

1<sup>st</sup> March 2013

Dr Richard Chadwick  
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Adjudication Branch ACCC  
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Canberra ACT 2601

**Email:** [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Dear Richard

**Re: Homeworker Code Committee application for interim authorisation – interested party consultation**

Thank you for the opportunity to make comment on the application for interim authorisation from Ethical Clothing Australia (ECA). We note that this is in the context of an additional application for re-authorisation (application for revocation and substitution) which includes substantive changes to the existing Home Workers Code of Practice (HWCP) and that the ACCC proposes to conduct further consultation should interim authorisation be granted.

We are writing to you on behalf of 1,800 businesses in the textile and fashion industries in Australia who are members or affiliates of the Council of Textile & Fashion Industries of Australia (TFIA) - the peak industry representative body for the Textile, Clothing and Footwear (TCF) industries.

The arguments outlined in this letter relate to industry feedback in working with the existing HWCP and by extension the impacts of the behaviour of the Home Workers Code Committee (HWCC) and the accreditation agency Ethical Clothing Australia (ECA).

We are greatly concerned about the inflexibility of the current TCF labour regime and the bearing of the Ethical Clothing Australia accreditation process which according to Senate estimates queries funds the TCFUA through the Compliance Service Level Agreements providing unique and unprecedented Union access to what remains of the local manufacturing industry.

Employment numbers in our sector are continuing to decline (48,000 in 2006 to 38,500 2012) as are registered businesses (see TFIA Annual Report page 6 showing a > 30% decline with 91% of businesses employing 20 people or less). As I write this I know of three large high profile Australian brands with a 20 year commitment to making in Australia which are in the process or which have closed down their local manufacturing departments in the last 12 months i.e. The Just Group, PAS Group (Review & Metalicus) and Scanlan & Theodore.

TFIA believes that aspects of the FWA Act and recent amendments<sup>1</sup>, in tightening of deeming provisions, extension of principal obligations and improved right of entry provisions combined with the time consuming compliance regime for an ECA accreditation have all impacted on a TCF business's ability to compete (particularly SMEs) and has restricted their previous competitive edge in which flexibility and quick turnaround underpinned their success.

The use of multiple Home Worker entities to facilitate construction of various garment types without incurring hefty penalty rates or minimum part time arrangements<sup>2</sup> is no longer possible. For the purposes of the Fair Work Act there is only one way in which an outworker or an outworker entity can receive income and that is through an employer / employee arrangement. (See attachment - Gouda P/L paperwork example which indicates that it is not possible to comply with the Fair Work Act and the Tax Act creating significant confusion in the industry)

The Council's interest is in ensuring that Australia has a transparent, effective and efficient TCF regime that reflects the appropriate rights of employers, contractors and employees and that also nurtures the growth of the TCF sector. Clearly the policy settings require some adjustment to reverse the contraction of the local industry.

TFIA are founding members of the Home Workers Code of Practice (HWCP) and have been long-time supporters of seeking an end to exploitation of home workers. Undercutting of legitimate manufacturers does not serve the clothing manufacturing sector, nor does the creation of legislation to restrict use of contractors working from residential premises. It stifles opportunity for the very people it seeks to protect.

Until last week when the TCFUA and ECA management took steps to remove TFIA from the Home Workers Code Committee (HWCC), TFIA has also been actively engaged in all meetings (see attached meeting attendance record as reported by Senate Enquiry). Since it was first authorised, TFIA have supported all previous applications to the ACCC for re-authorisation of the HWCP. So it is with great concern that we write this letter alerting the ACCC to the issues about the conduct of an ECA audit which appears to have gone beyond the protection offered for Home Workers under the current authorisation and the remit of the HWCC and incredibly is being used as justification for substantive change for a new HWCP to cover the entire TCF industry (workers and home workers).

At the time of the previous lodgement for a request for re-authorisation (14th October 2010), the TCF industry had worked with the new TCF Regime (FW Act, TCFAI Modern Award and

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<sup>1</sup> Fair Work Amendment (Textile Clothing and Footwear) Bill 2011

<sup>2</sup> TCFAI Award MA000017 Schedule F.4.2 Hours of work (a) A principal must provide the worker with work which is: (i) full-time, 38 hours per week; or (ii) regular part-time, with no less than 20 regular hours per week to be agreed between the principal and the worker; or (iii) regular part-time, with no less than 15 regular hours per week to be agreed between the principal and the worker with the consent of the Union in accordance with Schedule F—Outwork and Related Provisions.

deeming provisions for outworkers) for a period of 3 months (transitional arrangements ended July 2010). The full implications of the new regime were just beginning to be felt.

It was in April 2011 that the first complaints were received by TFIA staff and these arose out of compliance checks being conducted by the TCFUA as part of an ECA accreditation. These complaints have continued to escalate with the introduction of the Fair Work Amendment (TCF) Bill 2011, where the line between what is normal union activity and an ECA accreditation has been blurred. TFIA has received multiple complaints about the ECA audit that burden applicants and those in their supply chains with unnecessary paperwork (Statutory Declarations and the frequency of notifications being among the most unpalatable)<sup>3</sup>. Whilst these issues have been raised in HWCC meetings they have been largely ignored.

TFIA has also been made aware of the difficulties many SMEs have in fully understanding the complexities in the TCF Regime and the obligations of employers (see attachment - Survey Results page 25 onwards - FWA Senate TFIA Submission 11012012).

Examples of the confusion include the status of contractors, whether or not it is acceptable that contractors must only be paid by a wage, whether the TCFUA can demand that meetings be conducted in lunch rooms or if the employer has had to recommend TCFUA membership at the conclusion of an ECA compliance audit.

There is no question that the TCF Regime has become prescriptive, extremely complex and difficult for SMEs to navigate. A Department of Employment and Workplace Relations official Ms Jennifer Wyborn, Acting Branch Manager at the 2 Feb 2012 Senate Hearing inquiry into the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011 stated (see attachment EEWR Legislation Committee Hearing Extract page 24)

*...This is, as I am sure you will appreciate, an incredibly complex area of the law. Identifying the relevant legal status of these bodies is a very difficult issue that is overlaid with constitutional questions and not something that is easily managed....*

Because the TCF regime is difficult to understand this has increased the fear surrounding an ECA compliance audit. This fear is expressed in the number of confidential submissions TFIA believes will be made to the ACCC questioning the need for an interim authorisation.

It is also expressed in the rapid contraction being reported in turnover figures amongst makers<sup>4</sup> where brands are telling makers "they don't want the hassle of an ECA audit" and are electing a preference for offshore manufacturing<sup>5</sup>. As a consequence, makers are

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<sup>3</sup> See attachment Press Release Qld Red Tape 20112012

<sup>4</sup> Gouda P/L reported at the TCF Industry Roundtable held on 27<sup>th</sup> Feb 2013, a 60% downturn in its turnover figures in last 6 months.

<sup>5</sup> Rate of ECA accreditations of brands with Home Workers in their supply chains have not grown commensurate with the \$5mil investment by the Commonwealth as would be expected.

reducing the number of Home Workers employed, the very people the HWCP seeks to protect.

Disappointingly, in seeking an ECA accreditation which is meant to promote businesses complying with the law, the reality is that those brands which voluntarily sign up to the HWCP capture businesses in their supply chains which have no choice other than to accept a TCFUA compliance visit and worse still after an ECA accreditation is complete often remain invisible to the rest of the sector. In completing an ECA accreditation evidence suggests that the tiers that previously pre-existed in the supply chain are lessened as are the number of Home Workers.

SMEs have consistently reported not being able to afford the ongoing engagement of 20 hour minimum part time work (as specified in the TCFUA Award Schedule F 4.2 Hours of Work) for all the Home Workers they might have previously engaged over a 12 month period, depending on skill requirement or equipment needed for a particular order. This is as well a disappointing outcome for Home Workers who find themselves with less if any work to do.

Compounding the impact on Home Workers it was reported by the TCFUA in the Senate hearing, that once they have been terminated, Home Workers have difficulty in finding alternative employment.

Senate hearing 2<sup>nd</sup> Feb 2012 page 20 Michele O'Neil National Secretary TCFUA

*"...In terms of where workers end up, we have tracked multiple workers—many thousands of workers over the last few years—who have lost their jobs, both home workers and factory workers. Unfortunately, a significant proportion of them never work again. Of those who do work, the great bulk are ending up in short-term insecure work. They are moving out of an industry where they might have seen, if they were in a factory environment, longer term, more permanent employment than in a home work environment, into mainly hospitality and aged care, which are the predominant ones, with some in the retail sector as well. The majority of those jobs are short term and casual in nature. So, unfortunately, effective systems are not in place to ensure proper retraining and support for that type of transition."*

TFIA submits that the number of Home Workers is vastly depleted today compared to March 2011 and is nowhere near the hundreds of thousands reported at the 2 Feb 2012 Senate hearing. There is simply not a manufacturing base left which is large enough to support their previous engagement levels.

The number of registered clothing manufacturers as at June 2011 (new ABS data was due for release Jan 2013 but as yet is unavailable) can be identified in the table below. Reports from TFIA members and its affiliates suggest further contraction since 2011. Given that the vast majority of businesses engage less than 20 people and/or turn over less than \$2mil, TFIA estimates the average number of Home Workers per manufacturing entity to be under 10 (TCFUA estimates 14 per establishment). Given ECA's own figures of 500 suppliers and 6,000 home workers assisted, the average would be 12 per establishment.

**Table 1. ABS 2011 Counts of Australian Businesses, including Entries and Exits, Jun 2007 to Jun 2011**

Industry Class	NSW		QLD		VIC		WA		AUS TOTAL	
	\$200k > \$2m	\$2m >	\$200k > \$2m	\$2m >	\$200k > \$2m	\$2m >	\$200k > \$2m	\$2m >	\$200k > \$2m	\$2m >
1351 Clothing Manufacturing	440	121	204	27	442	89	93	22	1179	259
Estimated Home Workers (<\$2mil x 8 & >\$2mil x 17)	3,520	2,057	1,632	459	3,536	1,513	774	374	9,432	4403

Adding the 2,366 non-employing but registered ABNs who list themselves as clothing manufacturers and who we believe to be Home Worker entities (plus a margin of error) and the combined above figures equals less than 20,000 Home Workers. Given the rate of attrition in recent months the TFIA estimates a further loss of 25% and it is being compounded by the combined effects of the TCF Regime and the prospects of an ECA accreditation.

TFIA also believes that in not being subject to competitive pressure the ECA compliance audit is inefficient, takes an undue amount of time (12 to 18 months) and is outside a normal service delivery model. The detriment to the industry has been far reaching and far out ways the public benefit as Home Workers are continuing to lose their jobs. The return on investment for the Commonwealth must also be questioned.

In 2008 in response to a Senate Estimates query the HWCC advice to Government listed approx. 30 companies as being accredited, with approximately 40 pending applications. In total, the accredited companies covered approximately 350 manufacturers or homeworkers in their supply chains. There were approximately 125 signatory retailers and 7 sports and corporate-wear deed signatories. At this point the No Sweat Shop Label as it was known then was run out of the TCFUA offices as a part time role.

In the 2013 application for interim authorisation ECA lists 80 brands as being accredited with some 500 suppliers audited with a further 141 (221 less 80) signatory retailers. Allowing for an attrition rate of 25% pa (8 per year) and a public investment of \$5mil over a 5 year period this represents an amount of approx. \$62,500 per accredited brand, a significant public investment and one that is not subject to competition from similar global accreditation schemes<sup>6</sup>.

In the Feasibility Study – A Voluntary Ethical Quality Mark for the Australia Textile Clothing and Footwear Industries Jan 2011 (see attached ECA NBMBM 1010221), 44 compliance

<sup>6</sup> Feasibility Study – A voluntary ethical quality mark for the Australian textile, clothing and footwear industries January 2011 Report submitted to TCF Innovation Council - See attachment ECA NBMBM 101221

programs were identified (12 being CSR programs) as being available to businesses in the TCF sector. This Study was commissioned by the Federal Government's TCF Innovation Council and subsequently the recommendations were not taken up because the TCF representatives believed that there were sufficient programs available to the market and a one size fits all approach was not suitable for an innovative niche value added market that was emerging in the Australian TCF sector.

TFIA have received reports from accredited brands that indicate there is little to no increase in sales as a result of an ECA accreditation. Given that most of the effort focuses on compliance, it is likely the uptake figures will not improve substantially while the status quo is preserved and unless an incentive is created where brands and those in their supply chains can see a tangible benefit. The sector is under enormous competitive pressure and is most vulnerable to even the smallest changes in Industrial Relations. Extending the current HWCP to include all workers as well as home workers, is high risk and ignores those that already have comparable certifications through global programs such as through ISO.

At the TCF industry round table consultation held on 27th February 2013 the 22 people in attendance representing TCF businesses and industry associations voted unanimously that "the HWCP interim authorisation should only be extended if substantial (statistical) evidence is provided that demonstrates there continues to be exploitation to the degree that an ACCC exemption under the grounds of public benefit is warranted and where this cannot be addressed by the current TCF legislative regime (NES, TCFAI Award, FW Act, Enterprise Agreement and any other legal legitimate employment arrangement)."

In the interim application no hard evidence is submitted (only opinion) that shows any awareness of the negative impacts on the competitiveness of the local TCF industry or the detriment that would result from the broadening of its remit. This is despite removing TFIA from the HWCC for bringing to public attention the lack of consultation and the likely impacts. Once again it would appear that attempts are being made to silence the voice of industry.

