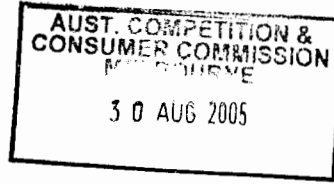




**Department of  
Innovation, Industry and Regional Development**

Industrial Relations Victoria



Level 3 55 Collins Street  
Melbourne, Victoria 3000  
GPO Box 4509RR  
Melbourne, Victoria 3001  
Australia  
Telephone: (03) 9651 9200  
Facsimile: (03) 9651 9333  
www.irv.vic.gov.au  
DX 210074

Ref No DC05/32

FILE No:
DOC:
MARS/PRISM

Mr Gavin Jones  
Director  
Adjudication Branch  
Australian Competition & Consumer Commission  
GPO Box 520J  
MELBOURNE VIC 3001

Dear Mr Jones

**HOMEWORKERS CODE OF PRACTICE COMMITTEE INC  
APPLICATIONS FOR AUTHORISATION – INTERESTED PARTY  
CONSULTATION**

I refer to your correspondence of 28 July 2005 to Mr Timothy Lee inviting a submission, as an interested party, in relation to the application for authorisation of the Homeworkers Code of Practice Committee Inc. Mr Lee has asked me to respond on his behalf.

The attached submission provides background information and supports the application. Should any additional information be required, please contact Dr Sharon Winocur on 03 9651 9560 or via email on [sharon.winocur@iird.vic.gov.au](mailto:sharon.winocur@iird.vic.gov.au).

Yours sincerely

  
**BRIAN CORNEY**  
Director – Private Sector

Att

## **Introduction**

1. The Victorian Government welcomes the opportunity to comment on the Homeworkers Code of Practice Committee's application for authorisation for conduct that may constitute action contrary to the *Trade Practices Act 1974* (the TPA).
2. To assist the ACCC in its consideration of the applications, this submission in support of the Committee's application will outline:
  - legislation applying to outworkers in Victoria;
  - the evidence of outworker exploitation; and
  - views on the Homeworkers Code.

### ***Victorian Legislation relating to outworkers***

3. In 2003, the Victorian Government passed the *Outworkers (Improved Protection) Act 2003* (the Act). The Act is a key part of the Government's commitment to ensuring fairness for outworkers in the clothing industry. The Act came into force on 1 November 2003.
4. The Act was amended on 17 February 2005 to ensure that all contractor outworkers in the clothing industry will receive Federal award wages and conditions. This includes outworkers who are required to establish themselves as a business to obtain work.
5. Among other things, the Act established the Ethical Clothing Trades Council of Victoria (the Council). The Council is chaired by Mr Bill Kelty and comprises a range of industry, union and consumer interests. Its primary role is to enhance voluntary compliance by the clothing industry to ensure that outworkers receive their lawful entitlements.
6. Section 20 of the Act requires the Council to evaluate action taken by the clothing industry, during the first twelve months of operation of the Outworkers Act, to improve compliance in the industry with obligation to ensure outworkers receive their lawful entitlements.
7. To determine whether outworkers are receiving their lawful entitlements and evaluate the effectiveness of actions taken by the industry to improve industry compliance with outworkers' entitlements, the Council commissioned a compliance program.
8. A disturbing lack of compliance was found. More detail on these findings is available in Part 7 of the Council's Report, which was provided by the Homeworkers Committee, or can be found at [www.irv.vic.gov.au](http://www.irv.vic.gov.au).
9. These low levels of compliance are reflected by information gathered by Industrial Relations Victoria's Information Service Officers, where outworkers reported they receive between \$5 and \$7 per hour, depending on the complexity of the garment, which is less than the award rate.

10. The Council presented its Report to the Minister, who tabled it in Parliament on 17 February 2005.

### ***Outworkers in Australia***

11. In addition to the findings of the Ethical Clothing Trades Council, the working conditions of outworkers have been the subject of a number of investigations. Past studies have found that outworkers in the clothing industry are among the most vulnerable to exploitation and generally do not receive their lawful entitlements.
12. The Senate Economics Reference Committee<sup>1</sup> stated that common problems experienced by outworkers include 'low piece rates which translate to low hourly rates; impossible deadlines for completion of work; late payment, underpayment, non-payment for completed work; rejection of work and reimbursed expenses; physical and verbal harassment from intermediaries (blackmail, threats, coercion and bribes); substandard working environments; and worries associated with combining work with family responsibilities. These stresses are compounded by the lack of English language skills and inadequate training'.
13. Dr Christina Cregan undertook the most recent study of Victorian outworkers in 2001.<sup>2</sup> Key findings included:
- outworkers were paid an average rate of \$3.60 per hour and as little as 50 cents per hour;
  - 88 per cent advised they relied on these wages for essential household expenses;
  - most averaged more than 12 hours work per day with 62 per cent working 7 days per week and a further 26 per cent working 6 days per week;
  - 74 per cent did not have their wages paid on time and 52 per cent had experienced non-payment of wages for work performed;
  - 95 per cent did not get holiday leave, sick leave or public holiday pay;
  - 75 per cent were not able to get a steady supply of work; and
  - family members helped out in 70 per cent of households with 31 per cent of outworkers relying on their children to complete the work.
14. The move away from factory-based clothing manufacturing 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; and

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<sup>1</sup> Senate Economics Reference Committee Inquiry (1996), *Outworkers in the Garment Industry*, pp xi-xii.

