recommendation 2**

The *Outworkers (Improved Protection) Act 2003* is amended to remove any ambiguity or varied conditions of employment created by the *Federal Workplace Relations Act Part XVI*

(*Contract Outworkers in Victoria in the TCF industry*) and the failure to enact the Federal Award Uniform Systems Bill to

- give full effect to the deeming provisions of the Act to ensure that whether classified as an independent contractor or outworker the worker is entitled to identical terms and conditions of employment, has the capacity to recover money and that the same obligations of transparency and record keeping apply to all companies giving work out.
- include within the scope of "relevant industrial legislation" in *Part 2, Section 5 Definitions the Victorian Clothing Trades Victoria Common Rule Award 2005*
- include in *Part 2 Division 1 – Outworkers as Employees Section 4(2) the Clothing Trades Victoria Common Rule Award 2005*
- expand the capacity of Information Services Officers to inspect and enforce compliance.

### **Recommendation 3**

WorkSafe Victoria target outworkers in the clothing industry in Victoria for priority prevention activity including implementing a comprehensive compliance strategy which focuses on information and education, incentives, enforcement, investigations, prosecutions and penalties.

### **Recommendation 4**

The Victorian State Government implement a comprehensive outworker strategy as a new policy initiative to support and increase the efficacy of the *Outworkers (Improved Protection) Act 2003* and the *Clothing Trades Victorian Common Rule Award 2005*. Such a strategy to include

- a whole of government approach to addressing the needs of Victorian Outworkers
- an outworker vocational education and training program
- a community and consumer education campaign
- an inspection, compliance and enforcement program
- promotion and development of the Homeworkers Code of Practice
- education of outworkers regarding their rights and employers regarding their responsibilities in relation to outworkers entitlements and employer obligations
- the signing and implementation of the Victorian Government TCF Procurement Code to ensure Government purchasing of TCF products is consistent with the objectives of the strategy
- sufficient budgetary resources to implement the above strategy including funds being made available to support the strategy activities of relevant State Government Departments, the TCFUA, Employer Organisations, FairWear and the Homeworkers Code of Practice Committee.

# 1 Introduction

An outworker, as defined in the *Outworkers (Improved Protection) Act 2003*, is a person engaged, for someone else's business, in or about a private residence or other premises that are not necessarily business or commercial premises, to perform clothing work.

Over the last decade there has been a growing awareness outside of the clothing industry that outworkers are subject to often extreme levels of exploitation. Outwork is not an exception in the forms of employment and production within the clothing industry in Australia; the industry is structured around it. A large proportion of clothing garments that are made in Australia are made by people who are paid extremely low wages in poor and undesirable conditions.

A high proportion of outwork is performed by migrant women between the ages of 25 to 35, who have young children at home<sup>\*</sup>. They are frequently new immigrants with poor English skills and low job opportunities. Elderly members of families and children commonly assist with ancillary tasks<sup>†</sup>.

Over the past ten years there have been a number of State and Federal Government inquiries and reports concerning the conditions under which outwork is performed. These reports and investigations include first-hand evidence from outworkers as well as submissions from industry groups, unions, and community organisations that advocate on behalf of outworkers. These reports have consistently found that outworkers receive payment and work conditions which are significantly inferior to their statutory and award entitlements.

This report contains information relating to the current state of employer compliance with outworker entitlements in the clothing industry in Victoria. Representatives from the Textile, Clothing and Footwear Union of Australia (Victoria Branch) undertook a process of inspecting 151 companies and interviewing outworkers in order to gather information on the current state of compliance and to evaluate action taken by the clothing industry [whether voluntary or not] to improve compliance with obligations to ensure that outworkers receive their lawful entitlements.

The information contained in this report illustrates that outworkers are not currently receiving their lawful entitlements. The level of compliance of the clothing industry in relation to outworkers receiving their lawful entitlements remains extremely low and in many instances non-existent.

As early as 1987, then Deputy President Riordan of the Australian Industrial Relations Commission in discussing the issue of compliance found that: "The evidence in this case of breaches and blatant evasion of the relevant award provisions, with the consequential unfair exploitation of the persons concerned, demands that the strongest possible protection be given to ensure compliance with the award conditions. The long history outlined herein indicates that unless a specific obligation is placed on respondents not to

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<sup>\*</sup> Senate Economics Reference Committee (December 1996), *Outworkers in the Garment Industry*, AGPS, Commonwealth of Australia, p xi)

<sup>†</sup> Senate Economics Reference Committee (December 1996), *Outworkers in the Garment Industry*, AGPS, Commonwealth of Australia, pi -ii & paragraph 2.69)

engage in practices which encourage the avoidance or evasion of the award provisions the award, is likely to be ignored<sup>+</sup>."

The information gathered demonstrated that the highest levels of compliance of employers ensuring outworker receive their lawful entitlements was most likely in companies that were signatories to the Homeworkers Code of Practice, followed in general by companies that were respondents to the *Clothing Trades Award 1999*, whilst the lowest levels of compliance was amongst non-respondent companies.

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<sup>+</sup> Riordan (1987) Australian Conciliation and Arbitration Commission, *Clothing Trades Award 1982 in relation to contract work* C No. 4546 of 1985

## 2 Background

The rise in outworkers, particularly in the clothing industry, has accompanied the restructuring of the manufacturing industry over the past ten to fifteen years. The clothing industry in Australia is structured in a complicated chain of out-sourced production that often ends with grossly underpaid workers who subsidise the profits of others in the production chain. The outworkers, their families and the broader community bear the costs of those exploitative employment conditions.

### 2.1 The Clothing Industry

The Textiles, Clothing and Footwear (TCF) industry is one of Victoria's largest manufacturing sectors, providing around 33,000 jobs (in the formal sector, with large number varying from 20,000 and 140,000 people in the informal sector), and spending AUD\$1,000 million annually on wages and salaries<sup>§</sup>.