Whilst the TFIA has consistently maintained a dialogue with ECA, the TFIA membership base and the broader TCF industry, a copy of the substantially changed TCF (Workers & Home Workers) Code of Practice document was not provided to TFIA until 1st February 2013. This has meant limited time was available for a comprehensive response from industry.

We remain available should further information be required.

Yours sincerely,



Jo Kellock  
CEO



COUNCIL OF  
TEXTILE & FASHION  
INDUSTRIES OF AUSTRALIA LTD.

# **TFIA ANNUAL REPORT 2011 - 2012**

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The **Council of Textile and Fashion Industries of Australia Limited** is the peak industry association for the Australian textile, clothing and footwear (TCF) sectors. Its members are drawn across the TCF supply chain and range from small to medium to large companies and state and national based sectoral associations.

Beginning in 1940, the Council in its current and past forms has represented the interests of Australia's TCF sector to governments, the Australian public and the global marketplace.

Our activities comprise lobbying and advocacy to State and Federal Governments on issues of importance to the industry, policy development and assistance in accessing government and its funding programs.

In addition, the TFIA actively encourages networking among its members, government officials and non-TCF companies.

We invite you to read through this Report to gain a better understanding of the functioning and role of the Council.

Yours sincerely,

TFIA Board of Management

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**COUNCIL OF TEXTILE AND FASHION INDUSTRIES OF AUSTRALIA LIMITED  
CORPORATE OFFICE BEARERS, 2011-2012**

**President:** Mr. Michel Abeysekera

**Honorary Treasurer:** Mr. Yaron Flicker

**Immediate Past President:** Mr. Jim Liaskos

**Board Members:** Mr. Joe DePetro  
Mr. Jim Liaskos  
Mr. John Condolis  
Mr. David Giles-Kaye  
Mr. Sandip Ranjan  
Ms. Karen Webster

**Chief Executive Officer:** Ms. Jo-Ann Kellock

Divisional Representatives

**Clothing & Procurement Sector Chair:** Mr. David Giles-Kaye

**Textile Sector Chair:** Mr. Sandip Ranjan

**AFC Sector Chair:** Ms. Karen Webster

## **REPRESENTATIVE POSITIONS HELD BY THE TFIA**

### **International Organisations**

Member of International Textile Manufacturers Federation (ITMF)

Member of the International Apparel Federation (IAF)

### **Government Advisory Bodies**

Rotating Director of Manufacturing Skills Australia (MSA)

Industry Training Advisory Body Victoria Skills

### **Other Bodies**

Council Member Standards Australia

Member of the Australian Design Alliance [AdA]

Member of the Trade Remedies Task Force

Member of the Homeworkers Code Committee

Chair of the Sizing Consortium Australian Landmark Evaluation (SCALE) study

Member of the RMIT Industry Advisory Group

Member of the Holmesglen TAFE Advisory Group

# AUSTRALIAN TEXTILE CLOTHING AND FOOTWEAR SECTOR

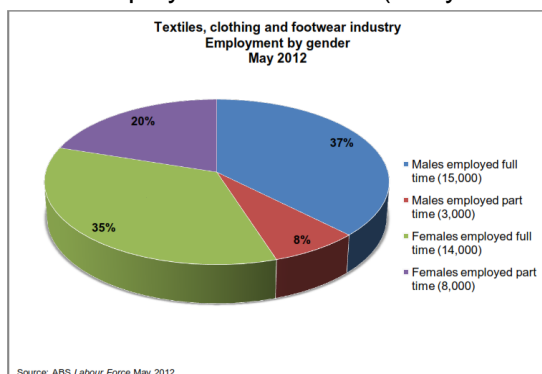
## Contribution to Australian Economy

One measure of Gross Domestic Product (GDP) is 'Industry Value Added' (IVA). In the Financial Year ending June 2011, the textiles, clothing and footwear industry contributed approximately \$2.8 billion to the Australian economy. During the 2010-11 financial year, the TCF industry contributed 2.8% of the manufacturing IVA.

Another measure of GDP is sales and services income. In the 2010-11 financial year total sales and services income generated by the textiles, clothing and footwear industry was \$8.3 billion. Victoria and New South Wales are the dominant states in this sector contributing a combined 73% of the sales and services income. Queensland contributed 12% of sales and services income whilst the other states and territories contributed less than 10% respectively.

## Employment

As at June 2012, an estimated 38,000 people were employed in Australia's TCF industries. This year the majority of full time employees were male (last year it



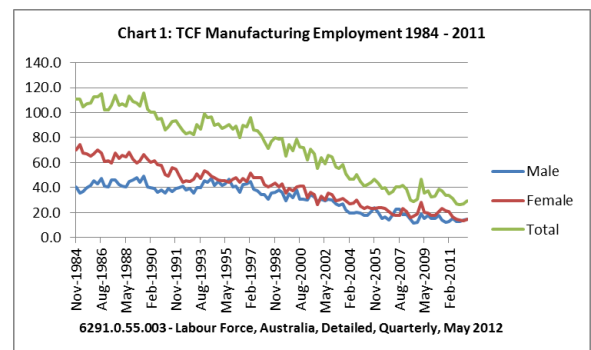
was female). The number of part time males doubled from 4% to 8% in 2011. While the number of full time female employees fell from 44% in 2010 to 35%

in 2011. Women still accounted for nearly 55% of the workforce with a 20% of women employed part-time. Female part time employees also increased from 15% in 2010 to 20% in 2011.

## Employment Trends

TCF manufacturing employment trends have continued to fall. However these figures do not reflect a new and emerging industry.

For instance fashion designers are not recorded in TCF manufacturing figures. Nor are printers of garments and other value added activities such as printing on tents and flags.



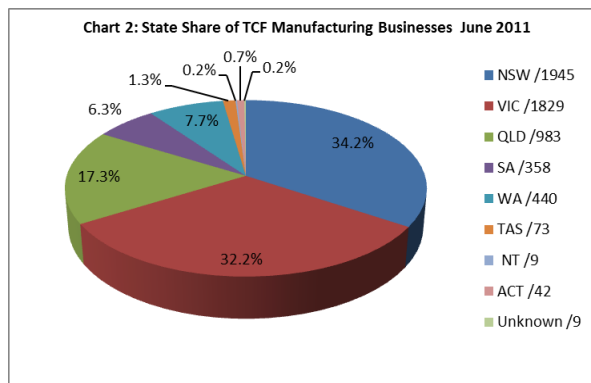
Outworkers are also difficult to gauge and not included in Chart 1. There were 2,366 non-employing registered ABNs as at 30 June 2011 (60% have classed themselves as clothing manufacturers). Some of these are believed to be outworkers with a registered ABN.

Table 1 following identifies 1438 clothing manufacturers in the 4 main states at June 2011 grossing more than \$200K. The union claims there are an average of 14 outworkers per establishment. This would put outworker numbers at an additional 20,000 plus. We believe TCFUA estimates to be high as outworkers often work for multiple brands.

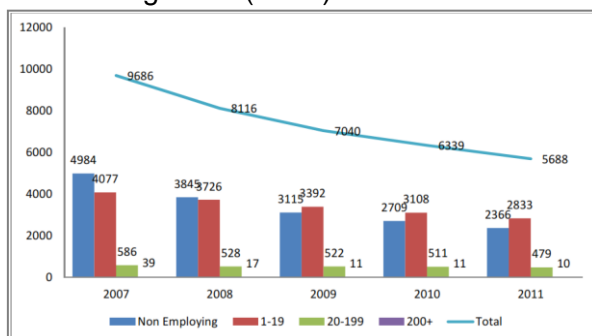
According to ECA there are 75 TCF apparel businesses that have had their supply chains accredited. And over 700 businesses have been put through TCF apparel supply chain ECA compliance checks i.e. makers etc.

### Characteristics of Australia's TCF Businesses

There were 5,688 Australian ABNs recorded as manufacturers of textiles, clothing or footwear products in 2011. The majority of these (34%) were located in NSW (see chart below) because of a higher number of SMEs employing less than 20 people (NSW 1,823 compared to Vic 1623). Victoria has the largest number of businesses employing 20 or more (NSW 121 compared to Vic 206).



91% of companies engaged in TCF activities in Australia are small to medium sized businesses employing less than 20 people. Industry employment has dropped about 10,000 in the last 3 years (about 20%), whilst the slippage of firms has been greater (-30%).

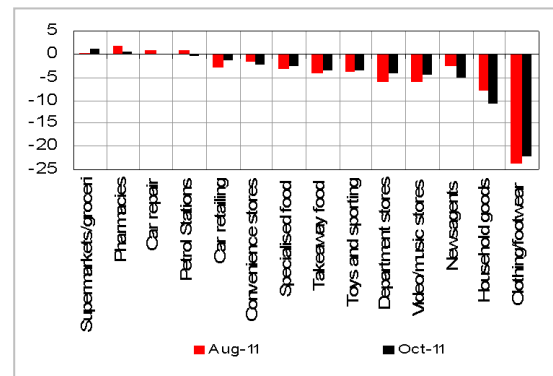


This has been due to the strong slippage in the single employing section (partially offset by the strong slippage in the over 200 employment firms).

The largest decline in firms and employment was in F09 (GFC) and particularly so for the larger over 200 employment firms. The larger plants have stabilised in decline since 2009.

### Retail Sales

Consumers are still extremely cautious, mainly in the area of discretion e.g. clothing - not in personal and recreational services and food. Consumers saving ratio has moved up to 10% from 2% of household income in 2002. And while internet is growing it's not the main driver, it savings.



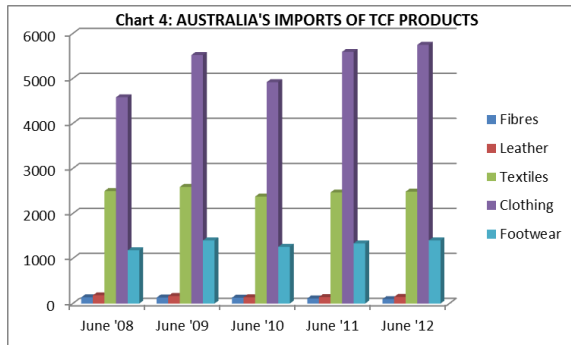
However total retail turnover has been trending upwards for last 2 quarters in 2011/2012 (as illustrated by the following graph) at around \$1.6 billion in seasonally adjusted terms.

### Contribution to Trade

Australia's total imports of textile,



clothing and footwear products increased again in the last financial year, following a dip in 2010 (see Chart 4 below).



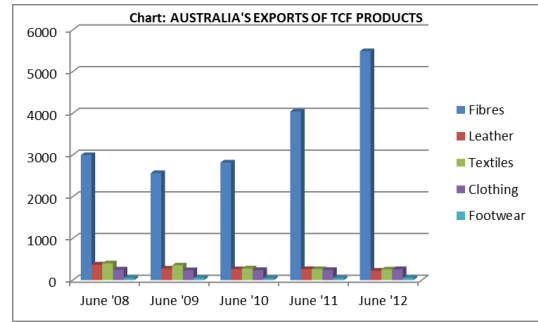
While textile fibre imports declined a further 14% in 2011/12, imports in all other broad categories of the industry sector increased:

- Leather and leather manufactures – up 2.9%
- Textile yarn, fabrics and made up articles – up 1%
- Clothing and clothing accessories – up 2.7%
- Footwear – up 4.9%.

### Clothing Imports 2011/2012

Units	1.4bil
Customs Value (FOB)	\$5.7bil
Duty	\$516mil

With regard to **Australia's Exports** of TCF products, there continues to be a very strong increase in exports of textiles fibres (no doubt largely due to the bumper cotton growing season experienced in the last year), but there has been very little change in exports of the more processed products (see Chart below).



As can be seen, textile fibre exports grew by a 26% and clothing (at \$262 million) was up 8%, but exports of leather and leather products (at \$222 million in 2011/12) were down 15% and textiles exports (at \$255 million) were down 1.9% on 2010/11. While footwear recorded an increase in export sales of 12%, this is on a low base and now puts it on par with 2009 levels.