<sup>2</sup> Dr Christina Cregan (2001), *Home Sweat Home*, Melbourne University

- obtain quick turn around times which often lead to poor work practices.
15. Such arrangements give outwork-based entities an unfair advantage over factory-based enterprises that are more likely to provide award rates and conditions.
  16. 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;
    - little access or knowledge of services available to them;
    - originally from countries with authoritarian governments, undermining trust in government institutions;
    - lacking in self-confidence; and
    - fear and/or cultural resistance to complaining about their circumstances.<sup>3</sup>
  17. The combination of below-award rates of pay, long hours of work, incidence of occupational injuries, non-application of award and legislative entitlements such as sick, annual and long service leave, and the predominance of sub-contracting structures associated with the social and cultural factors described above have led to outworkers facing severe disadvantage and hardship. Hence, clothing outworkers constitute one of the most marginalised segments of the Australian workforce.
  18. For more information about past studies, refer to **Attachment A**.

### ***Homeworkers Code***

19. The Homeworkers Code seeks to reduce the risk of exploitation of outworkers in the clothing industry. It is a voluntary self-regulatory system that aims to regulate and monitor the production chain from the retailer to the homeworker, to ensure legal wages and conditions.
20. The Code is designed to complement the relevant awards and to make the contracting chain transparent and enable homeworkers 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
21. The TCFUA is responsible for monitoring compliance with the Code. This includes identifying problems and providing details to the manufacturer/fashion house/wholesaler or retailer. If the problem is not rectified within a short time frame, the company responsible risks losing its contract to supply the retailer or accredited manufacturer. The Committee is able to revoke a manufacturer's accreditation.

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<sup>3</sup> NSW Ethical Clothing Trades Extended Responsibility Scheme (2004), *Regulatory Impact Statement*

22. The Homeworkers Code of Practice Committee comprised of employer and union representatives, works to improve compliance at a national and Victorian level. A number of manufacturers and retailers have signed up to the Code, which is designed to make the contracting chain transparent and enable homeworkers to receive their lawful entitlements.
23. The Victorian Government has supported the Homeworkers Code through funding to assist in raising community awareness and support to promote the Homeworkers Code of Practice among textile and fashion industry participants and the broader community. This reflects the Victorian Government's commitment to ensure outworkers receive their lawful entitlements.

#### Anti-Competitive Effect

24. It is not considered that the Homeworkers Code has any adverse effect on competition, nor is it likely to in the future.
25. It does place requirements on voluntary signatories to the Code with regard to record keeping and ensuring that outworkers receive award pay and conditions. For example, retailers are required to investigate suppliers if they are found not to be complying with the Agreement. If the investigation proves that a supplier has not been complying with the Code, the retailer is to terminate its relationships with the supplier.
26. The Homeworkers Code also provides for the TCFUA to enforce compliance with the Code.
27. The Code requires signatories to adhere to their legal obligations by paying outworkers in accordance to the Clothing Trades Award 1999, providing a minimum fortnightly workload, and not exceeding certain hours of work.
28. While some of these arrangements may have the potential to constrain suppliers, it is not considered that the Code would substantially affect participating parties' ability to compete.

#### Public Benefits

29. The Homeworkers Code has provided and continues to provide public benefits including:
  - reducing the risk of exploitation of outworkers;
  - providing information to outworkers so that they are in a better position to understand their entitlements;
  - facilitating compliance with legislation;
  - helping to ensure award pay and conditions for outworkers; and
  - improving the social environment for outworkers and their family by providing more standardised working conditions.
30. These public benefits significantly outweigh any adverse effect on competition that might arise from the arrangements.

### **Victorian Government Position**

31. The Victorian Government is supportive of the Committee's application to seek exemption from the TPA provisions.

## RESEARCH ON OUTWORKERS

1. It is widely acknowledged that outworkers working in the clothing, textile and footwear industry are among the most vulnerable. Working conditions of outworkers has been the subject of a number of investigations in recent years. They include:
  - Senate Economics Reference Committee Inquiry (1996), *Outworkers in the Garment Industry*;
  - Industry Commission Inquiry (1997), *The Textiles, Clothing and Footwear Industries*;
  - NSW Legislative Council Standing Committee on Law and Justice (1998), *Inquiry into Workplace Safety*;
  - IRC of NSW (1998), *Pay Equity Inquiry*;
  - AIRC (1998) *Award Simplification Case*; and
  - Family and Community Development Committee (2002), *Inquiry into the Conditions of Clothing Outworkers in Victoria*.
2. These reports illustrate the fact that outwork in the textile, clothing and footwear industry is predominantly undertaken by migrant women between the ages of 25 to 35, who have young children at home (Senate Economics Reference Committee, 1996 p xi). They are frequently new immigrants with poor English skills and low job opportunities. Elderly members of families and children commonly assist in tasks.
3. The TCFUA has identified the main ethnic origin of employees to be predominantly Vietnamese and Chinese. Smaller ethnic groups include people of Arabic, Filipino, Khmer, Korean, Laotian, Portuguese, Spanish and Turkish people (TCFUA, 1995).
4. Outwork in the TCF industry tends to be located in the inner north, west, and outer south east of Melbourne. These areas coincide with areas of high unemployment (Industry Commission, 1997).
5. The Senate Economics Reference Committee (1996: xi-xii) state that the common problems experienced by outworkers include 'low piece rates which translate to low hourly rates; impossible deadlines for completion of work; late payment, underpayment, non-payment for completed work, rejection of work and reimbursed expenses; physical and verbal harassment from intermediaries (blackmail, threats, coercion and bribes); substandard working environments; and worries associated with combining work with family responsibilities. These stresses are compounded by the lack of English language skills and inadequate training'.
6. Christina Cregan undertook the most recent study of Victorian outworkers in 2001. Key findings included the following:
  - outworkers were paid an average rate of \$3.60 per hour and as little as 50 cents per hour;