Over the past two decades the TCF industry in Australia has undergone significant transformation as changes to national industry policy have occurred and Australia has embraced free trade policies. During this period, TCF firms working in Australia have gone out of business, reduced staff, shifted costs and faced constant pressure to improve their productivity, efficiency and practices in the face of ongoing reductions of tariffs and quotas and increased competition from imported products from developing countries.

These changes to the TCF industry have resulted in considerable restructuring of operations, most notably:

- high volume, routine manufacturing for the most part has moved offshore;
- the manufacture of women's fashion and other areas such as school uniforms has remained in Australia;
- cost-shifting has ultimately led to the growth in sub-contracting and clothing outwork both nationally and in VIC;
- Over the six year period May 1997 to May 2003 total TCF employment fell from 103,000 to 68,000 with Victoria experiencing half of this decline. Over the same period Victorian TCF employment as a proportion of total manufacturing employment in Victoria declined by more than a third. (ABS, Productivity Commission Inquiry Report, July 2003)
- a significant move from factory-based employment to the use of a home-based workforce performed by a large pool of displaced factory clothing workers\*\*.

### 2.2 The Increase in Retail Influence on Production

A Federal Industry Commission report in 1997 (Vol. 2 B8-9) noted that contracting out of design, assembly and finishing of clothing was more prevalent, rather than complete garment manufacture taking place in one single establishment. In the same report the Industry Commission noted evidence of a further trend during the 1990s which became known as the 'oligopolisation' of the retail market. With the larger retailers dominating through industry mergers and takeovers, in what was seen as a turnaround, the retail

<sup>§</sup> Ethical Clothing Trades Council of Victoria (2004), *Quarterly Report for the Quarter Ending 1 May 2004*, p6

\*\* NSW Ethical Clothing Trades Extended Responsibility Scheme (October 2004) *Regulatory Impact Statement*, p5

sector began to dictate to the fashion houses and manufacturers/makers what would be made and what price it would be made at<sup>††</sup>.

## 2.3 The Clothing Supply Chain Today

Today the clothing industry and the organisation of a majority of out-sourced local production is characterised by a complex supply chain that often distances principal contractors-retailers and/or fashion houses from remote and isolated outworkers. One or several intermediaries may operate between the principals and the workers, connected via a series of contractual relationships. However it is also not unknown for outworkers to be engaged directly by retail fashion houses. Because the chain of garment production is so long and complex, it has become easy for responsibility to be passed off from one element to another along the chain. Of particular significance is the dominance of highly mobile but less visible 'middlemen' who source production through outworkers for manufacturers, wholesalers and fashion houses. Outworkers appear at all levels of the industry, engaged by retailers, wholesalers, manufacturers or subcontractors<sup>‡‡</sup>.

## 2.4 Outworkers in the Clothing Industry

Clothing outworkers can be defined as workers who perform work for a maker, subcontractor, fashion house or retailer in a domestic dwelling<sup>§§</sup>. Most outwork is undertaken by migrant women aged between twenty-five and thirty-five years, who have young children. Many have poor English language skills and find it difficult to obtain other forms of work<sup>\*\*\*</sup>. The ethnic origins of outworkers are predominantly Vietnamese and Chinese. Smaller ethnic groups include people of Arabic, Filipino, Greek, Khmer, Korean, Laotian, Portuguese, Spanish and Turkish people.

The move away from factory based clothing manufacture to outwork has led to a dissipation of compliance with awards for pay and conditions of outworkers. Some manufacturers and fashion houses use the sub-contracting structure of the supply chain to:

- reduce wage costs, given they are employed by contractors (intermediaries) and therefore largely invisible to compliance authorities and the Union;
- avoid on-costs such as penalty rates, superannuation, workers compensation insurance and payroll tax;
- circumvent costs of plant and equipment, transferring costs to outworkers;
- artificially reduce labour costs, which are in some cases compensated for by welfare payments;
- obtain quick turn around times which often lead to poor work practices.

Such arrangements give outwork-based entities an unfair advantage over factory-based enterprises that are more likely to provide award rates and conditions. Clothing outworkers face problems underpinned by social and cultural factors, such as:

- social isolation – working from home or in hidden workshops;
- predominantly women from South East Asian countries with poor English literacy and language skills;

<sup>††</sup> NSW Ethical Clothing Trades Extended Responsibility Scheme (October 2004) *Regulatory Impact Statement*, p7

<sup>‡‡</sup> NSW Ethical Clothing Trades Extended Responsibility Scheme (October 2004) *Regulatory Impact Statement*, p8

<sup>§§</sup> NSW Department of Industrial Relations Issues Paper (December 1999) *Behind the Label – The NSW Government Clothing Outwork Strategy*, p.1.

<sup>\*\*\*</sup> Victorian Industrial Relations Taskforce (2000) *Independent Report of the Victorian Industrial Relations Taskforce*, p.133.



- little access or knowledge of services available to them;
- little self-confidence; and
- fear and/or cultural resistance to complaining about their circumstances<sup>+++</sup>.

The conditions under which clothing outwork is performed and the impact that poor wages and unsafe and unsustainable employment conditions have on outworkers and their families has been the subject of numerous investigations and inquiries by both state and federal governments and industrial tribunals<sup>+++</sup>. Overwhelmingly evidence reported from these investigations as well as numerous interactions with outworkers, their families, and communities have consistently verified the unacceptable employment conditions faced by clothing outworkers.

These reports have found that outworkers within the clothing industry often receive payment and work under conditions which are inferior to their statutory and award entitlements. Conditions are characterised by allegations of:

- low piece-rates, which translate to low hourly wage rates which are contrary to industry award standards;
- late payment, part payment or non payment of wages;
- unreasonable and improper rejection of work by contractors/employers;
- lack of basic industrial entitlements such as paid annual leave;
- long working hours without appropriate penalty rates;
- impossible or unreasonable deadlines for completion of work;
- substandard working environments affecting occupational health and safety; and
- strain associated with combining work and family responsibilities.