**Table 1 – TCF Businesses by Main State & Selected Turnover Ranges >\$200k**

AS AT JUNE 2011	TURNOVER SIZE RANGE									
	NSW		QLD		VIC		WA		AUSTRALIA TOTAL	
	\$200k > \$2m	\$2m >	\$200k > \$2m	\$2m >	\$200k > \$2m	\$2m >	\$200k > \$2m	\$2m >	\$200k > \$2m	\$2m >
1311 Wool Scouring	6	0	0	0	3	3	0	0	9	3
1312 Natural Textile Manufacturing	9	3	6	0	6	10	3	0	24	13
1313 Synthetic Textile Manufacturing	0	3	3	0	11	11	3	0	17	14
1320 Leather Tanning, Fur Dressing & Leather Product Manufacturing	44	9	33	3	42	18	3	0	122	30
1331 Textile Floor Covering Manufacturing	10	6	9	0	24	9	0	0	43	15
1332 Rope, Cordage & Twine Manufacturing	0	6	9	0	6	6	8	0	23	12
1333 Cut & Sewn Textile Product Manufacturing	236	54	169	36	211	66	84	15	700	171
1334 Textile Finishing & Other Textile Product Manufacturing	83	15	48	0	76	22	23	9	230	46
1340 Knitted Product Manufacturing	9	0	9	3	37	14	0	3	55	20
1351 Clothing Manufacturing	440	121	204	27	442	89	93	22	1179	259
1352 Footwear Manufacturing	20	9	3	0	24	10	9	3	56	22
<b>Total TCF Manufacturing</b>	<b>857</b>	<b>226</b>	<b>493</b>	<b>69</b>	<b>882</b>	<b>258</b>	<b>226</b>	<b>52</b>	<b>2458</b>	<b>605</b>
0521 Cotton Ginning	0	6	9	3	3	0	0	0	12	9
1611 Printing	891	228	507	82	748	227	238	55	2384	592
1829 Other Basic Polymer Manufacturing	0	0	3	0	3	0	3	0	9	0
1913 Polymer Foam Product Manufacturing	17	17	12	3	20	14	8	6	57	40
1919 Other Polymer Product Manufacturing	67	37	87	27	93	54	29	23	276	141
2090 Other Non-Metallic Mineral Product Manufacturing	116	31	71	19	137	33	60	12	384	95
<b>Total Affiliated TCF</b>	<b>1091</b>	<b>319</b>	<b>689</b>	<b>134</b>	<b>1004</b>	<b>328</b>	<b>338</b>	<b>96</b>	<b>3122</b>	<b>877</b>
<b>TOTAL TCF INDUSTRY</b>	<b>1948</b>	<b>545</b>	<b>1182</b>	<b>203</b>	<b>1886</b>	<b>586</b>	<b>564</b>	<b>148</b>	<b>5580</b>	<b>1482</b>

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## Media release

Attorney-General and Minister for Justice  
The Honourable Jarrod Bleijie

Tuesday, November 20, 2012

### Red tape out of fashion for clothing industry

Queensland's clothing and textile industry has earned a much needed red tape reprieve after the State Government repealed the mandatory code of practice for clothing outworkers.

Attorney-General Jarrod Bleijie said the decision would remove the unnecessary reporting obligations imposed on small businesses by the previous Labor Government.

"The code required retailers in Queensland to report on clothing designs, fabric and seam details, and the names and addresses of who had worked on the product," Mr Bleijie said.

"Despite the tangled web of bureaucracy, not one prosecution has been made since the requirement was introduced two years ago.

"Any complaints about payments to clothing outworkers are dealt with through Fair Work Australia and the additional paper work was unnecessary."

Mr Bleijie said a review confirmed industry concerns about the excessive reporting obligations, particularly given the federal award and statutory provisions already protecting workers.

"No one disputes the need to protect the rights of clothing outworkers, but we also need to avoid the duplication," he said.

"For too long, red tape has strangled business, stunted economic growth and driven up the cost of living for Queensland families."

Red tape, fees, levies and charges are now costing the business community \$7 billion per annum, an increase of 30 per cent in just five years.

"Those costs are inevitably passed on to consumers, so everyone ends up paying more for over-regulation," he said.

"The Queensland Government is committed to removing the culture of red tape and regulation in the state and making sure the world knows Queensland is open for business."

**[ENDS] 20 November 2012**

**Media contact: Matt Johnston 0432 535 893**



**Senate Standing Committee on Education Employment and Workplace  
Relations**

**QUESTIONS ON NOTICE  
Budget Estimates 2012-2013**

**Outcome 4 – Workplace Relations and Economic Strategy**

**DEEWR Question No. EW0034\_13**

**Senator Abetz provided in writing.**

**Question**

**Homeworkers Code of Practice Committee**

"Reference is made to Parliamentary Question on Notice 1813 1) For all meetings in the last two years, please provide the: a) Date and Time; b) Location; c) Attendance; d) Apologies; and e) Proxies. 2) Does the Committee have Key Performance Indicators? a) If so, please advise of these KPI's. 3) Are members of this committee paid? a) If so, please advise how much each member is paid per meeting. "

**Answer**

- 1) See attached table
- 2) The Homeworker Code Committee does not have KPIs
- 2a) Not Applicable
- 3) Members of this Committee are not paid in relation to their Committee membership.
- 3a) Not Applicable.

<b>Date &amp; Time</b>	<b>Location</b>	<b>Attendees</b>	<b>Apologies</b>
8 June 2010, 11am	Teleconference	Michele O'Neil, Barry Tubner, Blake Briggs, Hanisha McNabb, Jo Kellock, Steve Davies, Vivienne Wiles, Emer Diviney, Roque Grillo	Elizabeth Kingston, Jennifer Kruschel, Ted Eftimiadis, Tony Dalton
22 June 2010, 11am	Ethical Clothing Australia, Melbourne	Michele O'Neil, Rob Schonberger, Hung Nguyen, Jo Kellock, Steve Davies, Vivienne Wiles, Emer Diviney, Roque Grillo, Blake Briggs	Elizabeth Kingston, Barry Tubner, Jennifer Kruschel, Ted Eftimiadis, Tony Dalton
17 Aug 2010, 11am	NSW Business Chamber, Sydney	Michele O'Neil, Barry Tubner, Blake Briggs, Elizabeth Kingston, John Owen, Rob Schonberger, Vivienne Wiles, Emer Diviney, Elizabeth MacPherson, Laura Kent, Jo Kellock	Hung Nguyen, Jennifer Kruschel, Ted Eftimiadis, Tony Dalton
12 Oct 2010, 11am	Ethical Clothing Australia, Melbourne	Michele O'Neil, Rob Schonberger, Blake Briggs, Vivienne Wiles, Barry Tubner, John Owen, Ted Eftimiadis, Jo Kellock, Emer Diviney	Jennifer Kruschel, Elizabeth Kingston, Hung Nguyen, Tony Dalton
12 Oct 2010, 1pm AGM	Ethical Clothing Australia, Melbourne	Michele O'Neil, Rob Schonberger, Blake Briggs, Vivienne Wiles, Barry Tubner, John Owen, Ted Eftimiadis, Jo Kellock, Emer Diviney	Jennifer Kruschel, Elizabeth Kingston, Hung Nguyen, Tony Dalton
7 Dec 2010, 11am	NSW Business Chamber, Sydney	Michele O'Neil, Ted Eftimiadis, Jo Kellock, Rob Schonberger, John Owen, Barry Tubner, Hung Nguyen, Vivienne Wiles, Blake Briggs, Emer Diviney	Jennifer Kruschel, Elizabeth Kingston
1 Feb 2011, 4:30pm	Teleconference	Michele O'Neil, Jo Kellock, Rob Schonberger, Vivienne Wiles, Elizabeth Kingston, Hung Nguyen, John Owen, Barry Tubner, Dick Grozier (for Blake Briggs).	Ted Eftimiadis, Jennifer Kruschel, Tony Dalton
19 Apr 2011, 11am	NSW Business Chamber, Sydney	Michele O'Neil, Blake Briggs, John Owen, Vivienne Wiles, Rob Schonberger, Paula Rogers, Eloise Bishop, Ted Eftimiadis.	Jo Kellock, Barry Tubner, Elizabeth Kingston, Hung Nguyen, Jennifer Kruschel, Tony Dalton
7 June 2011, 11am	Ethical Clothing Australia, Melbourne	Michele O'Neil, Jo Kellock, Rob Schonberger, John Owen, Barry Tubner, Hung Nguyen, Vivienne Wiles, Blake Briggs, Elizabeth Kingston, Simon McRae, Denise Chevalier	Ted Eftimiadis Jennifer Kruschel, Tony Dalton
2 Aug 2011, 11am	NSW Business Chamber, Sydney	Michele O'Neil, Jo Kellock, Rob Schonberger, Barry Tubner, Huong Nguyen, Vivienne Wiles, Blake Briggs, Simon McRae	Ted Eftimiadis Jennifer Kruschel, Tony Dalton, John Owen
24 Oct 2011, 12pm	Ethical Clothing Australia, Melbourne	Ted Eftimiadis, Michele O'Neil, Hung Nguyen, Vivienne Wiles, Elizabeth MacPherson (for Jennifer Kruschel), Paula Rogers (for Jo Kellock), Rob Schonberger, Gabrielle Starr (for Blake Briggs), Barry Tubner, John Owen, Simon McRae, Roque Grillo	Tony Dalton
24 Oct 2011, 1pm AGM	Ethical Clothing Australia, Melbourne	Ted Eftimiadis, Michele O'Neil, Hung Nguyen, Vivienne Wiles, Elizabeth MacPherson (for Jennifer Kruschel), Paula Rogers (for Jo Kellock), Rob Schonberger, Gabrielle Starr (for Blake Briggs), Barry Tubner, John Owen, Simon McRae	Tony Dalton
6 Dec 2011, 11am	NSW Business Chamber, Sydney	Michele O'Neil, Barry Tubner, Paula Rogers, Gabrielle Starr, Rob Schonberger, Simon McRae, Vivienne Wiles, Jennifer Kruschel.	Tony Dalton, Barry Tubner, John Owen, Ted Eftimiadis
7 Feb 2012, 11am	Ethical Clothing Australia, Melbourne	Michele O'Neil, Ted Eftimiadis, Vivienne Wiles, Jennifer Kruschel, Simon McRae, David Kesby, Roque Grillo, Paula Rogers, Gabrielle Starr, Rob Schonberger, John Owen, Hung Nguyen, Damien Peirce-Grant, David Kesby	Tony Dalton, Barry Tubner
17 Apr 2012, 11am	NSW Business Chamber, Sydney	Michele O'Neil, Gabrielle Starr, Vivienne Wiles, Elizabeth Macpherson, Rob Schonberger, Barry Tubner, John Owen, Simon McRae, Paula Rogers, Ted Eftimiadis	Hung Nguyen, Tony Dalton, Damien Peirce-Grant

**Feasibility Study – A voluntary ethical quality  
mark for the Australian textile,  
clothing and footwear industries**

January 2011

**Report**

## Report preparation

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**Status:** Draft

Ethical Quality Mark

Feasibility Study

January 2011

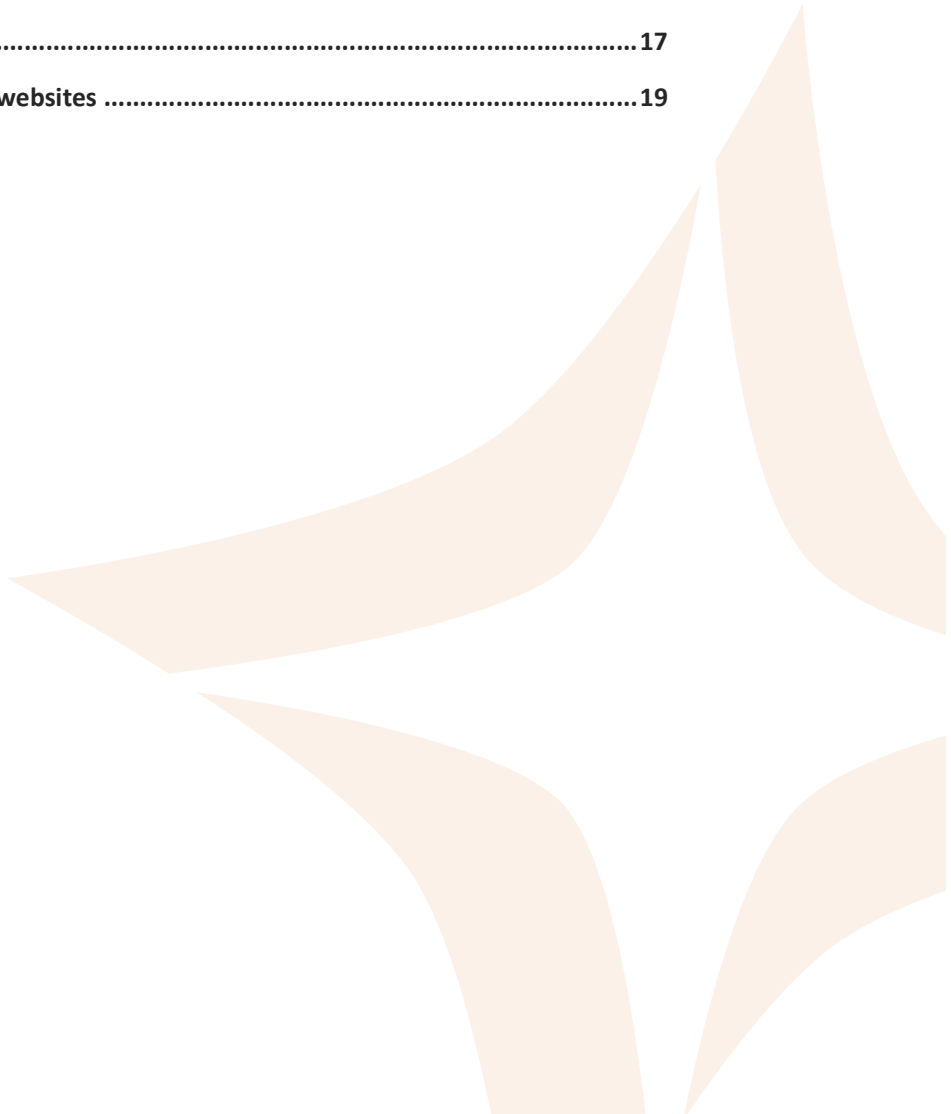
NB Ref: MMPJ10ECA142

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## Review of existing certifications and programs

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### Introduction

The aim of this project is to examine and assess the feasibility and appropriateness of establishing an environmental component of the Australian Textile, Clothing and Footwear (TCF) Ethical Quality Mark (EQM). The Australian Government is supportive of this development and is eager to see that a robust process is put in place to establish the feasibility and appropriateness of a voluntary EQM mindful of existing standards, certifications and codes of practice.