- 88 per cent advised they relied on these wages for essential household expenses;
  - most averaged more than 12 hours work per day with 62 per cent working 7 days per week and a further 26 per cent working 6 days per week;
  - 74 per cent did not have their wages paid on time and 52 per cent had experienced non-payment of wages for work performed;
  - 95 per cent did not get holiday leave, sick leave or public holiday pay;
  - 75 per cent were not able to get a steady supply of work; and
  - family members helped out in 70 per cent of households with 31 per cent of outworkers relying on their children to complete the work.
7. Some of the recent studies/reports relating to outworker issues include the following. These have been summarised for the information of Council Members.
- Economics Legislation Committee, Provisions of the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 and the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004, August 2004.  
[http://www.aph.gov.au/Senate/committee/economics\\_ctte/textile\\_bill/report/report.pdf](http://www.aph.gov.au/Senate/committee/economics_ctte/textile_bill/report/report.pdf)
  - Vietnamese Outworkers in Queensland: Exploring the Issues “The more people want to find out, the more people want to hide it” UQ Boilerhouse, Community Service and Research Centre, The University of Queensland (August 2004)  
<http://www.uq.edu.au/csrc/cdandc/media/outworkers.pdf>
  - Senate Economics Reference Committee Inquiry (1996), *Outworkers in the Garment Industry*;  
[http://www.aph.gov.au/senate/committee/economics\\_ctte/outworkers/report/contents.htm](http://www.aph.gov.au/senate/committee/economics_ctte/outworkers/report/contents.htm)
  - Productivity Commission Inquiry into assistance to the TCF industry post 2005 (26 November 2003)  
<http://www.pc.gov.au/inquiry/tcf/finalreport/index.html>
  - TCFUA (1995), *The Hidden Cost of Fashion*;  
(hard copy only)
  - Industry Commission Inquiry (1997), *The Textiles, Clothing and Footwear Industries*;  
<http://www.pc.gov.au/ic/inquiry/59tcf/finalreport/index.html>
  - Family and Community Development Committee (2002), *Inquiry into the Conditions of Clothing Outworkers in Victoria*;  
<http://www.parliament.vic.gov.au/fcdc/PDF%20Files/Outworkers/Full%20intro%20section.pdf>
  - Dr Christina Cregan (2001), *Home Sweat Home*;  
<http://www.nosweatshoplabel.com/Downloads/HomeSweatHome.pdf>



**Economics Legislation Committee, Provisions of the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 and the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004, August 2004.**

[http://www.aph.gov.au/Senate/committee/economics\\_ctte/textile\\_bill/report/report.pdf](http://www.aph.gov.au/Senate/committee/economics_ctte/textile_bill/report/report.pdf)

1. The Textile Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 and the Customs Tariff Amendment (Textile Clothing and Footwear Post-2005 Arrangements) Bill 2004 were introduced into the House of Representatives on 16 June 2004 by the Hon Ian MacFarlane MP, Minister for Industry, Tourism and Resources. They were passed by the House of Representatives on 25 June 2004, and were introduced into the Senate as a package on 3 August 2004.
2. The Textile Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 extends the Textile, Clothing and Footwear (TCF) Strategic Investment Program (SIP) for ten years, to 2015. The Bill also provides for the establishment of a TCF Small Business Program.
3. The Customs Tariff Amendment (Textile Clothing and Footwear Post-2005 Arrangements) Bill 2004 reduces tariffs on a wide range of TCF products. Tariffs on most TCF products will be reduced to 5% in 2010; and tariffs on clothing and some finished textiles will be reduced to 5% in 2015.
4. On 23 June 2004, the Senate referred the provisions of the bills to the Senate Economics Legislation Committee to inquire whether:
  - the Strategic Investment Program (SIP) Bill assists small and medium sized enterprises (SMEs) to access government assistance;
  - the legislation improves market access overseas;
  - the phase-down of SIP funding from 2009 threatens the future of the industry and employment;
  - the legislation provides adequate support for high value exports;
  - the legislation provides adequate support for R&D activity;
  - the legislation provides adequate support for production value added activity;
  - the reduction in grant types from 5 to 2 will decrease access for some TCF firms;
  - the cut in tariffs will have an adverse effect on the industry, economy generally, employment and sustainability of regional cities and towns;
  - our trading partners are reducing tariffs at the same rate as Australia; and
  - the combination of these two bills and provisions in the United States Free Trade Agreement will adversely impact on the future of the industry and on employment.
5. The Senate Committee noted “the substantial amount of evidence relating to the continued employment of outworkers in substandard conditions in the TCF

industry”.<sup>4</sup> The Senate Committee noted its disappointment that nearly seven years after the Senate Economics References Committee Report on *Outworkers in the Garment Industry*, “it is still hearing evidence of the continued and systematic exploitation of outworkers in the TCF industry”<sup>5</sup> The Senate Committee encourages all industry participants to sign up to the Homeworkers Code of Practice, or equivalent code of practice, and end the exploitation of outworkers in this industry.<sup>6</sup>