Clothing outworkers constitute one of the most marginalised sections of the Australian workforce. A study was undertaken of Victorian outworkers in 2001 by Dr Christian Cregan<sup>sss</sup> that included the following key findings;

- outworkers were paid an average of \$3.60 per hour and as little as 50 cents per hour
- 88% advised that they relied on these wages for essential household expenses
- 95% did not get holiday leave, sick leave or public holiday pay
- 75% were not able to get a steady supply of work
- 74% did not have their wages paid on time
- 52% had experienced non-payment of wages for work performed

The reports have found the following unique circumstances in the clothing industry in dealing with attempts to regulate the above problems:

- lack of compliance with minimum legal employment standards by many employers of home-based clothing workers;
- the hidden nature of outwork;
- the ineffectiveness of existing methods of regulation to address this issue;
- the preponderance of vulnerable workers, particularly south-east Asian women, with poor English-language skills and education levels caught in the home-based

<sup>+++</sup> NSW Ethical Clothing Trades Extended Responsibility Scheme (October 2004) *Regulatory Impact Statement*, p8-9

<sup>+++</sup> The Senate Economics References Committee Inquiry (December 1996), *Outworkers in the Garment Industry*; Industry Commission (June 1997) *The Textiles, Clothing and Footwear Industries Volume 1 Report No. 59*, AGPS, Canberra; The Senate Economics References Committee (July 1998), *Outworkers in the Garment Industry Review Report*; the NSW Legislative Council Standing Committee on Law and Justice (1998), *Inquiry into Workplace Safety; Pay Equity Inquiry* (1998) New South Wales Industrial Relations Commission; *Allowability of outworker clauses in Clothing Trade Award 1982* (1999) 45 AILR 4-029; Family and Community Development Committee (2002), *Inquiry into the Conditions of Clothing Outworkers in Victoria*

<sup>sss</sup> Dr Christina Cregan (2001) *Home Sweat Home*, Melbourne University



clothing sector with adverse consequences to their income, health and well-being, and their families; and

- an industry focused on surviving through suppressed labour costs.

### 3 Identifying Outworker Entitlements

#### 3.1 Summary of Outworkers Lawful Entitlements

Outworkers' lawful entitlements in the clothing industry are prescribed by a range of legislative instruments including;

- *Clothing Trades Award 1999.*
- *Outworkers (Improved Protection) Act 2003*
- *Long Service Leave Act 1992*
- *Public Holiday Act 1993*
- *Occupational Health and Safety Act 1985*
- *Workplace Relations Act 1996*
- *Commonwealth Superannuation Guarantee legislation*

"Outworker" is defined to mean "a person engaged, for someone else's business, in or about a private residence or other premises that are not necessarily business or commercial premises, to perform clothing work" (*Outworker (Improved Protection) Act section 3*).

The phrase 'lawful entitlements' is defined to mean "the entitlements conferred on the outworker by law, including any entitlements conferred by or under relevant industrial legislation or any other legislation" (*Outworker (Improved Protection) Act section 3*).

The evaluation of action taken to improve compliance with obligations to ensure outworkers receive their lawful entitlements requires an identification of what those entitlements are. This section of the report attempts to identify, broadly, the sources of entitlements for outworkers.

First, it is important to note that the sources of the lawful entitlements of an outworker will vary, depending on

- whether the outworkers is considered to be an **employee** or an **independent contractor**;
- whether or not the person engaging the outworker is a **respondent** to the Clothing Trades Award 1999.

These two sets of factors can overlap, creating four distinct categories of outworker:

Outworkers engaged as employees by a non-respondent employer	Outworkers engaged as employees by respondent employers
Outworkers given work as independent contractors by a non-respondent person	Outworkers given work as independent contractors by a respondent person

It is a relevantly simple process to determine whether a person engaging an outworker is a respondent to the federal award. That person will be bound if they are a 'roped-in' party, named in the Schedule appended to the award, or if they are a member of one of the employer organisations party to the award, such as the Australian Industry Group.

These overlapping factors will become less complicated, in Victoria, as from January 2005. At that time, the *Clothing Trades Victorian Common Rule Award 2005* (AIRC print reference PR950670) will come into force, effectively binding all Victorian clothing industry employers to the terms of the *Clothing Trades Award 1999*, subject to the specific exemptions and provisions of the Common Rule Declaration.

In the meantime, this analysis will identify the range of sources for the lawful entitlements of outworkers for the period within 12 months of the coming into force of the *Outworkers (Improved Protection) Act 2003* – that is, the pre-Common Rule environment.

### **3.1.1 Outworkers engaged as employees by a non-respondent employer**

Outworkers engaged as employees by a non-respondent employer have entitlements arising under

- contracts of employment (where those contracts do not provide for terms and conditions less favourable than the entitlements arising under legislation or industrial instrument);
- the minimum wage order made under section 501 of the Workplace Relations Act 1996, namely, the Manufacturing Industry Sector Minimum Wage Order 1997 (AW789236);
- Schedule 1A of the Workplace Relations Act 1996 (Cth);
- Other general provisions of the Workplace Relations Act 1996 (including provisions relating to termination of employment, right of entry by union officials, anti-discrimination provisions, etc)
- Commonwealth superannuation guarantee legislation;
- *Public Holidays Act* (Vic)
- *Long Service Leave Act* (Vic)
- *Occupational Health and Safety Act* (Vic)
- *Equal Opportunity Act* (Vic)

This category will, effectively, cease to exist after the commencement of operation of the *Clothing Trades Victorian Common Rule Award 2005* in January 2005. Thereafter, the terms and conditions for this group will be effectively the same as those for outworkers engaged as employees by respondent employers.