This review considered a range of standards and certifications which may be directly or indirectly relevant to the development of an EQM. This review builds on the work completed in June 2010 by the Secretariat to the TCF Industries Innovation Council on “A Voluntary Ethical Quality Mark for the Australian Textile, Clothing and Footwear Industries: An Examination of Possible Design Components.” In the report, the Secretariat listed relevant certifications to an Ethical Quality Mark.

### List of social and environmental certifications

Net Balance reviewed the certifications summarised by the TCF Industries Innovation Council, and in addition, examined other relevant social and environmental certifications and programs. The certifications and programs reviewed were:

- Ethical Clothing Australia label
- Fair Wear Foundation
- Social Accountability International SA8000
- Business Social Compliance Initiative
- Ethical Trading Initiative
- Fair Labor Association
- Textile, Clothing, Footwear and Associated Industries Award 2010
- GoodWeave International
- Better Work Programme
- DFID Responsible and Garment Sector Challenge Fund (RAGS)
- ILO Conventions
- Worldwide Responsible Accredited Production (WRAP)
- Australian Certified Organic
- Global Organic Textile Standard
- Fairtrade Mark
- Nordic Initiative Clean and Ethical
- Good Environmental Choice Australia
- Better Cotton Initiative
- Oeko-Tex 100, 1000 and 100plus standards

- Made-by
- Forest Stewardship Council
- BMP Cotton
- MBDC Cradle to Cradle Certification
- Ecospecifier Green Tag Certification
- Defra's Sustainable Clothing Action Plan
- EU Eco-label
- Environmental Choice New Zealand
- Blue Angel
- The Australian Carpet Classification Scheme/Environmental Certification Scheme
- National Wool Declaration
- Australian Packaging Covenant
- Carbon Reduction Label
- REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals)
- ISO 14001
- Australian-made
- Global Reporting Initiative
- OECD Guidelines for Multinational Enterprises
- UN Global Compact
- ISO 26000
- People for the Ethical Treatment of Animals
- Supplier Ethical Data Exchange (SEDEX)
- Australasian Furnishings Research & Development Institute (AFRDI Standard 146 - Leather).

These certifications and programs were chosen from a number of sources including the report in June 2010 by the Secretariat of the TCF Industries Innovation Council, web searches for environmental and social accreditations and programs relevant to the TCF industry, existing knowledge of programs by Ethical Clothing Australia, Net Balance and WSP Environmental and via the Ecolabel Index (website: <http://www.ecolabelindex.com/>).

These details for each certification can be found in an addendum to this report.

### Criteria examined

The review examined:

- Whether the certification/program covered social issues, environmental issues or a mixture of both
- The type of certification (e.g. whether it related to manufacturing facilities or products)

- Whether it was sector-specific
- The key issues addressed
- Criteria used
- The standard-setting norm followed
- How compliance with the certification/program is ensured
- How often it is reviewed
- The positives and negatives of the certification/program
- Who the certification/program is managed by
- Its duration (i.e. how long the certification/program has been around for)
- The region it applies to
- Its take-up (e.g. how many products have been certified under the program).

### *Options*

The review also assessed three options for an EQM in order to identify the most desirable, effective and efficient model to adopt and operationalise. These options included:

- **Option 1:** Expansion of the current Ethical Clothing Australia label to include environmental/sustainability accreditation as an optional adjunct to the current labour rights accreditation for the local textile, clothing and footwear industries
- **Option 2:** Transformation of the current Ethical Clothing Australia label so that the primary focus of the new label is an environmental/sustainability accreditation while still accrediting members for upholding labour rights for the local textile, clothing and footwear industries
- **Option 3:** Development of an environmental/sustainability accreditation for the local textile, clothing and footwear industries that is separate from Ethical Clothing Australia

This report examines each option and the certifications and programs that would support each option.



## Key findings

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### Certifications/programs by type

The certifications and programs which were examined in this review could be divided into:

- **Social certifications/programs:** Focus is solely on social criteria (e.g. workers' conditions and labour standards).
- **Social and environmental certifications/programs:** There is a mixture of both social and environmental criteria (e.g. workers' conditions and environmental practices).
- **Environmental certifications/programs:** Focus is solely on environmental criteria (e.g. energy usage, water usage) .
- **Other certifications/programs:** This included sustainability reporting and management frameworks and certifications such as Australian-Made and AFRDI Standard 146 Leather.

The table below details how many certifications/programs were in each of these categories.

**Table 1: Category and number of certifications/programs**

Type of certification/program	Number of certifications/programs in this category
Social	11
Social and environmental	16
Environmental	10
Other	8

The majority of certifications and programs examined in this review incorporated both social and environmental criteria (16). The extent to which these programs focused more on environmental impacts or social impacts varied. For example, the Worldwide Responsible Accredited Production program focuses mainly on social criteria such as workplace standards with some criteria on environmental performance. On the other hand, the Global Organic Textile Standard focuses mainly on environmental criteria but also has minimum social criteria based on the key norms of the ILO.

The certifications and programs which covered either social criteria **or** environmental criteria (but not both) were approximately equal in number (11 and 10 respectively).

The certifications and programs which were categorised as "other" totalled eight and included those programs which focus on issues such as performance guidelines for leather and corporate social responsibility management and reporting framework.

## Findings by options

### ***Option 1: Expansion of the current Ethical Clothing Australia label to include environmental/sustainability accreditation as an optional adjunct to the current labour rights accreditation for the local textile, clothing and footwear industries***

The majority of certifications and programs reviewed can be categorised in this Option. These certifications and programs are mainly focused on social and labour rights accreditation but also include environmental/sustainability accreditation.

**Table 2: Certifications/Programs relevant to Option 1**

Name of program	Main areas covered	Year established and criteria
GoodWeave International	Child labour in the handmade rug industry in South Asia but is currently being extended to include environmental criteria.	Est 1994 (as Rugmark) No child labour.
Worldwide Responsible Accredited Production	Workplace standards, compliance and environmental practices	Est 2000. Criteria include Compliance with laws and workplace regulations, Prohibition of forced labour, Prohibition of child labour, Prohibition of harassment or abuse, Compensation and benefits, Hours of work, Prohibition of discrimination, Health and safety, Freedom of association and collective bargaining, Environment, Customs compliance and Security.
Fairtrade Mark	International fair-trade standards for products.	Est. 1998. The key aims are to ensure a guaranteed Fairtrade minimum price which is agreed with producers, provide an additional Fairtrade premium which can be invested in projects that enhance social, economic and environmental development and set clear minimum and progressive criteria to ensure that the conditions for the production and trade of a product are socially and economically fair and environmentally responsible.
Better Cotton Initiative	Social and environmental impacts of cotton farming	Est 2009. The criteria include Financial profitability for farmers, Reduce impact of water and pesticide use on human and environmental health, Improve soil health and biodiversity, Promote decent work for farming communities and cotton farm workers and Increase traceability along the cotton supply chain.

Name of program	Main areas covered	Year established and criteria
Oeko-Tex 1000 standard	Environmentally-friendly manufacturing processes Social attributes.	Est 1992. Criteria include use of environmentally-damaging auxiliaries and dyestuffs prohibited, compliance with standard values for waste water and exhaust air treatment, optimisation of energy consumption, avoidance of noise and dust pollution, defined measures to ensure safety at the workplace, use of child labour prohibited and introduction of basic elements of an environmental management system.
Made-by	Social (based on ILO conventions) and environmental criteria.	Est 2004. Social standards include Freedom of association and right to collective bargaining, Forced labour and child labour, Non-discrimination, Wages, Working hours, Health and safety, Employment relationship and Abuse.  Environmental standards for fibres include Greenhouse gases, Human toxicity, Ecotoxicity, Energy input, Water input and Land use.
Defra's Sustainable Action Plan	Social and environmental impacts of clothing industry.	2007. Environmental impacts include Energy use and generation of GHG emissions from washing and drying of clothes, Energy use, resource depletion and generation of GHG emissions from processing fossil fuels into synthetic fibres, Significant water use, toxicity from fertiliser, pesticide and herbicide use, energy use and GHG emissions associated with fertiliser generation and irrigation systems from fibre crops, e.g. cotton, water use, toxicity, hazardous waste and effluent associated with production stage, pre-treatment chemicals, dyes and finishes and waste. Social impacts: working conditions, child labour, trade inequities and animal welfare, limited market access and information for farmers and workers leading to inequitable trading conditions.
Global Reporting Initiative indicators	Reporting framework - organisational operations, environmental, economic and social criteria.	GRI guidelines est. 2000. Sector Supplement still at pilot stage. In addition to the GRI guidelines, the sector supplement mentions: Code of conduct content and coverage, compliance audit process, supply chain policies, non-compliance with labour standards; Use of materials, environmentally-preferable materials; Energy consumed from renewable sources; Employment standards, wages and hours, diversity and equal opportunity, adherence to ILO conventions, labour/management relations, health and safety; Community investment and Public policy.

Name of program	Main areas covered	Year established and criteria
OECD Guidelines for Multinational Enterprises	Covers all major areas of business ethics, including corporate steps to obey the law, observe internationally-recognised standards and respond to other societal expectations.	Est 1976. Guidelines include Employment and industrial relations, Human rights, Environment, Information disclosure, Combating bribery, Consumer interests, Science and technology, Competition and Taxation.
UN Global Compact	Principles that businesses sign up to.	Est 1996. Human rights, labour, environment and anti-corruption
ISO 26000	Guidance on social responsibility.	Est 2010. Gives guidance to organisations on 7 subjects: Organisational governance, Human rights, Labour standards, The environment, Fair operating practices, Consumer issues and Community involvement and development.

### ***Trends in Option 1 certifications and programs***

- The certifications and programs in Option 1 include both sector-specific programs, such as GoodWeave International, Oeko-Tex 1000 standard and Better Cotton, as well as programs which are applicable to a wider range of industries and products such as the Fairtrade Mark.
- This option includes a number of standards on social responsibility, from reporting frameworks such as the Global Reporting Initiative, business principles such as the UN Global Compact and guidance for organisations on social responsibility (ISO 26000).
- GoodWeave International started off solely examining child labour in the handmade rug industry in South Asia but is now looking to expand its criteria to include environmental impacts.

### ***Option 1 – Conclusions and recommendations***

There are examples of certifications and programs that could be used in this option as a basis for expanding the current Ethical Clothing Australia label to include environmental accreditation.

Some of the programs categorised under this option took a similar approach to Ethical Clothing Australia in terms of starting off focusing on social criteria and expanding the program to include environmental criteria.

There are also global standards for all industries which provide guidance on the type of social and environmental indicators and issues which could be considered. For example, the Global Reporting Initiative provides a reporting framework to enable organisations to report on their governance,

organisational structure, economic, environmental, labour, human rights, social and product responsibility performance. Additional performance indicators relevant to the TCF industry are provided in the form of the sector supplement for Apparel and Footwear organisations.

The benefits of this option include:

- Focus on social impacts is maintained, while incorporating environmental impact issue areas.
- In line with global reporting and corporate responsibility standards such as the Global Reporting Initiative, UN Global Compact, ISO 26000.
- Take-up of existing programs and certifications has been quite high. With more than 1,400 certificates issued by WRAP in 2009 and over 1,500 organisations reporting using the GRI guidelines.

***Option 2: Transformation of the current Ethical Clothing Australia label so that the primary focus of the new label is an environmental/sustainability accreditation while still accrediting members for upholding labour rights for the local textile, clothing and footwear industries***

There were some certifications and programs in this study which focused primarily on environmental accreditation while still incorporating labour and other social criteria.

**Table 3: Certifications/Programs relevant to Option 2**

Name of program	Main areas covered	Year established and criteria
The Australian Carpet Classification Scheme - Environmental Certification Scheme	Mainly environmental criteria, but also has a requirement for social accountability reporting.	Est. 2006 Environmental criteria for carpets. Covers wide range of environmental impacts relevant to carpets such as VOC emissions, GHG management, water use, toxicity etc
Ecospecifier Green Tag Certification	Environmental and social criteria – green buildings.	Est. 2010 Criteria include building design synergy, greenhouse emission point, human health, lifecycle impact, biodiversity, resource consumption and corporate social responsibility.
BMP Cotton	Environmental and social criteria for cotton production.	Est 2001. Started off with environmental criteria but have expanded the program to include social criteria such as workplace practices. Focus areas include: Human Resources, Water Management, Greenhouse and Carbon, Soil Health, Quality, Natural Assets, Technology, Biosecurity, Pesticide Management and Workplace health and safety.
MBDC Cradle to Cradle Certification	Safety of products to humans and the environment.	Est. 2005 The materials and manufacturing practices of each product are assessed in five categories: material health, material reutilisation, renewable energy use, water stewardship and social responsibility.
Good Environmental Choice Label Australia	Labour relations, HR policies, safety  Environmental criteria.	Est. 2000 Criteria include fitness for purpose, material requirements, hazardous materials, environmental compliance and compliance to labour, anti-discrimination and safety regulations.
Nordic Initiative Clean and Ethical	Environmental and social criteria for fashion industry.	Est. 2008 Looks at the hotspots in the lifecycle of garments including: water, carbon emissions, waste, chemicals and dyes and labour and ethics.