6. The Senate Committee recommended that the Bills be passed. Both Labor and the Democrats made dissenting reports, opposing the Tariff Amendment Bill and supporting the extension of the SIP. The Labor Senators note that “given that the current bills propose arrangements which will fundamentally change the TCF industry in Australia, it is disappointing that not one proposed measure, in a package worth some \$600 million, specifically addresses the challenges faced by outworkers in this industry. There are no measures to support those who remain in the industry (FairWear has suggested linking SIP grants to participation in the Homeworkers Code of Practice) and no specific measures to support the transition of outworkers out of the TCF industry and into other employment, despite the widespread understanding that reduced tariffs will force many outworkers out of the industry”.<sup>7</sup>

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<sup>4</sup> para 3.60, p.25, *Economics Legislation Committee, Provisions of the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 scheme) Bill 2004 and the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004*, August 2004.

<sup>5</sup> para 3.61, p.25, *Ibid*

<sup>6</sup> para 3.61, p.25, *Ibid*

<sup>7</sup> para 1.40, p.38, *Labor Senators Dissenting Report, Economics Legislation Committee, Provisions of the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 scheme) Bill 2004 and the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004*, August 2004.

**Vietnamese Outworkers in Queensland: Exploring the Issues “The more people want to find out, the more people want to hide it” UQ Boilerhouse, Community Service and Research Centre, The University of Queensland (August 2004)**

<http://www.uq.edu.au/csirc/cdandc/media/outworkers.pdf>

1. The project explored outworker issues in Queensland and sought to expand on anecdotal evidence which suggests that the majority of outworkers are Vietnamese women living in the southeast of the state, particularly Brisbane.
2. It consisted of 21 interviews, 15 with current outworkers, one with a subcontractor, and five with former outworkers.
3. The results of the project were:
  - Extent of outworking – this is hard to determine with any accuracy, due to the difficulties of conducting such studies. Outworking is a widespread activity within the Vietnamese community, although it would appear that in recent years the amount of available work, and hence number of outworkers, has been declining.
  - Who is outworking? – the majority of participants were married women with children, with an average age of 45. Most have been living in Australia since the 1980s, although most lacked fluency in English. Some men, usually husbands, were also involved in outwork, usually with ancillary tasks or as sub-contractors, rather than sewing itself.
  - Employment history – nearly half the participants had only worked as outworkers, while a number have had jobs either in factories or in family businesses. The majority of participants have been involved with the outworking industry for more than 10 years, with nearly half having been involved for 15 years or more.
  - Reasons for outworking – the primary reasons given for outworking were caring responsibilities and a lack of fluency in English. Nearly half the participants cited the need to look after children as the primary reason for working at home. Outworking is considered convenient and flexible, as it allows the worker to earn an income while simultaneously looking after children and the house.
  - Garments produced – the main types of clothing being produced in Queensland are women’s fashion and uniforms, including school, hospital and chefs’ uniforms.
  - Employers and the chain of production – two thirds of participants obtain work through a sub-contractor (middle man), while one third work directly for a factory. Information provided suggests the chain of production is relatively short in Queensland, with only one sub-contractor between the outworker and manufacturer.
  - Pay and entitlements – payment is made per garment produced, known as the piece rate system. Based on the rate per garment and approximate time each item takes to make, hourly rates range from approximately \$4 to over \$20,

with over 90% of participants earning between \$4 and \$10 per hour, before tax. All participants are paid by cheque, and none receive paid overtime, public holidays, sick or recreational leave. Non-payment of wages is not common, although wages are often paid late. Each worker was responsible for providing their own sewing machine and for the cost of maintenance. Other expenses include the cost of collecting and delivering orders and/or wages, and for some, the cost of thread. There is much confusion over the employment status of outworkers, with most regarding themselves as sub-contractors.