### **3.1.2 Outworkers engaged as employees by respondent employers**

Outworkers engaged as employees by a respondent employer have entitlements arising under

- contracts of employment (where those contracts do not provide for terms and conditions less favourable than the entitlements arising under legislation or industrial instrument);
- the *Clothing Trades Award 1999*, and in particular the provisions at clause 47 within Part 9 of that Award
- General provisions of the *Workplace Relations Act 1996* (including provisions relating to termination of employment, right of entry by union officials, anti-discrimination provisions, etc)
- Commonwealth superannuation guarantee legislation;
- *Public Holidays Act* (Vic)
- *Long Service Leave Act* (Vic)
- *Occupational Health and Safety Act* (Vic)

- *Equal Opportunity Act (Vic)*

### **3.1.3 Outworkers given work as independent contractors by a non-respondent person**

Outworkers given work as independent contractors by a non-respondent person are entitled to

- the terms of whatever contractual arrangement is agreed between the parties; and
- the minimum rate of pay provided for by Subdivision B of Part XVI of the *Workplace Relations Act 1996* (see especially the definition of 'statutory amount' provided in section 541); and
- the benefits arising by operation of the *Outworker (Improved Protection) Act 2003*, namely, the extended operation of
  - *Public Holidays Act*
  - *Long Service Leave Act*
  - *Occupational Health and Safety Act*

This category will, effectively, cease to exist after the commencement of operation of the *Clothing Trades Victorian Common Rule Award 2005* in January 2005. Thereafter, the terms and conditions for this group will be effectively the same as those for outworkers engaged as independent contractors by respondent persons.

### **3.1.4 Outworkers given work as independent contractors by a respondent person**

Outworkers given work as independent contractors by a respondent person are entitled to

- the terms of whatever contractual arrangement is agreed between the parties; and
- the *Clothing Trades Award 1999*, and in particular the provisions at clause 46, which incorporate the minimum conditions set out in clause 47 within Part 9 of that Award; and
- the benefits arising by operation of the *Outworker (Improved Protection) Act 2003*, namely, the extended operation of
  - *Public Holidays Act*
  - *Long Service Leave Act*
  - *Occupational Health and Safety Act*

See **Appendix I** for Summary of Outworker Entitlements

### **3.1.5 The Clothing Trades Award 1999**

The *Clothing Trades Award 1999* provides the minimum rates of pay and working conditions for employees in the clothing industry. The award imposes legal rights and obligations on employers and employees which are legally enforceable.

The *Clothing Trades Award 1999 Part 9* provides for Outwork and Related Provisions. Part 9 contains unique clauses specific to outworkers in the industry and provides a minimum set of conditions regarding company obligations as well as outworker obligations and rights. Below is a brief summary of the content of those provisions.

#### **Outwork**

Requires a Respondent employer to:

- Make an application for registration before giving any work to outworkers (Clause 47.1).
- Enter into a written agreement with an outworker regarding the outworkers employment status, full time or part time before employing the outworker (Clause 47.3.1).
- Provide to outworkers work to be performed in ordinary working week and not require outworkers to work on Saturday, Sunday or a public holiday (Clause 47.13).
- Provide to the person performing the work each time work is given out, information in regard to their award entitlements in the form of schedule B of the Award (Clause 46.27).
- Maintain written work records and provide a copy of the work record with the work to the outworker performing the work (Clause 47.16).
- Not employ more than 10 outworkers without consent of the union or the board of reference (Clause 47.5).
- Provide to the TCFUA for inspection work records (Clause 47.16.4).

### **Contract Work**

Requires a Respondent employer to:

- Make an application for registration before giving out work and not give work to any other employer if they, in turn, are not registered (Clause 46.1.1 & 46.1.2).
- Maintain written records of all work given to respondents and non respondents and provide work records to respondents and non respondents (Clause 46.2.1).
- Maintain a list of all respondents to whom they give work (Clause 46.3.1a).
- Send a copy of this list to the AIR and the TCFUA on the last working day of May and November each year (Clause 46.3.1b).
- Do not enter into a contract or arrangement with a respondent or non respondent (who gives work to other people outside their premises) without a written agreement (Clause 46.4.2).
- The written agreement must state that any work performed by a person other than the respondent or non-respondent is carried out according to a written agreement (Clause 46.4.2a). The written agreement must specify matters set out in relation to work records in clause 46.2.3(a) to (l) and must provide for wages and conditions no less favourable than those provided for outworkers in Clause 47 (Clause 46.4.2c).
- Provide to the AIR and TCFUA, a list of respondents or non respondents that the employer has entered into contracts as referred to in clause 46.4.3(c) & (d). This list must be forwarded within seven days of the last working day of February, May, August and November each year (Clause 46.4.3).
- Observe the award (Clause 46.6).
- Provide information to persons who perform the work themselves, in regards to their award rights (Clause 46.7).
- Provide to the union for inspection, the employers work records this includes: wage book records, contract records, lists of respondents and non-respondents to whom you give work, lists of respondents and non respondents whom you have entered into written agreements with (Clause 46.2.5).

### **3.1.6 Outworkers (Improved Protection) Act 2003**

The *Outworkers (Improved Protection) Act 2003* covers all outworkers in the clothing industry in Victoria. The Act gives outworkers legal status as employees and provides for

the capacity to recover unpaid money up the contracting chain. The *Outworkers (Improved Protection) Act 2003* section 4 defines that;

### **Outworkers are employees for the purposes of certain laws**

- (1) For the purposes of the laws specified in sub-section (2)—
  - (a) an outworker is an employee;
  - (b) a person who engages an outworker is an employer;
  - (c) the contract between an outworker and a person who engages him or her is a contract of employment;
  - (d) the conditions on or under which an outworker performs work are conditions of employment;
  - (e) the relationship between an outworker and a person who engages him or her is an employment relationship.
- (2) The laws referred to in sub-section (1) are—
  - (a) this Act;
  - (b) the **Federal Awards (Uniform System) Act 2003**;
  - (c) the **Long Service Leave Act 1992**;
  - (d) the **Occupational Health and Safety Act 1985**;
  - (e) the **Public Holidays Act 1993**;
  - (f) regulations and other subordinate instruments (including common rule orders) made under an Act specified in paragraph (a), (b), (c), (d) or (e).

#### **3.1.7 Occupational Health and Safety Act 1985**

The Victorian WorkCover Authority is responsible for the Victorian workplace safety system including enforcing the *Occupational Health and Safety Act 1985*. WorkSafe Victoria the VWA's occupational health and safety arm takes the lead role in the promotion and enforcement of health and safety in Victorian workplaces. WorkSafe target their activities and identify situation and hazards for priority prevention activity based on reported injuries and hazards. Given the nature of outwork, the absence of a traditional workplace and the relative position of outworkers in the production chain, reported injury and hazard rates in the clothing industry are inaccurate and do not reflect realities faced by workers.