Name of program	Main areas covered	Year established and criteria
Global Organic Textile Standard	Organic fibres, including social and environmental impacts.	Est. 2006 Criteria include organic certification, evaluation of chemical inputs, prohibition of critical inputs such as toxic heavy metals, use of bleaches, dyes, discharge printing methods, environmental policy, energy, water consumption, wastewater treatment, packaging material, minimum social criteria based on key norms of the ILO.
Australian Certified Organic	Organic status of products and basic human rights principles and ILO core labour standards.	Est. 1987 Criteria include Soil fertility and health management, Brought-in materials, stock and equipment, Composts, Water management and ecology, Pest disease and weed management, HACCP based ACO farm food safe certification, Environmental management and social policy and Contamination

#### ***Trends in Option 2 certifications and programs***

- The certifications and programs covered in Option 2 tend to be more recently established than the certifications and programs covered in Options 1 and 3 (with the exception of Australian Certified Organic).
- The certifications and programs covered in Option 2 tend to be sector-specific – e.g. Global Organic Textile Standard and the Australian Carpet Classification Scheme.
- The certifications and programs covered in Option 2 tend to focus on environmental criteria, but have some minimum social criteria requirements on workers’ rights and conditions.
- Some of these programs, like BMP Cotton, started off with just environmental criteria but have been expanded to include social criteria.

#### ***Option 2 – Conclusions and recommendations***

The program that is most closely aligned with this option specific to the TCF industry is the Nordic Initiative Clean and Ethical (NICE). NICE is a project of the Nordic Fashion Association, which is made up of the Danish Fashion Institute, Oslo Fashion Week, The Swedish Fashion Council, Helsinki Design Week and Iceland's Fashion Council. However, this is an industry only initiative. While this program is an initiative rather than an accreditation, the focus on environmental and social hotspots could potentially be used in the transformation of the Ethical Clothing Australia label to centre on the issues which have the highest impacts.

The benefits of Option 2 include:

- In the classifications and programs in this option there are some examples of sector-specific criteria that could be used.
- Social impacts are still considered, alongside environmental impacts in this option.

**Option 3: Development of an environmental/sustainability accreditation for the local textile, clothing and footwear industries that is separate from Ethical Clothing Australia.**

This option would mean keeping the environmental and social accreditation for the local TCF industries separate.

Several of the certifications and programs examined in this review cover just social criteria and therefore are categorised in line with Option 3.

Social criteria certifications/programs	Fairwear Foundation, SA8000, Business Social Compliance Initiative, Ethical Trading Initiative, Fair Labor Association, Textile, Clothing, Footwear and Associated Industries Award 2010, GoodWeave International, Better Work Programme, ILO Conventions
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**Environmental/sustainability certifications and programs**

In terms of developing an environmental/sustainability accreditation for the local textile, clothing and footwear industries that is separate from Ethical Clothing Australia, there are several existing certifications and programs that focus solely on environmental/sustainability accreditation.

A list of these programs, along with their key criteria is given in the table below.

**Table 4: Certifications/Programs relevant to Option 3**

Name of program	Main areas covered	Year established and criteria
Oeko-Tex 100 standard	Health and safety of textile products	Est. Since 1992. Criteria includes <ul style="list-style-type: none"> <li>• substances which are prohibited by law, such as carcinogenic dyestuffs</li> <li>• substances which are regulated by law, such as formaldehyde, softeners, heavy metals or pentachlorophenol</li> <li>• substances which according to current knowledge are harmful to health, but which are not yet regulated or prohibited by law, such as pesticides, allergy-inducing dyestuffs or tin-organic compounds</li> <li>• parameters such as colourfastness and a skin-friendly pH-value, which are precautionary measures to safeguard consumers health</li> </ul>



Name of program	Main areas covered	Year established and criteria
EU Eco-label	Environmentally-friendly products	<p>Est since 1992.</p> <p>Criteria for textile products include:</p> <ul style="list-style-type: none"> <li>• Substances with harmful effects on the aquatic environment and air have been limited during fibre production</li> <li>• The risk of allergic reactions has been reduced</li> <li>• The product does not shrink more than conventional products</li> <li>• The product is as colour resistant against washing, drying friction and light exposure as conventional products</li> </ul> <p>Criteria for footwear include:</p> <ul style="list-style-type: none"> <li>• Risk of allergic reactions from certain chemicals is minimised</li> <li>• Water and air pollution during manufacturing is limited</li> <li>• The product is sold in recycled packaging</li> <li>• The product is at least as hard wearing as conventional shoes</li> </ul>
Environmental Choice New Zealand	Environmentally-friendly products	<p>Est since 1992.</p> <p>Looks at environmental compliance, fibre sources, chemicals use, water, energy management and wastewater.</p>
Blue Angel	Environmental label for products	<p>Est. Since 1978.</p> <p>Criteria on climate, water, resources and health.</p>
Nordic Swan	Environmental label for products	<p>Est 1989.</p> <p>Criteria include Energy/climate, Raw Materials, Harmful chemicals, Hazardous effluents, Waste, Packaging, Instructions for use and Government requirements.</p>
Australian Packaging Covenant	Environmental effects of packaging	<p>Est. 2010 in its current form.</p> <p>Criteria include:</p> <ul style="list-style-type: none"> <li>• Design: packaging optimised to achieve resource efficiency and reduced environmental impact without compromising product quality and safety.</li> <li>• Recycling: the efficient collection and recycling of packaging.</li> <li>• Product Stewardship: a demonstrated commitment to product stewardship by organisations in the supply chain and other signatories.</li> </ul>
REACH	Legislation for safe management of chemicals	<p>Est. 2007.</p> <p>Regulation on safe management of chemicals.</p>
ISO 14001	Environmental management systems certification	<p>Est. 1996</p> <p>Aim is to provide a framework for a holistic, strategic approach to the organisation's environmental policy, plans and actions.</p>

### ***Trends in Option 3 certifications and programs***

In examining the certifications and programs which align with Option 3 there are a few patterns:

- Many of the certifications and programs are long-established, more so than in the other countries, with the Blue Angel environmental label established in 1978.
- While some of the social certifications refer specifically to the Textile, Clothing and Footwear industry there are few environmental certifications in this category (apart from Oeko-Tex ) that relate solely to the industry. However some of the environmental labelling programs do have specific categories for textiles, clothing and footwear.
- Some of the environmental certifications and programs focus on specific issues such as the safe management of chemicals (REACH) or packaging (Australian Packaging Covenant) rather than on encompassing a broader range of environmental issues.
- The Nordic Eco-label and the EU Eco-label take a lifecycle approach in examining the environmental impacts of products. This is in line with a report published by the UK Government's Department for Environment, Food and Rural Affairs in 2007 called "Mapping of Evidence on Sustainable Development Impacts that occur in the Life Cycles of Clothing."<sup>1</sup> In this report, Defra summarised the environmental and social impacts associated with the lifecycle stages of the clothing industry.

### ***Option 3 – Conclusions and recommendations***

The certifications and programs examined in this review show a trend towards bringing social and environmental impacts together in certification schemes (which would fit with Options 1 and 2). This can help consolidate social and environmental information on manufacturing facilities and products and enables organisations to understand their impacts more fully.

However, the benefits of Option 3 include:

- The potential to develop an environmental accreditation that would be specific to the TCF industry
- The opportunity to develop a whole of lifecycle approach for the environmental impacts of the industry.

Through the review of certifications and programs for Option 3, a number of environmental impacts have been identified that could be included in the development of an environmental

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<sup>1</sup> [http://randd.defra.gov.uk/Document.aspx?Document=EV02028\\_7073\\_FRP.pdf](http://randd.defra.gov.uk/Document.aspx?Document=EV02028_7073_FRP.pdf)

accreditation program. These have been grouped according to the stage in the lifecycle of the industry in which they occur.

**Table 5: Environmental impacts that could be included in the development of an environmental accreditation program**

Lifecycle stage	Environmental impacts
Design and Raw Materials	<ul style="list-style-type: none"> <li>Environmentally-preferable materials</li> <li>Resource consumption</li> <li>GHG emissions and energy use</li> <li>Water use</li> <li>Toxicity from fertiliser, pesticide and herbicide use</li> <li>Soil degradation/contamination</li> <li>Biodiversity/land use</li> <li>Solid and hazardous waste</li> </ul>
Manufacture and Assembly	<ul style="list-style-type: none"> <li>Chemical use and toxicity</li> <li>Water use</li> <li>Energy use, resource depletion and generation of GHG emissions</li> <li>Soil degradation/contamination</li> <li>Biodiversity/land use</li> <li>Hazardous waste and effluent associated with production stage pre-treatment chemicals, dyes and finishes</li> </ul>
Distribution and Sales	<ul style="list-style-type: none"> <li>Solid and hazardous waste</li> <li>GHG emissions</li> <li>Packaging</li> </ul>
Use	<ul style="list-style-type: none"> <li>Resource consumption</li> <li>Instructions for use</li> <li>Use of chemicals (consumer safety)</li> <li>Energy use and generation of greenhouse gas emissions from washing (water heating) and drying of clothing.</li> </ul>
End-of-life	<ul style="list-style-type: none"> <li>Recyclability and waste</li> <li>Packaging (biodegradable packaging)</li> <li>Solid and hazardous waste</li> <li>GHG emissions from waste</li> </ul>

#### ***Other certifications and programs***

There were a number of certifications and programs that did not fit into these three options. The programs which were not included in these options, and the reason why, is given in the table below.

**Table 6: Certifications/Programs that did not fit into any option**

Certification/Program	Reason why not included in the options
DFID Responsible and Garment Sector Challenge Fund (RAGS)	This is funding rather than a program.
Australian Wool Exchange	Focus is on mulesing rather than wider social/environmental accreditation.
Australian-Made Campaign	Focus is on being Made or Produced in Australia rather than on wider social/environmental accreditation.
People for the Ethical Treatment of Animals	Focus is on animal welfare rather than wider social/environmental accreditation.
Supplier Ethical Data Exchange	This is a database of the ethical performance of suppliers.

## Concluding remarks

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The large number of existing social and environmental certifications that currently exist both for the TCF industry and for other industries, provide examples that could be used in the development of an Ethical Quality Mark.

In examining the certifications in terms of the three options, **the most feasible option may be Option 1** with the majority of certifications examined in this review fitting with this option. Option 1 is the “Expansion of the current Ethical Clothing Australia label to include environmental/sustainability accreditation as an optional adjunct to the current labour rights accreditation for the local textile, clothing and footwear industries”.

In developing an EQM, the certifications and programs in Option 1 may be useful as they include both sector-specific programs such as the Oeko-Tex 1000 standard and programs that are applicable to a wider range of industries, such as the Fairtrade Mark.

The benefits of this option include:

- Focus on social impacts is maintained, while incorporating environmental impact issue areas.
- In line with global reporting and corporate responsibility standards such as the Global Reporting Initiative, UN Global Compact, ISO 26000.

While the results of this review suggest that Option 1 may be the most feasible of the three options, there are elements of the certifications and programs covered in the other two options which could be used in the development of an EQM using the Option 1 approach. In other words, if Option 1 is chosen over Option 2 and 3, the development of an EQM would benefit from taking into account the features that have worked well in some of the certifications and programs covered in Options 2 and 3.

For example, Option 3 certifications focus solely on environmental certifications, but the lifecycle approach taken by some of these certifications may be helpful in developing an EQM aligned with Option 1. This would include examining the social and environmental impacts of the TCF industry according to the stage in the lifecycle in which they occur.

Another example is the focus on environmental and social “hotspots” that is used by the Nordic Initiative Clean and Ethical which is classified under Option 2. The focus on the environmental and social issues which have the highest impacts could be used in the development of an EQM that is aligned with Option 1.

Expansion of the current Ethical Clothing Australia label to include environmental accreditation as an optional adjunct to the current labour rights accreditation would assist in helping the TCF industry to examine a much broader range of sustainability impacts than a focus purely on either social or environmental impacts.