- Working hours – hours are long, largely due to low piece rates. For all, work depends on the availability and for most, if work is available then long hours will be undertaken in order to meet deadlines. The average number of hours worked per day ranged from five to 12, with a number of participants working such hours seven days a week. Public and school holidays are also worked regularly. The long hours are partly a result of the irregularity of available work, which means that most outworkers are without work for between one and three months each year. As a result, all work is usually taken when offered, to compensate for periods when no work is available. As outworkers have no access to entitlements, if they do not work, they have no income.
- Working conditions – nearly all participants work in their own home, either in the garage, under the house (if it is high-set), or in a spare room. Most also report working alone, rather than with other outworkers.
- Work-related health issues – Two thirds of participants reported experiencing various musculoskeletal pains as a result of their work. Although only four reported the pain to be severe, two thirds of outworkers have had to stop work in the past as a result of the pain, either for a few hours or a few days. A couple of people noted the need to keep working despite severe pain, due to the need for money, particularly if outwork provides the only family income.
- Impacts of outworking – the majority of participants have not experienced any harassment as a result of their outwork, although several reported that they were aware this does occur. However, nearly half reported feelings of social isolation, that arise from the boredom and loneliness of working at home alone for long periods of time. More widespread impacts were reported to affect the family unit due to the amount of time mothers may spend outworking, or through the need for some family members to assist the outworker in order to meet deadlines. The stress associated with this type of work can also affect both the partner and children.
- Job satisfaction and future aspirations – the key advantages of outworking include being able to look after children and the house, and the flexibility to arrange your own time. The two key disadvantages reported are the lack of award entitlements and the low rates of pay. In total, two thirds of participants said that they liked their work, although a similar number said they would prefer an alternative job to outwork. The key barriers preventing access to alternative employment are the need to care for children and low levels of English language skills. A number of participants also said their age explained their reluctance to seek alternative work.

- Changes in the outworking industry in Queensland – a key theme to emerge from the research relates to changes in the outworking industry, particularly in the last few years. Most participants feel that the amount of available outwork has declined in the last five years, and similarly, that pay has either stayed the same or in some cases, decreased. The perceived reason for this decline is the export of production to overseas markets, particularly China, meaning that outworkers believe themselves to be competing not only locally but also with labourers overseas. The decrease in available work, which results in less pay, was cited by four of the five former outworkers as the reason for leaving the industry. If the decline continues, it could have potentially significant impacts for outworkers, many of whom have few alternative employment options.

**Senate Economics Reference Committee Inquiry (1996), *Outworkers in the Garment Industry***

1 **[http://www.aph.gov.au/senate/committee/economics ctte/outworkers/report/contents.htm](http://www.aph.gov.au/senate/committee/economics_ctte/outworkers/report/contents.htm)**

2

1. The Senate Committee found that outworking is now so prevalent that it is not just a characteristic of the industry, the entire industry is structured around it.
2. With the addition of a large outworker labour force and their associated intermediaries, the chain of garment production has lengthened. With the structural complexities of the garment manufacturing chain, it has become easy for various parties to shed responsibility and it appears that the majority of outworkers are not paid award wages. Further, some outworkers are seriously exploited.
3. Estimates provided indicate that there is somewhere between 50,000 and 330,000 people involved in outworking in the garment industry on a full and part-time basis.
4. Most outworkers are migrant women, aged between 25 - 35, who have young children at home. Some are assisted by their husbands, either in a full-time or part-time capacity. Most have very poor English language skills and are thus unable to find work elsewhere. Elderly people and children assist in many outworker families with ancillary tasks.
5. Problems experienced by outworkers include: low piece rates which translate to low hourly rates; impossible deadlines for completion of work; late payment, underpayment, non-payment for completed work, rejection of work and unreimbursed expenses; physical and verbal harassment from intermediaries (blackmail, threats, coercion and bribes); substandard working environments; and worries associated with combining work with family responsibilities. These stresses are compounded by the lack of English language skills and inadequate training.
6. The Senate Committee also identified the following issues as areas of concern:
  - occupational health and safety;
  - the use of child labour in outwork;
  - the confusion surrounding the employment status of outworkers;
  - decreased enforcement of award wages and conditions by government agencies; and
  - the unwillingness on the part of outworkers to report non-compliance and to have government agencies involved in the circumstances of their employments.
7. The Senate Committee endorsed the Homeworkers Code of Practice, Deeds of Cooperation, labeling of garments, a National Outwork Committee, and industry education in areas of award compliance, industrial relations, taxation compliance, and management skills.

**Productivity Commission Inquiry into assistance to the TCF industry post 2005  
(26 November 2003)**

**<http://www.pc.gov.au/inquiry/tcf/finalreport/index.html>**

1. The Commission made the following comments about the TCF labour force:
  - more likely to be older, female, married and not proficient in speaking English
  - 55 per cent of the TCF workforce are women, which is more than double the proportion for manufacturing as a whole
  - just under 50 per cent of all TCF workers were born overseas, predominantly in non-English speaking countries, compared with about a third of workers in manufacturing generally
  - according to DEWR the number of retrenched workers in the TCF sector declined from 17,700 in the 3 years to 1997 to 8,600 in the 3 years to June 2001
  - appears that re-employment prospects for retrenched workers in the TCF improved markedly in the 3 years to 2001 compared with the 3 years to 1997 (however the TCFUA have disputed the validity of this data)
  - many retrenched workers are not interested in retraining, instead putting a priority on re-employment (the Commission recommended that Job Network services should be made more accessible to displaced TCF employees)
  - the adjustment costs for workers displaced from the TCF sector likely to be higher, on average, than for workers displaced from other sectors as the skills are sector-specific and the capacity to relocate or to travel for job search are often limited
2. The Commission made the following findings in relation to outworkers:
  - The potential for the exploitation of outworkers through low rates of pay, long working hours and poor working conditions, who generally have no redundancy or severance payment entitlements, or notice periods, and often face the loss of personal investment in sewing equipment if they are displaced.
  - The flexibility provided to manufacturers by the use of outworkers can assist them in responding more effectively and efficiently to the needs of their customers. For some outworkers, there are advantages from being able to combine paid employment with family and other responsibilities.
  - While it is difficult to ascertain the number of people periodically engaged in outwork, the full-time equivalent number of outworkers in Australia is unlikely to be much above 25,000. Nonetheless, with the decline in factory based employment in the TCF sector over the past few years, outworker employment is now about 40 per cent of total factory based employment in the sector and exceeds factory based clothing employment by about 25 per cent.
  - Concerns about the exploitation of outworkers appear to have more to do with the levels of compliance with legislated requirements than with the provisions of those requirements.