#### **3.1.8 Homeworkers Code of Practice**

The Homeworkers Code of Practice (the Code) is a voluntary agreement entered into by retailers, manufacturers and unions. The Code was established in 1997 following negotiations between the industry groups and the TCFUA. The Code is designed to complement the relevant awards and the make the contracting chain transparent and enable outworkers to receive their lawful entitlements. It involves an accreditation process for manufacturers, and agreement by retailers to use suppliers that comply with employment laws and minimum award conditions and a process to identify and resolve unethical employment practices. It also includes a label system for consumers to identify ethically produced clothing – the No Sweat Shop Label. The code has three main parts: retailers sign Part One, manufacturers become accredited to Part Two, allowing them to

sew the No Sweat Shop Label into their clothes and Sports and Corporate Wear Companies sign Part Three.

### 3.2 *Outworkers and work relationships*

The question as to whether an outworker is an employee or an independent contractor has significant impact on companies legal obligations and the lawful entitlements of outworkers and independent contractors. Under federal law, if an outworker is an employee, they are covered by the terms of a federal award or agreement if the employer is a respondent to or covered by, the award or agreement. Under most awards, if the person is an independent contractor they cannot be covered by an industrial instrument, and may only apply to the Federal Court for a review of an unfair contract. In some instances, however, federal award coverage has been extended to cover outworkers and individual contractors. For instance, the federal *Clothing Trades Award 1999* stipulates that no outworker can be engaged for less than what is set out in the award.

At common law, there have been a range of tests developed for determining, on a case-by-case basis, whether a particular 'work relationship' is an *employment* relationship or an *independent contractor* relationship. These tests have been formulated in a range of different ways in different cases.

For the purposes of the *Outworkers (Improved Protection) Act 2003*, this distinction was intended to be overridden by a 'deeming' provision – section 4. This provision establishes outworkers as employees. However this does not mean that the employee/contractor distinction is irrelevant, because the *Outworkers (Improved Protection) Act 2003* in its current form provides for only a very limited range of entitlements, such as long service leave, public holidays and OH&S. The issue has been further muddled by the 2003 amendments to the *Federal Workplace Relations Act Part XVI (Contract Outworkers in Victoria in the TCF industry)* and the failure to enact the Federal Award Uniform Systems Bill. Consequently the policy objective of deeming outworkers as employees in Victoria has been significantly undermined.

## 4 Investigations and Inspections

### 4.1 Interviews with outworkers

The TCFUA conducted interviews with outworkers during October 18<sup>th</sup> – 26<sup>th</sup> 2004. Each interview lasted between 30mins and 1 hour. The interviews were conducted in Vietnamese or English, as appropriate and involved Vietnamese, Chinese, Greek and Australian-born outworkers. 18 outworkers were interviewed and of those interviewed the majority were women. Outworkers who participated in the interviews were selected randomly from the pool of outworkers who have participated in English language classes in the last two years. Interviews were conducted anonymously to protect the outworkers' identities and the data from the interviews was compiled by the Department of Innovation, Industry and Regional Development. The purpose of the interviews was to ascertain whether outworkers are receiving their lawful entitlements in the clothing industry. See **Appendix II** for the questionnaire sheet used during the interviews.

The TCFUA also collected an additional seven statements and case studies from outworkers and in-house factory workers relating to outworker entitlements and compliance in the clothing industry. These were self-generated by workers who became aware of the compliance project as a result of the union's inspections and interview process. They included outworkers independently contacting the union with reports of exploitative work practices and also in-house factory workers contacting the union with information relating to outwork after inspections had been conducted at their workplaces.

### 4.2 Inspections of workplaces.

The TCFUA was contracted to complete 150 inspections of workplaces between September 2004 and October 2004. During the period of September 8<sup>th</sup> and October 6<sup>th</sup> 2004, the TCFUA conducted 151 workplace inspections in the clothing manufacturing industry. The focus of the inspections was to determine whether outworkers are receiving their lawful entitlements in the clothing industry.

Permit holders as outlined in the Workplace Relations Act section 285 exercised their powers under section 285(2) to investigate suspected breaches of the *Clothing Trades Award 1999* and the *Workplace Relations Act 1996*. The inspections were all conducted with the same methodology and focus.

The selection of workplaces included in the inspections was determined by a number of factors. These included a combination of respondent and non-respondent companies to the *Clothing Trades Award 1999*, company size and geographic location. Companies listed on the Board of Registration quarterly lists were randomly selected. Companies involved in contracting chains of companies who had been previously prosecuted by the TCFUA and or who were accredited with the Homeworkers Code of Practice were also included in the inspections. Companies were also selected from information referred by the Department of Innovation, Industry and Regional Development.

Respondent and non respondent companies to the *Clothing Trades Award 1999* have different obligations and legal requirements in relation to outworkers' lawful entitlements. The variation in companies' obligations in relation to outworker entitlements was addressed in the inspection process by the use of different inspection sheets for the two



different categories of companies. See **Appendix III** respondent inspection sheet and **Appendix IV** non-respondent inspection sheet.

The companies were telephoned prior to inspection to confirm company name, address and contact details. As outlined in the *Workplace Relations Act 1996 section 285D (2)* all companies were sent a letter of notification with the required 24 hours notice with the inspection date, name of permit holders and time that inspection would take place. Letters were faxed and where no fax was available letters were sent via express post.

In the case of respondent companies an additional letter was faxed prior to the notice of inspection, outlining obligations under the award. Notification letters included the union office telephone number for companies to contact the union, should they require further information about the inspection. All queries were responded to either by telephone or in written communication. Considerable effort was made to explain the inspection process and relevant legislative requirements, and to reschedule where appropriate the inspection times. Information collected during the inspections was gathered in a proper and transparent manner as prescribed in the *Workplace Relations Act 1996*.