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## Appendix A – Programs and websites

Name of Certification/Program	Website
<b>Social certifications and programs</b>	
Ethical Clothing Australia	<a href="http://www.ethicalclothingaustralia.org.au">www.ethicalclothingaustralia.org.au</a>
Fair Wear Foundation	<a href="http://fairwear.org">http://fairwear.org</a>
SA8000	<a href="http://www.sa-intl.org">www.sa-intl.org</a>
Business Social Compliance Initiative	<a href="http://bsci-eu.org/">http://bsci-eu.org/</a>
Ethical Trading Initiative	<a href="http://www.ethicaltrade.org">http://www.ethicaltrade.org</a>
Fair Labor Association	<a href="http://www.fairlabor.org/">http://www.fairlabor.org/</a>
Textile, Clothing, Footwear and Associated Industries Award 2010	<a href="http://www.airc.gov.au/awardmod/awards/textile.pdf">http://www.airc.gov.au/awardmod/awards/textile.pdf</a>
GoodWeave International	<a href="http://www.goodweave.net">http://www.goodweave.net</a>
Better Work Programme	<a href="http://www.betterwork.org">http://www.betterwork.org</a>
DFID Responsible and Garment Sector Challenge Fund (RAGS)	<a href="http://www.dfid.gov.uk/Working-with-DFID/Funding-opportunities/Business/Responsible-and-Accountable-Garment-Sector-RAGS-Challenge-Fund-/">http://www.dfid.gov.uk/Working-with-DFID/Funding-opportunities/Business/Responsible-and-Accountable-Garment-Sector-RAGS-Challenge-Fund-/</a>
ILO Conventions	<a href="http://www.ilo.org/declaration/">http://www.ilo.org/declaration/</a>
<b>Social and environmental certifications and programs</b>	
Worldwide Responsible Accredited Production	<a href="http://www.wrapcompliance.org">www.wrapcompliance.org</a>
Australian Certified Organic	<a href="http://www.australianorganic.com.au/">http://www.australianorganic.com.au/</a>
Global Organic Textile Standard	<a href="http://www.global-standard.org">www.global-standard.org</a>
Fairtrade Mark	<a href="http://www.fairtrade.org.uk">www.fairtrade.org.uk</a>
Nordic Initiative Clean and Ethical	<a href="http://www.nicefashion.org/en/">http://www.nicefashion.org/en/</a>
Good Environmental Choice Label Australia	<a href="http://www.geca.org.au">www.geca.org.au</a>



Better Cotton Initiative	<a href="http://www.bettercotton.org">www.bettercotton.org</a>
Oeko-Tex 100 standard	<a href="http://www.oeko-tex.com/OekoTex100_PUBLIC/content5.asp?area=hauptmenue&amp;site=oeotexstandard100&amp;cls=02">http://www.oeko-tex.com/OekoTex100_PUBLIC/content5.asp?area=hauptmenue&amp;site=oeotexstandard100&amp;cls=02</a>
Oeko-Tex 1000 standard	<a href="http://www.oeko-tex.com/OekoTex100_Public/content5.asp?area=hauptmenue&amp;site=oeotexstandard1000&amp;cls=02">http://www.oeko-tex.com/OekoTex100_Public/content5.asp?area=hauptmenue&amp;site=oeotexstandard1000&amp;cls=02</a>
Oeko-Tex Standard 100plus	<a href="http://www.oeko-tex.com/oeotex100_public/content5.asp?area=hauptmenue&amp;site=oeotexstandard100plus&amp;cls=02">http://www.oeko-tex.com/oeotex100_public/content5.asp?area=hauptmenue&amp;site=oeotexstandard100plus&amp;cls=02</a>
Made-by	<a href="http://www.made-by.nl/?lg=en">http://www.made-by.nl/?lg=en</a>
Forest Stewardship Council	<a href="http://www.fsc.org/">http://www.fsc.org/</a>
MBDC Cradle to Cradle Certification	<a href="http://www.mbcc.com/detail.aspx?linkid=2&amp;sublink=8">http://www.mbcc.com/detail.aspx?linkid=2&amp;sublink=8</a>
BMP Cotton	<a href="http://www.bmpcotton.com.au/">http://www.bmpcotton.com.au/</a>
Ecospecifier Green Tag Certification	<a href="http://www.ecospecifier.org/services_offered/greentag_certification">http://www.ecospecifier.org/services_offered/greentag_certification</a>
Defra's Sustainable Clothing Action Plan	<a href="http://www.defra.gov.uk/environment/business/products/roadmaps/clothing/documents/clothing-action-plan-feb10.pdf">http://www.defra.gov.uk/environment/business/products/roadmaps/clothing/documents/clothing-action-plan-feb10.pdf</a>
<b>Environmental certifications and programs</b>	
EU Eco-label	<a href="http://www.eco-label.eu">www.eco-label.eu</a>
Environmental Choice New Zealand	<a href="http://www.enviro-choice.org.nz">www.enviro-choice.org.nz</a>
Blue Angel	<a href="http://www.blauer-engel.de/">http://www.blauer-engel.de/</a>
Nordic Ecolabel	<a href="http://www.nordic-ecolabel.org/">http://www.nordic-ecolabel.org/</a>

The Australian Carpet Classification Scheme - Environmental Certification Scheme	<a href="http://www.carpetinstitute.com.au/environment/index.htm">http://www.carpetinstitute.com.au/environment/index.htm</a>
National Wool Declaration	<a href="http://www.awex.com.au/publications/national-wool-declaration-nwd.html">http://www.awex.com.au/publications/national-wool-declaration-nwd.html</a>
Australian Packaging Covenant	<a href="http://www.packagingcovenant.org.au">http://www.packagingcovenant.org.au</a>
Carbon Reduction Label	<a href="http://www.carbon-label.com/">http://www.carbon-label.com/</a>
Reach (Registration, Evaluation, Authorisation and Restriction of Chemicals)	<a href="http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm">http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm</a>
ISO 14001	<a href="http://www.iso14000-iso14001-environmental-management.com/iso14000.htm">http://www.iso14000-iso14001-environmental-management.com/iso14000.htm</a>
<b>Other certifications and programs</b>	
Australian-Made	<a href="http://www.australianmade.com.au">www.australianmade.com.au</a>
Global Reporting Initiative	<a href="http://www.globalreporting.org">www.globalreporting.org</a>
OECD Guidelines for Multinational Enterprises	<a href="http://www.oecd.org/department/0,3355,en_2649_34889_1_1_1_1_1,00.html">http://www.oecd.org/department/0,3355,en_2649_34889_1_1_1_1_1,00.html</a>
UN Global Compact	<a href="http://www.unglobalcompact.org">www.unglobalcompact.org</a>
ISO 26000	<a href="http://www.iso.org/iso/iso_catalogue/management_standards/social_responsibility.htm">http://www.iso.org/iso/iso_catalogue/management_standards/social_responsibility.htm</a>
People for the Ethical Treatment of Animals	<a href="http://www.peta.org/">http://www.peta.org/</a>
Supplier Ethical Data Exchange (SEDEX)	<a href="http://www.sedex.org.uk">http://www.sedex.org.uk</a>
Australasian Furnishings Research & Development Institute (AFRDI Standard 146 - Leather)	<a href="http://www.furntech.org.au/index.php/commercial-furniture/lether.html">http://www.furntech.org.au/index.php/commercial-furniture/lether.html</a>





COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS  
LEGISLATION COMMITTEE

**Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011  
[2012]**

(Public)

THURSDAY, 2 FEBRUARY 2012

MELBOURNE

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**SENATE**  
**EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION COMMITTEE**  
**Thursday, 2 February 2012**

**Senators in attendance:** Senators Back, Boyce, Gallacher, McKenzie and Rhiannon

**Terms of reference for the inquiry:**

To inquire into and report on:

Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011 [2012]

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**MEAD, Mr Michael, National Manager, Advocacy and Policy, Australian Industry Group**

**NOLAN, Mr Peter, Director, Workplace Relations, Australian Industry Group**

**Committee met at 13:30**

**CHAIR (Senator Marshall):** The committee will commence its inquiry into the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011. I welcome representatives of the Australian Industry Group. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee has your submission and I now invite you to make a short opening statement. At the conclusion of your remarks I will invite members of the committee to put questions to you.

**Mr Nolan:** The bill proposes a range of significant amendments to the Fair Work Act. Ai Group, as it has indicated in its submission, strongly opposes all the key elements of the bill. We are of the view that the bill will create a complicated web of laws for those in the sector and, further, that the bill is unbalanced and unfair on business. It purports to create a nationally consistent regime, but still maintains a role for state regulation, which is inconsistent.

In Ai Group's view, it is not legitimate or fair to deem contractors to be employees in circumstances where parties have agreed to enter into a contractor arrangement. It is not legitimate, in our view, or fair to apply different right of entry provisions and regulations to employers in the TCF sector merely because they are employers in that sector. It is not legitimate, in our view, or fair to hold businesses accountable for the actions of others when they have no control or knowledge of those actions and may never have any contractual relationship with that other party.

Ai Group has substantial membership in this sector. Not only do these proposals in the bill assume that all operators in the TCF sector operate illegitimately, but the bill may dramatically and adversely affect decisions regarding the engagement of outworkers. Any business that operates in the supply chain which contains outworkers will find itself legally liable for unpaid moneys owed to those outworkers. It is conceivable that businesses will find this risk too great and contractually prohibit the use of outworkers or cease manufacturing within Australia. In our submission, either scenario would be harmful to the Australian economy and certainly to the TCF sector.

Over the past decade we have witnessed the TCF industry in decline, particularly because of aggressive competition from cheap imports. It is without doubt that the proposed amendments, particularly in our current global economic climate and with the high Australian dollar, will place a further burden on local manufacturers. Whilst no-one doubts the importance of having adequate protections within our workplace relations laws to prevent exploitation of individuals, the Fair Work Act already contains substantial protections for employees, including outworkers. Many of the amendments that are being pressed in this bill were considered in the development of the Fair Work Act and the Fair Work (Transitional Provisions and Consequential Amendments) Act and were rejected on both occasions. Here we have a third attempt to force through proposals previously rejected within the last three years. The proposed amendments within the bill are unbalanced, inconsistent and extremely unfair to businesses that operate in this sector and should not be adopted.

Ai Group has had a strong and continuous involvement in the workplace relations system at the national, state, industry and enterprise levels for nearly 140 years. Ai Group is well qualified to comment on the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011.

**CHAIR:** Thank you. Yes, I think you are well qualified to comment on these matters. As you would be aware, the committee has been trying to grapple with protections for outworkers for many years and, prior to my involvement, for many years before that. It has gone across a number of different governments of different colours and it is probably fair to say that everyone has tried to address this issue to end what is really unacceptable exploitation of many, many people in the outwork industry. I guess the reason why we are here today is that the measures that the parliament and governments of both persuasions have taken before have failed to do that, and here we are still.

As you say, some of these things were considered in the development of the Fair Work Act, yet still we have a situation where not on an incidental basis but on a mass scale we have significant exploitation of people. The current legislative arrangements and schemes appear to have failed these people. As someone who has been involved in this industry for a long time and taken an interest in the exploitation of outworkers, I am very keen to ensure that we put in place a regulatory regime which offers the protection which these people deserve from the laws of Australia.



I note what you say: why should people be held responsible for the actions of others? Isn't it the case that the person who hands out the work in the first instance must take some responsibility for the conduct and behaviour of those who the work is handed out to? They must have some obligation and responsibility in the supply chain to ensure that people are being paid correctly, that their entitlements are being paid and that these people are not exploited in the way that they are being exploited at this time. Surely there is an obligation to do that.

**Mr Mead:** The submissions of the TCFUA identify that in relation to manufacturing in the TCF sector the supply chain in some circumstances can be quite extensive. The examples that are cited in the TCFUA submission have anywhere up to five or six separate links through the supply chain. Indeed, even one of the case studies cited by the TCFUA identifies that, following an organiser becoming aware of certain conditions being afforded to outworkers, when they spoke to the principal fashion house responsible for that work being performed the principal fashion house had absolutely no idea that outworkers were being engaged to manufacture their products. We see it as grossly unfair that businesses that might be quite substantially removed from the work of outworkers and indeed have absolutely no awareness that outworkers are being used to manufacture their products can in some way be legally liable for the conditions that are afforded to those individuals.

**CHAIR:** This is why we have the problem. We have people who say, 'It's not my responsibility, and as long as I remain ignorant of what actually happens through the supply chain I ought to be absolved of any responsibility.' We have tried to change this for 15 years and it has not worked. So I ask: what has the industry done to stop exploitation of outworkers which would not require the government to regulate it?

**Mr Nolan:** There have been in existence for some time certain codes in relation to the TCF sector that employers have participated in. Let us go to the point of why we are here today, which is that there is no doubt that there has been a decline in this sector over a period of years now. What we are endeavouring to put forward today is: if this sector is further regulated beyond where it is now, what does that do to make Australia an attractive point to manufacture in the sector? There may well be evidence produced to the committee that indicates that there are issues within the sector, but the primary reason we are here is to represent our members operating in that industry sector and to make sure it does not get any harder for them to operate in the sector.

**CHAIR:** I understand that and I am sympathetic to that. There are a lot of pressures, particularly on employers, in this sector and I think everyone is conscious of that. But that does not in some way absolve it of the problem or mitigate the problem that we have. It is an industry that has struggled, even though elements of it are doing very well and I think there is a rosy future for the industry as a whole, though it will not be exactly the same as we see today or saw yesterday; it will constantly develop. But just because the industry is struggling and there are industry pressures, that can in no way mitigate our obligation or responsibility to stop the unacceptable exploitation that is happening. I do not think anyone seriously denies that it has been happening and is still happening today. If you have a better way to suggest for us to stop it then do so, but I would have hoped that if you had a better way it would have been implemented voluntarily at the moment.

**Senator THISTLETHWAITE:** Mr Nolan and Mr Mead, in your submission, you outline on page 12 the reasons you are opposed to the changes to the right of entry provisions. You say:

... however there is no basis for applying such one-sided rights to all employees covered by a TCF award as proposed by the right of entry amendments to the Bill.

I would have thought that the peculiar circumstances of this industry justify specific right of entry provisions for workers in this industry. I am pointing to the fact that, in the case of sweatshop operations, if a union organiser becomes aware that there might be a sweatshop operation in existence and gives 24 hours notice then that operation can be packed up in a couple of hours and they can be gone from a garage or something like that. The organiser comes back the next day to do an inspection and everything is gone. In fact, the TCFUA point to that in their submission, at page 11, with a specific case in St Albans, Victoria, where the organiser sought to enter the employer's presence, was refused on the basis that 24 hours notice was required, and went back the next day to find the whole operation was gone. Don't those circumstances justify these changes?