- Legislation is a double edged sword in that it could force further production offshore to the detriment of the outworkers concerned.
  - Given the nature of outwork and the supply chain involved, achieving greater compliance will inevitably require cooperation between retailers, suppliers, their contractors and unions. More regulation, or heavy handed attempts to enforce regulation, could undermine the increasing degree of cooperation now emerging under the voluntary Homeworkers Code of Practice and therefore be counterproductive.
  - Governments, employer and community groups, industry associations and trade unions have a role to play in promoting compliance with awards and the Code, and the contribution that good employment practices more generally can make to the sector's future prospects.
3. The Commission noted that the Homeworkers Code is now well supported by retailers, only four of over 130 manufacturers and wholesalers have become accredited. The Commission also noted that the \$2,200 administration fee is a deterrent for small manufacturers, and that the 'No SweatShop Label' has been little used to date, with Hunter Gatherer being the only known user.
  4. The Commission noted the growing influence of retailers, with TCF retailing has become more concentrated with the larger department store operators accounting for an increasing share of home textile, clothing and footwear sales. These firms now control some of their own supply chains, organise the manufacture of own brand (or private label) merchandise both here and abroad, as well as stocking brands controlled by local and overseas suppliers and manufacturers. Greater buying power has provided the scope for them to transfer some inventory and delivery risk up the supply chain.
  5. The Commission made the following recommendations in relation to tariff reduction:
    - maintain all TCF tariffs at the new legislated 2005 levels until 2010, then reduce most of them to 5 per cent
    - tariffs on apparel and certain finished textiles, which are significantly higher than those on other TCF products, would not be reduced to 5 per cent until 2015
    - changes to delivery of transitional assistance
      - provide support for expenditure on state-of-the-art second hand equipment
      - subsidise investment in market and brand development
      - discontinue 'Type 3' value added grants
    - "...in the Commission's view, the sector's economic contribution, while significant, does not justify indefinite special assistance." (p.xxiii)



## **TCFUA (1995) *Hidden Cost of Fashion***

1. In 1994, the TCFUA undertook a National Outwork Information Campaign. It ran from July to November 1994. The multi-media campaign targeted outworkers, their employers, ethnic communities and the general community to both disseminate and gather information about this largely hidden sector of the Australian workforce.
2. The resulting report, the Hidden Cost of Fashion, estimates that there is a pool of 329,000 outworkers who work in their homes sewing clothes in Australia, with 144,000 being in Victoria. The report documents the work environment and extent of outwork in the industry.
3. The TCFUA found that over the last few years, outworkers' working conditions have deteriorated. Outworkers when they get work, typically work 12 to 18 hours per day, 7 days a week for about a third of the award rate of pay, and with no access to even the minimum conditions enjoyed by factory workers. Report from outworkers suggests that intimidation, abuse and harassment from employers are widespread. The report also highlights factors indirectly related to pay, such as taxation status, social security benefits, child work and high levels of misinformation.
4. The Report notes that in the future the TCFUA will be working towards the following:
  - to achieve long term results for outworkers by working with ethnic communities and other community organisations;
  - work will be undertaken with the relevant government departments to remove the major barriers which effectively trap outworkers and prevent them from moving into fairer and better paid forms of employment;
  - better community understanding of the rights of outworkers, responsibilities of employers and the legal obligations will help to bring this section of the clothing industry into the formal economy;
  - outworkers should have access to new initiatives in the industry such as training in vocational skills and English language; and
  - occupational health and safety of outworkers has been a neglected area. The union will work to improve awareness and standards of health and safety.