The table below is a summary of information from the company inspections.

**Table 1: Summary of information from company inspections**

Category	No.	%
Companies included in the project	151	
Inspections conducted of workplaces	125	83%*
No access to premises / records granted	26	17%*
Respondent companies included in the project	84	56%*
Non-respondent companies included in the project	67	44%*
Respondent companies inspected	76	90%**
Non-respondent companies inspected	49	73%***
Companies that give work out to be performed by someone else	92	73%

\* % of total companies included in the project

\*\* % of respondent companies included in the project

\*\*\* % of non-respondent companies included in the project

### *4.3 Level of Obstruction experienced in exercising Part IX inspection powers*

In the process of conducting inspections of workplaces, union representatives experienced a significant level of obstruction in exercising inspection powers by company representatives attempting to conceal non-compliance or even to conceal the existence of the employment of outworkers.

As part of the inspections process, union representatives conducted interviews with company representatives. Statements made by company representatives during these interviews were subject to verification through comparison of such statements to documents and records that were created and supplied by company representatives. The absence of other processes of independent verification of the statements made by company representatives significantly reduced the ability of the inspections process to reveal instances of employers making false statements intended to conceal non-compliance with their legal obligations to outworkers. This absence combined with the short timeframe of the project also reduced the ability of the inspections process to reveal instances of employers distorting or falsifying records provided to union representatives.

In the case of some companies inspected the apparent level of obstruction of the inspection process was actually incidental to a substantial level of claimed ignorance on the part of employers concerning both their obligations to provide legal entitlements to outworkers and to keep and maintain accurate records of their employment and contracting practices. However it was apparent that in many cases there was a clear intent to obstruct the inspection process to prevent union representatives from obtaining information or to distort or falsify the information provided.

Many employers attempted to conceal their failure to provide outworkers with their lawful entitlements by simply claiming that they did not employ any: outworkers were falsely classified as contractors, reflecting an understanding on the part of employers that if successful such a classification would allow them to avoid or reduce their legal obligations to outworkers. By falsely classifying outworkers as contractors, employers attempted to justify their failure to provide outworkers with their lawful entitlements and to maintain employment records with the claim that they were under no legal obligation to do so. These attempts to falsely classify outworkers as contractors reflected an intent to obstruct the inspection process in order to obscure and conceal the systematic methods used by employers seeking to avoid their legal obligations to outworkers.

Union representatives were unable to gain access to 17% of the workplaces included in the inspections. There were a number of reasons why union representatives were unable to obtain such access. In a small number of cases there were legitimate reasons, such as health problems and prior appointments that made it impossible for company representatives to comply with the notice of inspection. However, during the course of the inspection process it became clear that in an overwhelming majority of cases the denial of access was a deliberate strategy by employers to obstruct union representatives conducting the inspections. This strategy included employers locking up workplaces in response to the expected arrival of union representatives, as well as company representatives being said to be 'unavailable' to meet with union representatives, resulting in the inability of union representatives to conduct inspections.

The notice of inspection letter that companies received prior to the inspections occurring outlined which records and documents companies were required to produce. These included wage and time records and records relating to outwork. In a majority of instances

company representatives failed to produce all or some of the required documents, stating that they existed but were not on the premises. In a high proportion of such instances company representatives stated that such documents were 'at the accountants'. Even though the documents in question were often of a nature that would not have been required by accountants for example documents such as specification sheets detailing garment construction. It was clear that in many cases the records did not exist at all and where they did that companies did not want them to be inspected. Such documents if produced would have enabled union representatives to verify statements made by company representatives and to determine levels of compliance. In instances where company representatives stated that records existed but were not on the premises, they were given 48 hours to provide them to the TCFUA. Of those that were given an extension of time to produce the required documents only a small number of companies actually did.

In a number of instances the documents and records produced by company representatives had clearly been altered and/or falsely created for the inspection. Examples of this included records that had been clearly printed recently on clean white paper that were supposedly from four years ago and invoice books with page ripped out. A large number of employers followed the practice of keeping entirely separate invoice books for each outworker. This made it easy for employers to choose which records they wished to provide and hence which outworkers they wished to acknowledge they employed. This became apparent in several instances when comparisons were made between work records provided and records of payments recorded in cheque books.

## **5 Level of compliance with the legislative and other entitlements listed in Section 3**

The vast majority of outworkers in the clothing industry do not receive their lawful entitlements. Of the 151 companies included in the inspection process 73% give out work to be performed by someone else. Of these companies the overwhelming majority do not ensure or see it as their responsibility to ensure that outworkers receive their lawful entitlements. Information collected from both interviews with outworkers and from company inspections illustrates industry-wide non-compliance.

Only one company was found to be fully compliant with their legal obligations to outworkers, and there were significant differences in the level and form of non-compliance found in all of the other companies inspected. To determine the level of compliance of companies with legal obligations to outworkers it is useful to differentiate between different forms of non-compliance. Whereas some forms of non-compliance reflect an intent to impose higher levels of exploitation of outworkers than would be possible if companies were compliant with their legal obligations, other forms of non-compliance simply reflect inadequate understanding of these legal obligations.

Information collated by the TCFUA from both the interviews with outworkers and inspections of companies was consistent with the findings previous investigations and reports.

### **Key findings include;**

In a vast majority of cases

- Outworkers are not receiving award rates of pay;
- Outworkers are not receiving award entitlements such as annual leave, long service leave, overtime, public holidays ;
- Outworkers are being forced into sham contractor and company arrangements as a systematic method of employers avoiding legal obligations to employees;
- Outworkers are not receiving superannuation;
- Outworkers are not being identified as employees for purposes of WorkCover;
- Companies are not keeping transparent and correct work records;
- Companies who give out work are not registered with the Board of Reference.

Of the outworkers interviewed 67% stated that they are not happy with their working arrangements. 72% do not work regular hours, with their weekly hours of work ranging from 15 hours to 85 hours per week. 44% are not given enough time to complete the order. 72% are not paid on time and 73% are not paid regularly. 89% of outworkers are paid less than the award rate of pay.