**Mr Mead:** We say that the circumstances that you outline and that are outlined in the TCFUA submission, specifically issues surrounding the sweatshop dynamic, are already adequately covered by the provisions of the Fair Work Act. We cite in our submission at page 13 that in terms of the enhanced rights in respect of right of entry that apply to TCF outworkers, a TCF outworker is defined in section 12 of the Fair Work Act as where the performance of work is:

... at residential premises or at other premises that would not conventionally be regarded as being business premises ...

We say that those circumstances are already contemplated and addressed by the terms of the Fair Work Act and the right of entry provisions relating to TCF outworkers in its current terms. What we object to is the

expansion of the right of entry provisions—in particular, the non-requirement to provide 24 hours notice and also the access to non-member records that would be afforded to unions when they seek to enter any employer in the TCF sector—to legitimate factories or large operations of some of our members that would not fall within the example of the sweatshops that has been used to justify the variation.

**Senator THISTLETHWAITE:** But surely there are circumstances where that could still apply. For instance, the fact that the TCFUA have highlighted this in their submission seems to indicate that the current provisions are not working. They are providing evidence of that. Surely this committee should take note of that and the government should take note of that and amend the act accordingly to ensure that those circumstances do not arise.

**Mr Mead:** We say that the example that the TCFUA have cited in their submission is an example that would already be covered by the provisions of right of entry under the current act in relation to TCF outworkers. We just do not believe that this proposition that an established and existing factory could, if provided with 24 hours notice, shut up shop and disappear into thin air is a valid or accurate reflection of the circumstances on the ground.

**Senator THISTLETHWAITE:** On page 14 of your submission, and moving on to page 15, in respect of the special provisions you say:

If any additional provisions of the FW Act are to apply to contract outworkers then those provisions should be specifically identified in the Act. Such provisions should not include—

and there are a number of dot points there. One of them is the NES. I was of the view that that already applied in the award. Isn't it already the case that that does apply in the award?

**Mr Mead:** Pursuant to the modern textile, clothing and footwear award, schedule F does have a provision in relation to application of the NES. This bill and these provisions, though, extend beyond the coverage of the TCF award. Indeed, it is our view that the NES provisions should only apply in respect of employees. The circumstances that gave rise to the making of the—

**Senator THISTLETHWAITE:** But I guess the point of view of the committee is that those provisions are applying in the industry anyway. What is the problem with extending them? If people are doing the right thing, there is no issue.

**Mr Mead:** They are applying to a section of the industry. Indeed, the genesis of those provisions was really a function of the process of award modernisation that the Australian Industrial Relations Commission undertook, and specifically the requirements that no employee be disadvantaged and no employer's costs be increased based on the conditions that might have applied in the prevailing federal awards applying to that sector. Those were the parameters and the frame of reference around which that provision in the textile, clothing and footwear modern award was created. We say that that does not necessarily mean it is appropriate to apply what are conditions that were designed and drafted specifically for employees to individuals that are contractors.

**CHAIR:** But that commitment was done on the presumption that everyone was receiving their legal entitlements in the first instance. I do not think you are arguing that, just because people were receiving less than they were entitled to at the time that that commitment was made, that commitment applied to them. You are not arguing that, are you?

**Mr Mead:** No. I believe that, if you look at the material in the explanatory memorandum, it seems in our view that the justification to underpin the deeming provisions of contractors to employees is the notion of sham contracting arrangements and a need to try to do something to prevent these types of sham contracting arrangements from occurring. We say that there are already strong protections and prohibitions in the Fair Work Act against sham contracting, not only in terms of misrepresenting an employee's status as an independent contractor but also deliberately engaging an individual as an independent contractor in lieu of an employee or terminating an employee to engage him as an independent contractor. Those provisions all carry with them a maximum fine of \$33,000. If a sham arrangement has been created, there is a common law right for an employee, pursuant to the relevant common law tests, to gain access to all of the entitlements they should appropriately have received as an employee. The problem we have with the amendment is that it removes the ability of choice for an individual who legitimately wants to be an independent contractor to pursue that type of course and that type of an arrangement with an individual seeking to engage their services.

**CHAIR:** You might find one for me! Over the years of hearings, we have had dozens and dozens of outworkers who have presented before this committee who are, under the law, independent contractors. They are earning \$2, \$3 or \$5 an hour, with no other entitlements, and they have not been able to avail themselves of the present laws because of the power imbalance and inequity that is enshrined in this system of giving work out

constantly in a pyramid sort of way. There is no ability for people in those circumstances to exercise their rights. I have not met one yet who has come up to me and said, 'I wanted to be a contract so I could earn \$5 an hour and have no other entitlements.' I have not met one yet. To be honest, if someone wanted to be one, or if they were deemed to be an employee and were being paid above the award, it becomes a moot point anyway, doesn't it? If we said every independent contractor has to be paid at least the award rate of pay with the award entitlements then the problem is resolved anyway, isn't it? And isn't that all go beyond that. It confers other entitlements such as access to unfair dismissal, enterprise bargaining provisions, the low-paid bargaining stream, transfer of business and transfer of employment provisions. They are all entitlements that a normal award employee would be entitled to, and that is the point I am making. Do you have any independent contractors working in the outworker sector who choose to be contractors so that they can earn less than the award entitlements?

**Mr Mead:** We have not attached or included any statements from outworkers in our submission. That being said, I am aware that the TFIA submission—and I only reviewed its morning—contains a submission from an individual they interviewed over the telephone who was an outworker who seemed to indicate a preference for continuing to be engaged as a contractor. I am not saying that that one statement dictates the entire perspective of all outworkers who might be contractors in the industry, but I am aware of at least that one.

**CHAIR:** Are you aware of the practice where people insist that people have ABN numbers before they are given work to do on a piece rate basis?

**Mr Mead:** I can accept that that is a practice that may occur.

**CHAIR:** The evidence before this committee over a long period of time is that that is the common practice. And it is there because it is a legal loophole, so those giving out the work can choose to be ignorant of the fact that they have any obligations to ensure that these people get proper rates of pay and conditions. They say that, as a contractor, it is your problem to pay superannuation, workers compensation and tax, for instance, and everything else that goes with it. We need to ask ourselves why we are doing this. We are not here simply to regulate this industry because we think having new legislation is something fun to do. We are actually doing it to try and resolve a serious problem that has been there for a long time. I do not see any other way to do it, but I am certainly open to any other suggestions if people think it can be done another way.

I do not want to sound like I am lecturing anyone here, but the industry itself should have policed some of these issues. Mr Mead—and I do not think he said this maliciously—indicated, 'Why should someone have to take responsibility for someone else's work?' If they had have done exactly that—and, quite frankly, in my view, they should have—we would not be having this problem. We would not have one independent contractor handing work to another independent contractor handing it to another independent contractor and people getting paid virtually nothing for the work that they ultimately do. The person who is handing out work in the first instance simply says, 'It is not my problem.' If the industry had have policed that, we would not need the regulation or the laws changed. That is what we are trying to fix. We are not trying to make life any more difficult for the industry. We are trying to fix this problem. And it needs fixing, to be honest. It needs fixing.

**Mr Mead:** I might respond to that briefly. I acknowledge the problem. It is not the Ai Group's position that we wish to see any outworker exploited or provided with some of the horrific conditions that are described in some of the material—most notably, the TCFUA's submission. Perhaps if the bill dealt with the issue of a party deliberately turning a blind eye to particular practices as being a threshold question in terms of whether liability for unpaid moneys was appropriate that would be something that would seem at least somewhat reasonable. But the bill in its current terms—and we made this point in our submission—provides absolutely no mechanism for an employer who does all the due diligence that could reasonably be expected of him for absolution from liability. There is an inconsistency, we believe, in the bill in that there is an exemption for retailers in circumstances where retailers are not responsible for the supervision or control of the work being undertaken by an outworker for the liability of the supply chain. But there is no parallel exemption for a manufacturer, once again, who has absolutely no responsibility or ability to supervise or control the work being performed. Or, indeed, they may have done all the checks and inquiries possible to ensure and ascertain that those down the supply chain were receiving their just entitlements.

**CHAIR:** If the work were being done in-house, the manufacturer would have that obligation.

**Mr Mead:** Yes, they would, but in those circumstances the manufacturer actually has supervision and control. They can oversee and ensure that the obligations are being discharged. In the circumstances contemplated by the bill, the manufacturer can have absolutely no awareness, despite conducting as many legitimate and detailed inquiries as possible, of the terms and conditions that may be afforded to outworkers and still be left with that liability. We see that as a huge flaw in the bill in its current terms.

**CHAIR:** But the control they do have is who they let it out to in the first place. What it is really all about is legitimate people paying legitimate wages, providing legitimate conditions and treating people legitimately. That is the choice they have, isn't it?

**Mr Mead:** I would not disagree with that assessment if we were talking about the circumstance where there is only one link in the supply chain. But in circumstances where the supply chain can have five, six or more links, the principal at the front end of that change can have absolutely no idea or awareness of who the individual is who is contracting to the outworker at the end of that chain—

**CHAIR:** That is the problem. Again, there may be a legitimate reason why the supply chain is five or six links long. I have not heard one yet. We have been through many of these inquiries. My view of why it is such a long and complicated supply chain is to avoid scrutiny and to avoid providing the conditions. That is really it in my assessment of all the evidence that has been before this committee over the years, unless someone can tell me another good reason why a supply chain goes through five or six different entities to get the same work done that has been contracted out in the first instance.

**Mr Mead:** There may be circumstances where that is occurring, but the bill does not even use that concept as a threshold for determining liability up the supply chain. It is absolute. Even if the multiple links in the supply chain are a perfectly legitimate and not contrived method of performing the work that has the principle having no awareness of what might occur four or five links down the chain there is still a liability there. We say that that places substantial risks on the ongoing manufacture of textiles, clothing and footwear in this country. It could be understood if the principle who is responsible for the ultimate manufacture of those goods decides, because their cost structure is not fixed as a result of the terms of this bill, chooses to instead manufacture overseas. That is not something that we as an industry body want to see neither indeed do those individuals who are outworkers and performing that work, because it will see them unemployed.

**CHAIR:** But there are standards in this country which have been set as minimums and they have to be applied. Business decisions are business decisions, but there are minimums and we want to see those minimums applied.

**Senator THISTLETHWAITE:** At page 17 of your submission in respect of the code of practice you say that you are opposed because you believe that it will lead to uncertainty. I am curious about that, because as far as I understand there is already a code in New South Wales, Queensland and South Australia. I would have thought that one at a federal level would provide greater certainty and level the playing field for all participants throughout the nation. Isn't that a desirable outcome?

**Mr Mead:** Undoubtedly, national consistency is something that is a desirable outcome and something that the AI Group has long advocated for in the workplace relations system. But we do not believe that the provisions of this bill and the provisions of a national code, should it be introduced, will yield that. The reason for that is that the way in which this bill interacts with outwork conditions regulated at a state level is that they operate concurrently. Given the fact that outworker conditions, by virtue of section 27(2) of the Fair Work Act in its current form, is a non-excluded matter then the outworker conditions and regulations at a state level operate concurrently with whatever might be done at a federal level. You are correct that New South Wales, Queensland and South Australia have mandatory codes. On my review of those codes, they are not all in identical terms. There is also then a voluntary national code that sits on top of those. Then this bill purports to create a third code that would sit on top of that. There is no national consistency because, while this national code would apply across all the states and territories, there would be second tier mandatory codes applying in New South Wales, Queensland and South Australia. There would also be a voluntary code that applies nationally. We agree with the proposition that national consistency is important. We disagree that the bill in its current terms and a national code as contemplated by the bill would achieve that end.

**Senator THISTLETHWAITE:** If this code were to operate on a national basis and prevail to the extent of any inconsistency over any state codes, would that be a desirable outcome? Is that something that your organisation would support?

**Mr Mead:** It would ultimately depend on the terms of the code. As I said, we support the concept of national consistency. But what would be relevant is how the code might interact with the award conditions, for example, or various pieces of state legislation that also regulate outworker conditions and the degree to which those provisions would be ousted.

**Senator BACK:** Under the current Fair Work Act, does the principle manufacturer have any influence over or liability for the activities of home based work or outwork performed overseas on their behalf?

**Mr Mead:** I will take that on notice. I am not in a position to respond to that now.

**Senator BACK:** In your reading as the bill as proposed, are you aware of any clauses which would place a liability on an Australian based manufacturer for the activities of outworkers or home based workers who are not in Australia?

**Mr Mead:** Our reading of the bill is that it would not apply those regulations to outworkers who are performing work outside Australia.

**Senator BACK:** How long have the current provisions—the ones under which we are operating now—been in effect?

**Mr Mead:** It is my understanding that the provisions that are currently in the Fair Work Act were introduced approximately three years ago. These provisions deal with some of the key issues that the bill purports to cover, such as right of entry for outworkers and outworker terms in modern awards and are relatively recent additions.

**Senator BACK:** Sure. Can you point me to any studies, surveys or reports that have been undertaken since the current Fair Work Act became operational that discuss its success or lack of success? This is not a field in which I have any expertise. The chairman made some observations at the beginning that the Fair Work Act did not address the inequities that have been presented in papers and to this committee in this past. Can you point me to any reports or any work that has been done that would indicate that the current provisions are failing?

**Mr Mead:** No, we cannot. That is perhaps a very important point and one that I believe is made in a number of the other submissions—in particular, the TFIA submission. Much of the literature that is relied upon to identify the precarious nature of outwork and also the exploitation of outworkers is at minimum some 10 years old. There does not appear to be any more current literature on whether in fact the provisions enacted in the Fair Work Act some three years ago are having any success.