**Industry Commission Inquiry (1997) *The Textiles, Clothing and Footwear Industries***

<http://www.pc.gov.au/ic/inquiry/59tcf/finalreport/index.html>

1. The Industry Commission Inquiry was established to look at ways to support sustainable, prosperous and internationally competitive TCF manufacturing activities in Australia. The Commissioners agreed that assistance arrangements after 2000 should involve a reduction of TCF tariffs to 5 per cent in order to bring TCF into line with the general tariff rate for manufacturing and to prepare for free trade in APEC developed countries by 2010. It was agreed that this tariff policy should be accompanied by transitional adjustment assistance.
2. The Commissioners made a range of recommendations, including in relation to English language and literacy programs, retraining TCF workers, and implementing voluntary agreements to promote adherence to legal minimum payments and employment conditions for homeworkers.
3. The Commission made the following comments about homework:
  - The Commission noted that it is notoriously difficult to obtain reliable data on homeworking employment in Australia or internationally, with estimates of TCF homeworkers in Australia ranging from 50,000 (ATO 1991, unpublished data) to 330,000 (The TCFUA's 1994 'National Outwork Information Campaign'). Although the Commission has little evidence on this, it considers that the number of people undertaking TCF homework is more likely to be somewhere in between the two figures.
  - The majority of homeworkers are located in particular suburbs of Melbourne and Sydney with smaller numbers in other capitals and larger regional centres such as Wollongong and Geelong. This concentration may be related also to the areas where potential homeworkers tend to live and to the way in which they are recruited, which is often through local networks and media.
  - Tasks performed by homeworkers include cutting, sewing, finishing, pressing and labelling, although cutting is less common because it requires automated machinery and strict quality controls. Typically, TCF homeworkers are given one or two tasks, with the subcontractor transporting components and products from one worker to the next in sequence. Some homeworkers specialise in particular production tasks such as attaching trims or fastenings and some specialise in particular types of products — for example, curtains, stretch fabrics, uniform dresses or fashion knitwear.
  - Although some homeworkers are employed directly by manufacturers, most are connected to the principal manufacturer (or sometimes a retailer) through a network of subcontractors. The subcontractors coordinate the manufacturing process under contract from the manufacturer, who normally controls the design and distribution of the item, purchases the required materials and sets the contract price or piece rate for each item.
  - The chain leading from the manufacturer to the homeworker can be complex and the homeworker may not always know the identity of the principal manufacturer or retailer. Similarly, the principal may not always know whether a subcontractor is using homeworkers, although, under the industry's

Code of Practice, principals would be obliged to ensure that any homeworkers used by subcontractors are employed under legal terms and conditions.

4. With regard to outworkers receiving their entitlements, the Commission noted:
  - In practice, the TCFUA and relevant community and welfare groups believe that the majority of TCF homeworkers do not receive their full award entitlements. In addition, they have reported long delays in payment for work completed as well as under-payment and non-payment of agreed amounts. While piece rate payments equivalent to as low as \$2 per hour have been reported in the media, it is thought that typical piece rates are currently equivalent to around \$7 per hour for proficient workers, which is still well below the minimum award rate of around \$10.60 per hour.
  - While there is little substantiated evidence on the extent of the underground economy in TCF subcontracting, it is believed that payments to homeworkers are often in cash and rarely declared as income for taxation or social security purposes.
  - One of the key questions to arise from the TCF homework cash economy is whether demand for homeworkers would change if all TCF homeworkers in Australia were paid legal minimum award rates and conditions. It has sometimes been argued that if all homeworkers received award rates, most manufacturers currently using them would shift all or most of their production to cheaper offshore locations.
  - The TCFUA and others observed that TCF homeworking is largely concentrated in the fashion apparel sector which is not immediately suited to overseas production due to the short production runs and quick demand responses required by customers. The TCFUA also suggested that the fashion apparel sector may be better able to sustain any consequent retail price rises due to greater product differentiation and closely targeted markets.
  - While the Commission has not been able to make a firm judgment regarding the proportion of homeworking which would be likely to remain under a system in which homeworkers were part of the formal economy, it takes the view that there would be a significant decline.
5. The Commission also noted the concern of community and welfare groups about the socio-economic effects of TCF homework generally relate to access to services for homeworking migrants. In addition to occupational health and safety issues, specific concerns relating to homeworkers include social isolation, lack of career options, exploitation and abuse and the use of unpaid family members as assistants. Of prime concern is homeworkers' information and access to English and vocational training, with research showing that TCF homeworking is a significant factor influencing the low participation and completion rates for recently arrived Vietnamese women in the Adult Migrant English Program entitlement to English language training.
6. The Commission recommended that industry continue to pursue the adoption of the voluntary codes to promote adherence to legal minimum payments and employment conditions for homeworkers.

**Family and Community Development Committee (2002) *Inquiry into the Conditions of Clothing Outworkers in Victoria***

<http://www.parliament.vic.gov.au/fcdc/PDF%20Files/Outworkers/Full%20intro%20section.pdf>

1. The Family and Community Development Committee (2002) *Inquiry into the Conditions of Clothing Outworkers in Victoria* was to consider:
  - terms and conditions of engagement;
  - health and safety issues; and
  - social integration issues.
2. The Committee noted:
  - the invisible nature of outwork;
  - the broad scope of estimates of outworker numbers in Australia, which range from 50,000 to 329,000;
  - the uncertainty of employment status of outworkers;
  - the below-award rates of pay received by most outworkers;
  - the complexity of the production chain, which makes it difficult to address OHS issues and identify the responsible employer when remuneration is not paid in full or at all; and
  - the changes in manufacturing in the TCF industry that may have contributed to the growth of outwork.
3. The Committee provided the following comments on the Homeworkers Code of Practice:
  - The major problem with the Homeworkers Code of Practice is the small number of manufacturers who have become accredited. This makes it unattractive for manufacturers to become accredited as they may lose a competitive advantage compared to those who remain unaccredited.
  - In order to alleviate the low accreditation rate it has been argued that the Code could only operate effectively when it became mandatory.
  - As the introduction of mandatory codes within industries can cause major confusion, disruption and inequities in the short term the effectiveness of such regulatory action would have to be assessed closely.
4. The Committee made the following recommendations:
  - That the Victorian Government recognises the importance of the textile, clothing and footwear industry to the Victorian economy by continued support and that the Government continue to develop effective initiatives and programs to support the industry.
  - That the Victorian Government consider the recommendations of the New South Wales research into supply chain management within the clothing and textile industry when it is completed.