Evidence from both the companies inspected and outworkers interviewed indicates that outworkers are being forced into sham contractor and company arrangements as a systematic method by which employers sought to avoid their legal obligations to employees. Reports from outworkers include being forced to obtain an ABN or ACN number and to supply invoices for work performed, so as to continue receiving work, or even as requirement for the receipt of pay for work already performed. 39% stated that they have been told to set up as self-employed contractors in order to receive work. 83% of outworkers interviewed were expected by employing companies to have an ABN, and 50% were expected to have a company name or licence. 22% had been made to sign

agreements stating they were contractors, despite clearly falling into the category of outworkers. 83% were expected to pay their own income tax. Company representatives consistently told union representatives during inspections that they did not give work out to any outworkers, instead classifying them as contractors or sub-contractors.

### **5.1 Respondent companies**

Of the 151 companies included in the inspection process 84 were respondent to the *Clothing Trades Award 1999*. Of the 84 respondent companies included in the inspection process 61 gave work out to be performed by someone else. In general respondent companies were more aware of the existence of legal obligations to outworkers as compared to non-respondent companies. Despite a higher level of knowledge of the lawful entitlements of outworkers, respondent companies still consistently failed to comply with such obligations.

It was clear from the inspection of respondent companies that are signatories to the Homeworkers Code of Practice and/or have been prosecuted by the TCFUA for breaches of the *Clothing Trades Award 1999* that there is a higher level of compliance with the legal obligations to outworkers in these companies and the companies who make for them, than is the case with companies which have neither signed on to the Code nor have been prosecuted. Investigation of companies involved in the contracting chains of companies which have signed on to the code or have been prosecuted demonstrated that such companies were far more likely to have knowledge of outworkers lawful entitlements and of their legal obligations. In the majority of cases they received such information from the principle companies, strongly suggesting that prosecution and/or signing on to the Code has a positive impact on compliance beyond the principle company involved, even if the actual compliance levels of both the principle companies and those in its contracting chains remain low.

#### **5.1.1 Registrations with the Board Of Reference**

Companies who give work out are required to be registered with the Board Of Reference, which was established by the Australian Industrial Relations Commission in accordance with the *Clothing Trades Award 1999*. Of the 61 companies who gave work out, only 28 were registered with the Board of Reference. As a result 54% were not registered to give work out despite doing so on a regular basis.

#### **5.1.2 Wages, overtime, public holidays**

89% of companies inspected did not appear to be paying correct wages or to be calculating wages on an hourly rate as per the *Clothing Trades Award 1999*. Only 4 of the companies inspected included on work records the sewing time allowed for each garment, which is crucial to determine hourly rates as opposed to piece rates of pay. An overwhelming majority of companies pay outworkers by piece rate. This was confirmed by information supplied by outworkers in the interview process. 78% stated that they are paid by the piece. The average amount that outworkers reported that they receive per hour is \$5.70. From both the company inspections and information from interviews with outworkers it is clear that outworkers are not receiving award rates of pay. 89% of outworkers interviews stated that they are not paid a set hourly rate and 72% do not receive written pay records. 78% are working more than 38 hours per week and none receive overtime entitlements for this work. 83% work on weekends and do not receive weekend penalty rates. 78% work on public holidays without additional penalty rates.

### 5.1.3 Leave entitlements – annual and long service

Of the companies inspected 5 stated that they paid outworkers annual leave and long service leave to outworkers. 83% of outworkers interviewed stated that they do not receive paid annual leave or holiday time.

### 5.1.4 Superannuation

Only 6 companies stated that they paid superannuation for outworkers. 78% of outworkers reported that employers do not pay superannuation.

### 5.1.5 WorkCover

Of the outworkers interviewed 67% stated that they were not covered by employers WorkCover.

### 5.1.6 Written contracts and agreements with outworkers

Only 2 companies responded that they had written contracts and agreements with outworkers as per obligations outlined in the Clothing Trades Award 1999. As discussed in previous sections of this report this is as a result of companies incorrectly treating outworkers as contractors rather than as employees. Of the outworkers interviewed 89% responded that they did not have any kind of written agreement or contract with employers.

### 5.1.7 Work records

79% of companies keep work records for the work that they give out to be performed by someone else. 21% of companies do not keep any records at all of the work that they give out.

The overwhelming majority of the records kept by companies do not contain the correct information. Only 4 companies included the sewing time allowed for each garment on the work records for outworkers.

## 5.2 *Non-respondent companies*

Of the 151 companies included in the inspection process 67 were non-respondent companies. Of the 67 non-respondent companies included in the inspection process 31 gave work out to be performed by someone else.

In the process of inspecting non-respondent companies, union representatives encountered ignorance of the basic obligations of employers to outworkers, and even of the definition of outwork, with extreme frequency. Company representatives would often claim not to employ any outworkers while at the same time acknowledging that they paid people to perform work in clothing production from their homes. A number of non-respondent companies provided lists of contractors including people who after further investigation were in fact outworkers.

During the inspection process, non-respondent companies were able to provide union representatives with significantly fewer records than was the case with respondent

companies. Pay slips and other records that employers of outworkers are required to keep were unavailable and in many cases clearly did not exist, in part because of employers insisting that outworkers were contractors and hence that they were not required to keep such records. Employers who were falsely claiming that the outworkers they employed were contractors were unable to provide documentation of those employees long-service leave, for example, as the employers were not granting these employees any long-service leave, on the basis that, as contractors, they were not entitled to any. This failure to provide documents required by union representatives impacted upon the ability of union representatives to determine levels of compliance.

This category of companies will cease to exist come January 1 2005. However as has been shown in the finding of respondent companies the effect of companies being respondent to the Clothing Trades Award 1999 does not result in automatic, full compliance with legal obligations to outworkers.

While companies that had signed on to the Code were also very far from full compliance, union representatives found that companies that had signed on to the Code had a significantly greater level of compliance than those that had not, and on average significantly greater than the average level of compliance for companies that were respondents to the Award but not signatories to the Code.