- That the Victorian Government implements a program designed to enhance the knowledge and skills of outworkers who see themselves as small business operators to improve their operations and to increase their awareness of their taxation, industrial relations and occupational health and safety obligations.
- That the Victorian Government recognise the importance of the textile, clothing and footwear industry and outwork in particular as a source of employment for many who find it difficult to obtain employment in other areas of the workforce due to language differences, cultural barriers and family responsibilities.
- That the Victorian Government recommend the Commonwealth Government amend the Workplace Relations Act 1996 to ensure that outworkers who do not to operate as independent contractors or small businesses are deemed as employees.
- That the Victorian Government should create legislation to ensure that outworkers who do not operate as independent contractors or small businesses are deemed as employees for the purposes of industrial regulation in Victoria.
- That the Victorian Government implement an advertising campaign to inform all those working in the textile footwear and clothing industries of their rights and obligations as employers and employees.
- That the Victorian State Government create a multi-language information hotline for outworkers to inform them of their rights and entitlements under the Clothing Trades Award 1999 and the *Accident Compensation Act 1985*.
- That Industrial Relations Victoria appointment bi-lingual inspectors/advisors to work within the clothing industry to provide information and practical assistance to:
  - outworkers with regard to their rights and entitlements; and
  - employers in the industry with regard to their responsibilities and obligations
- That the Victorian Government encourages manufacturers and retailers to seek accreditation with the existing national Homeworkers Code of Practice.
- That the Victorian Government commits to the purchase of textiles clothing and footwear goods from suppliers who have met their full obligations as employers.
- That the Victorian Government consider the findings of the New South Wales Ethical Clothing Trades Council review of the Homeworkers Code of Practice due in February 2003.
- That the Victorian Government develops clothing specific legislation based upon the New South Wales Behind the Label strategy.
- That the Victorian Government considers establishing an advisory body with membership from key stakeholders to consider issues of relevance to the Victorian clothing industry and to advise government of industry issues and recent developments.

- That the Victorian Government amend the *Occupational Health and Safety Act 1983* and the *Accident Compensation Act 1985* to clarify the position of outworkers as employees.
- That the Victorian Government through the Victorian Workcover Authority fund educative programs on occupational health and safety for outworkers.
- That the Victorian State Government through the Victorian Workcover Authority fund educative programs on responsibilities and entitlements under the *Occupational Health and Safety Act 1983* and the *Accident Compensation Act 1985* for employers and contractors.
- That the Victorian Government define the duty of care responsibilities of sub-contractors and principal contractors within the production chain for the health and safety of outworkers.
- That the Victorian Government establishes funding to provide outreach services for outworkers including those working as contractors and small business operators to reduce isolation and vulnerability.
- That the Victorian Government provide funding for educative and training services for outworkers including those working as contractors and small business operators - these could include English language courses, trade certification and alternative vocational training.

1. Undertaken in 2001, the Cregan research is the most recent report into textile outworkers in Victoria.

*4.1.1.1.1 Scope and method of research*

2. Cregan approached the Textile Clothing and Footwear Union of Australia (TCFUA) to make direct links with outworkers, who were trained to conduct interviews as part of the research, to assist in overcoming language barriers. These outworkers were asked to contact other outworkers, who in turn were asked to contact other outworkers. As a result of this 'rolling method', a sample of 119 outworkers was identified.
3. Of the 119 outworkers, 114 were females and 5 were males. 110 of the outworkers were born in Vietnam. The average age was 39, but ages ranged from 17 to 64. At the time of the survey, eighty percent of the participants had been outworkers for at least five years.
4. The sample participated in open-ended discussions and completed administered questionnaires. The questionnaires were translated into Vietnamese and translated back to ensure accuracy.
5. Cregan notes that more outworkers than the sample were contacted, but only the 119 were willing to participate. Cregan argues that many outworkers will not discuss their working conditions, as they are frightened of losing their jobs.
6. The Cregan research does not provide empirical evidence about the extent of outworker exploitation; rather it relies on anecdotal data. The representativeness of the findings could be limited by the small sample size. The method used to select participants, where the outworkers were asked to contact other outworkers, could also result in localised data.

*4.1.1.1.2 Findings*

7. Key findings from the Cregan report include the following:
  - outworkers were paid an average rate of \$3.60 per hour and as little as 50 cents per hour;
  - 88 per cent advised they relied on these wages for essential household expenses;
  - most averaged more than 12 hours work per day with 62 per cent working 7 days per week and a further 26 per cent working 6 days per week;
  - 74 per cent did not have their wages paid on time and 52 per cent had experienced non-payment of wages for work performed;
  - 95 per cent did not get holiday leave, sick leave or public holiday pay;
  - 75 per cent were not able to get a steady supply of work; and
  - family members helped out in 70 per cent of households with 31 per cent of outworkers relying on their children to complete the work.

8. Cregan considers that her 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.”