## 6 Case Studies

\* indicates where names have been changed to retain anonymity

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### CASE STUDY ONE: Outworker Case study

P had been working at X for 8 years as a sewing machinist, when she decided that she would like to start a family. She made arrangements with X to set up some machines at home so that she could work from home. X agreed to keep her on the pay roll. "I was wrapt," says P, "Tax was still coming out and I'd get super depending on how much I earned, and they'd provide machines for me."

"I was worried about my long service leave, but they assured me that I wouldn't lose my long service leave," she says "but I didn't know that I was entitled to annual leave and public holidays, I didn't think I had any rights." X told her that people who work from home had to provide for their own holidays and other entitlements.

P was paid on a price per garment basis, not on an hourly rate. She discovered that the factory set the price and there was no possibility of negotiation. "If you asked for a little bit more money they'd tell you to bring it back," she says.

P was also expected to pick up and deliver orders herself, no matter how big, or how small. "They'd ring me and say "We've got quite a bit of work for you, come and collect it now." So I'd pack up everything, rush the kids out into the car and go down there, all the way, about a half hours drive to find they only had ten garments – ten basic little garments! I mean what can you do? You've got to take it and then run it back to them straight away. So sometimes I'd do trips twice a week down there."

Other times the factory would dump huge orders on P, and demand that they be finished by tight deadlines. "They'd say, "We need this pushed" and you'd know that you'd have to push it through the night. They didn't care. That meant working late hours, and through the weekends. They knew and they weren't prepared to give you anything extra."

Part of the problem was the piece rate. Sometimes P would go weeks without work, and then only small orders earning her \$50 or less. So when big orders were offered, she would just accept them to make up for the weeks and months of no income. "I'd have to work until one or two in the morning, sometimes three o'clock. Starting after tea time, I'd get the children settled and then get back on the machine again. You don't care how many hours you work, so you're just breaking yourself down really. You're getting exhausted by pushing a lot of work through and working late hours can mean you have a lot of accidents too because you can hardly keep your eyes open, and you go blurry."

Eventually, worn out with sustained pressure and long hours on the machine, P started thinking about accessing her long service leave, so she made a phone call to the union. The union told her that she was entitled to annual leave and public holidays as well. "The union told me to take it up with my boss, well, that scared me. I thought, I'm not strong enough for that and then they'll start telling me I've got no work and I'll be out of a job, so I wasn't ready for any trouble with them."



"Then it was last September that I received a phone call, at about quarter to three on a Friday. They'd left it to the very last minute. And the boss said to me, "Sorry P, but X has been sold. Someone might come around and pick up the machines so be prepared for someone to come around.' And I said 'What do you mean, I'm out of a job?' and she said 'Yes, you are'

P was devastated. Her boss told her that the factory would be gone by the following Wednesday. The boss could give her no answers when she asked about her entitlements.

"I rang the union straight away at nine o'clock on the Monday morning, and I told the organiser and he was straight in there making sure all the girls (in the factory) were getting all of their entitlements and of course he came with me to speak to the boss, but she said "Well I'm no longer going to be with the company so if you have any queries you're going to have to take it up with the secretary."

P rang the secretary and was told that she didn't have any entitlements at all. P kept pushing for her long service leave entitlement, but since the union had got involved the factory had changed tack. They were now saying that she had not actually been dismissed. When P asked for the company to draw up a contract that complied with the award, they refused. They would only agree to include long service leave, and they would not agree to provide her with a regular amount of work. "They wrote up two contracts but they were all rubbish. They wanted me to work piece work, but I said I'm fed up with not being paid when you don't give me work, I want to know that I'll still be paid when there's no work available and he [the owner] laughed as if it was a joke, and said 'Well, you know, I can't help you in that department.'"

P with the assistance of the union had a contract drawn up that conformed to the minimum conditions for outworkers as set out in the *Clothing Trades Award 1999*. The company has now agreed to abide by it. However, they have not signed the agreement.

P says that the company was outraged that she had involved the union. "They got really annoyed. 'How can an outworker be in the union?' they said. "That's not right." I never even left the union, I stayed with them. You see, the outworkers don't even know that they're entitled to be in the union when they're an outworker. They chose the wrong person to dismiss because I had back up. They think I'm a trouble maker now."

## **CASE STUDY TWO: OUTWORKERS CASE STUDY**

My name is Trinh\*. I have been an outworker for 20 years. I used to work 12 hours a day, 7 days a week until a year ago.

I did everything that my employer gave me: for example jackets, pants, shirts, skirts and dresses. The labels were: Jacqui E., Syndicate, Maestro, Target, Sportsgirl, Sportsman, Pierre Cuttin, Miss Shop, Country Road, My Size, Brown Sugar, Blazer and others.

I got paid \$3 to \$4 an hour. Sometimes I had to work at night and on the weekend to finish an order. I didn't get holiday pay, superannuation, sick pay, WorkCover or any other entitlements.

Now I can't do much outwork anymore. I have a sore back and sore shoulders. I can't do much outwork and I don't want to do outwork anymore.

I was happy to have a new law last year but my employers are not following the law and I still get only \$3 - \$4 an hour and nothing else. Last week the boss gave me a job for \$1.60 an hour.

### **CASE SUDY THREE: OUTWORKER CASE STUDY**

I'm Diep\*. I worked 5 years as an outworker. Now I don't do a lot of outwork because so much sewing has made my eyes very sore. Before I made T-shirts for children with Target and Kmart labels. They paid me a price per piece and I sewed more than 10 hours a day. Sometimes they needed the order quickly and I had to sew all night and on the weekend to finish the order, but the boss did not pay me more. I have never had superannuation, holiday pay or sick days. I used to work very hard.

Last year I learnt about the new law for outworkers. I asked my friends who still did outwork: "Now, is the new law good for you?" You know they answered me: "It's not good because the employers are not following the law. If you disagree with them and say anything about the new law, you loose your job." That's true. I think in my mind that this new law will not change anything for outworkers because the big companies are not following it and what does the government think?

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