**Senator BACK:** Thank you. That is all I have.

**Senator THISTLETHWAITE:** Reading the part of your submission about the recovery of unpaid amounts and the ability for someone to seek to recover up or down the supply chain, it seems that you have taken issue with the part about whether the person is responsible or not. I seem to recall that in New South Wales there is provision for workers employed by a contractor in the construction industry to seek to recover moneys from a principle contractor up the supply chain in circumstances when the contractor becomes insolvent or something like that. Isn't that a similar sort of provision that is operating okay in New South Wales?

**Mr Mead:** I am not familiar with the scheme or the approach that you are referring to. Perhaps I can take that on notice. Once again, if the trigger is insolvency in that case, this is a markedly different—

**Senator THISTLETHWAITE:** It does not have to be insolvency. It is for unpaid amounts. In New South Wales, if employees of a contractor are unpaid then they can seek to recover from the principle contractor—the ultimately responsible entity, if you like.

**Mr Mead:** I will have to take that on notice.

**Senator THISTLETHWAITE:** That is fine.

**Mr Mead:** One of the differences that may exist between the construction industry as opposed to the TCF sector is the visibility for the principle contractor of the subcontractors that are engaged down the chain and the awareness that the principle may have in terms of the various entitlements and terms and conditions that those subcontractors are being paid pursuant to. It is also my recollection—although I will confirm this for you—that those provisions seem to include an ability for a principle contractor, providing that they have received a written undertaking from the subcontractor that they are paying pursuant to the relevant award or industrial instrument, to be absolved of liability. That is something that is absent from the proposed bill. That goes to the point that I was trying to make earlier, which was that a principle contractor seeking to undertake all reasonable and appropriate inquiries to ensure that those down the supply chain are doing the right thing could be misled and lied to about whether in fact appropriate entitlements are being paid and they would still be left liable—despite undertaking their due diligence to ensure that the parties that they are contracting with are doing the right thing.

**CHAIR:** Mr Mead, have you appeared before this committee before?

**Mr Mead:** No, I have not.

**CHAIR:** Congratulations and thank you. You represent your members well. Thank you both for your appearance before the committee today and for your submission to this inquiry.

**CASTENS, Ms Debbie, Chairperson, FairWear NSW**

**McMULLEN, Mr Antony John, Administration Committee, VIC, FairWear**

**MARSHALL, Ms Shelley, Management Committee Member, FairWear**

**PHAM, Ms Bich Thuy, Policy Group, FairWear NSW**

**NGUYET, private capacity**

[14:13]

**CHAIR:** I now welcome representatives of FairWear. Thank you for your submission and for your attendance at this inquiry today. I invite you to make some opening remarks to the committee and to add anything that you wish to the capacities in which you appear. We will follow that by some questions.

**Ms Castens:** I thank the committee very much for inviting FairWear to speak today to ensure that outworkers' voices were not lost in discussions about legal technicalities and the impacts on business profits. The reason that we are all here is because there remains an unacceptable level of exploitation of migrant outworkers in the Australian clothing industry. FairWear is a broad coalition. That coalition is represented by people like Antony McMullen, who is a social justice officer with the Uniting Church in Australia. He is based here in Melbourne. He works in the justice and international mission unit of the Commission for Mission. Antony is a member of our FairWork committee here in Victoria.

Nguyet is an outworker from Sydney who has travelled here to ensure that outworkers' voices are directly heard at this inquiry. Bich Thuy Pham is a Vietnamese community worker who works in Sydney. She has been involved in outreach to outworkers for some 10 years and prior to that was an outworker. Bich Thuy is a member of our FairWork committee in New South Wales. Shelley Marshall is a senior lecturer in the faculty of business and economics at Monash University. She is also a member of the FairWork committee here in Victoria. Does that satisfy your requirements?

**CHAIR:** Yes, thank you.

**Ms Carstens:** I had my first meeting with home based and sweatshop outworkers early in 1994 and have continued to be inspired by the hard work and tenacity of these Chinese and Vietnamese women as I have continued to meet with them and work with them over the last 18 years. I have had the privilege of visiting them in their homes, sitting with them as they work and sharing in their lives in very many ways. It has been wonderful working with the FairWear outworker advocates group as they have decided to speak out, tentatively, in their own gentle way, to ask governments and companies to recognise their situations and take action to address their poor wages and conditions.

FairWear's greatest regret is that, after all this time, we have not yet broken the back of this exploitation at the grassroots. However, we have been heartened in recent years to see significant changes for some outworkers with the combined impact of federal laws, state legislation, voluntary mechanisms and some funding for compliance and education activities. The compliance and education activities of Ethical Clothing Australia and the TCF Union within the existing legal framework are slowly improving the wages and conditions of some outworkers, but this needs to be taken further.

FairWear welcomes this new federal outworker legislation as the important next step to bring national uniformity to the legal rights and protections for outworkers and to ensure sweatshop workers also gain the full benefits of the legal protections afforded to outworkers. The benchmark for these national protections should be no less than the protections that are available in the equivalent state legislation. We indicate to you that FairWear sees that some amendments are going to be needed in relation to the recovery provisions and the deeming provisions to ensure the federal legislation gives the same protections that exist in the states. We do not want any outworker to lose protections through this legislation.

The term 'outworker' in Australia has been synonymous with that of a home based outworker. However, the original meaning of outworker is someone who actually works outside the formal factory setting. While the information and evidence presented in various reports and inquiries has included documenting the situation of sweatshop workers alongside home based outworkers, the home based outworker image and situation has remained the paramount one in the community and amongst governments when we talk about outworkers.

Sweatshops and sweatshop workers have been part of the TCF industry scene in Australia for the whole time that we have been working and campaigning around outworker issues. The demographic of sweatshop workers is the same as for home based outworkers: they are generally migrant women working long hours that isolate them from the rest of the community and provide minimal opportunities to learn English. Their understanding of their

rights in the TCF industry in Australia has been shaped by their experiences in their home country and by limited or misinformation from their employers. There are some outworkers who actually move from sweatshop based work to home based work and back again, depending on where the work is available.

Also, of course, the same well-documented structural factors that have led to the poor wages and conditions of home based outworkers have also led to the poor wages and conditions of sweatshop workers. It is therefore important that the special rights of entry provisions in the TCF industry pertaining to home based outworkers are also extended to sweatshop workers. FairWear strongly supports the extension of the TCF special rights of entry to ensure sweatshop workers can be protected.

Thank you again for the opportunity to address this important inquiry. I will hand over Anthony to continue our opening comments.

**Mr McMullen:** The Uniting Church in Australia, Synod of Victoria and Tasmania, was one of the founding members of the FairWear campaign in 1996. Since then, the synod has passed a range of resolutions, and supporters and members of the United Church have been very active in the campaign over a significant period of time. We are very committed to this cause. A history of the involvement of the Uniting Church is available in the Uniting Church submission and if you are interested in that you can have a look at the different positions and some of the campaigns that the Uniting Church has been involved in.

There has also been a strong involvement from a range of other Christian denominations in the FairWear campaign. You would obviously be aware of the Brisbane Catholic Justice and Peace Commission's submission to this particular inquiry, but previous inquiries have also featured a range of other Christian dominations. The Uniting Church position is based on basic Christian social thought about protecting the most vulnerable. Also, the Uniting Church has a very strong commitment to internationally recognised human rights instruments, things like the ILO convention on home work and other such standards. In my work as a social justice officer for the Uniting Church in Melbourne I have also been involved in some direct liaison with employers in this industry on occasion and with others in the industry. One example was when I spoke to an employer in a fashion house in Melbourne and talked about the situation for home workers and referred them to the Brotherhood of St Laurence ethical threads study, which is excellent. We talked about all of the issues. The response from that employer was, 'Well, um, I donate to environmental causes, I am a good corporate citizen,' and that was the extent of the responsibility that that employer felt he had to vulnerable workers in his supply chain. There is that sort of, 'I can wash my hands of my responsibility,' by some employers in the industry. Another business person I spoke to was much more concerned about the situation for outworkers but talked to me about the complexity of the supply chain in the area of uniforms that he had to deal with. He had 40 suppliers and all of their subcontracting arrangements.

There is a great deal of complexity. That is why it is really important that there are strong safeguards to allow the good players in the system to recover unpaid wages for outworkers. That is one clear way that we can see the bill would address some of those problems. We are also aware that the situation is still bad. The TCFUA only last year uncovered an operation with people being paid \$7 per hour as outworkers, which was in the *Herald Sun*. There is long history of studies. There are recent examples of injustice in the sector and that is why we are involved. We hope for continued bipartisan support for protections for vulnerable outworkers. Our long experience with the campaign has been very positive across the range of parties represented at the federal level.

**Ms Castens:** Nguyet would now like to make a brief statement in Vietnamese which Bich Thuy is going to translate into English.

**Nguyet:** Good afternoon, everyone. I have been working as an outworker for 21 years. I make a range of different lace fashion dresses for several different labels from the high end of the clothing market. The garments I make are complex with different colours of material needing to be sewn together. It takes me around one hour to finish a garment. I have a lot of experience working at home as an outworker. My pay is very low, around \$5 or \$6 per hour, without benefits. That is the reason why, sometimes, I refuse an order because of the very complex garments. There are too many colours to match and I feel too much pressure. This salary came with the first time I was given an order to complete.

It is common for me to be given 100 garments to complete in one week. It is one hour of complex work for one complex garment. It told my employer that I can only handle 50 garments a week. This means my income is now very low. My body is tired and one of my legs is very sore, so I cannot handle the heavy workload anymore. My hopes for the future are the same as my friends. Others who are working at home like me would like to get fair wages and better conditions. We want the government to help improve our conditions at work so we can keep working and contributing to Australian society.

**Ms Pham:** As an Asian woman I work with many Vietnamese migrant women workers. We have low pay in employment in Sydney. I currently have contact with more than 50 Vietnamese workers and I have had contact with hundreds of other Vietnamese outworkers over the last 10 years of my work. I have heard the stories repeated over and over again in different ways. I am happy to take the questions about the common aspirations of the outworkers, which I have witnessed.

**Ms Marshall:** I am a senior lecturer at Monash University in business and economics and also a committee member of FairWear on the basis of my expertise in informal work. My research is in Australia, and I wanted to say to Senator Black that I have recently been conducting research with outworkers in Australia and I would welcome answering questions about that research. It is outlined in my individual submission.

FairWear is deeply concerned by earlier arguments and by submissions made to this committee that suggest that labour laws are responsible for the contraction of the manufacturing industry in Australia. In particular we think that focus on this point alone is hindering the important discussion that needs to happen in this industry about how we can promote the industry's survival.

When we look at global trends it is clear that Australia's labour laws are not the primary cause of the contraction of manufacturing. The fact is that, regardless of the nature of labour laws of industrialised countries, whether it is the US, Canada, the UK, wherever we look production has been moving to developing countries. This is for a number of economic reasons. One is trade liberalisation, and that happened 20 years ago and we saw the effects of that. Another is improvements in transportation which mean that it is much easier now to import goods from Asia. A third one, and I think this is very important for the industry to consider, is the fact that production quality and speed of production has increased greatly in developing countries. I am thinking, particularly, of the example of the incredible investment that has been made in China to reduce the speed with which production occurs and that it can be put on a ship and transported anywhere in the world. I contrast that to what I have seen in Australia during my research, which is exactly the opposite trend. What we see in Australia are longer and longer supply chains.

I have found it distressing to see outworkers, who are carrying out one tiny little bit of production, for example just overlocking, and then that work has to be picked up and taken to another house where another step is done. I have seen somebody who has constructed a giant cutting machine in his shed and, when you think about the way that that might be conducted in China at the moment, which is with highly technical cutting machines where it can be done much faster, I think that it is a great concern that certain parties that have made submissions to this inquiry are arguing for competitive advantage on the basis of low labour costs when, in fact, we need to be looking and focusing a lot more on a different model of production. Canada, for example, which has a very similar legal and economic structure to ours but does not have protections for outworkers, has still seen the contraction of its industry. Import penetration in Canada increased to 76.8 per cent in 2008 from only 59.8 per cent in 2004. That is on the basis of a global trend which is seeing production in all industrialised countries falling at a rate of about 1.6 per cent, regardless of labour laws.

So the answer is not to encourage noncompliance with labour laws; the answer is to put good labour laws in place for the workers who are conducting work and look at other responses for improving manufacturing in Australia. The problem now really is that manufacturing in Australia is characterised by low-quality, low-end production. I do not mean that in terms of the type of fashion but more that it is the kind of work that can be done on two machines in a house or a shed instead of the kind of manufacturing that we would like to see carried out in Australia, which can be done using technology, with higher wages.

It is FairWear's view that the industry has a common interest in promoting employment, but this cannot be done on the basis of exploitation due to risks being passed down supply chains so that the burden of risk is borne by outworkers. As a consequence, FairWear believes there are important features of this bill that are to be commended to the committee. A very important feature of it is that it recognises the unique structure of the industry. It recognises that it is not an industry where there is just one employer giving work to one employee directly; rather there are complex supply chains. It redistributes risk so that, instead of all the risk of inconsistent orders and so forth being borne by an outworker, those risks are shared across the industry more fairly. A very important part of this bill is, for example, the mandatory code that means that retailers have responsibility, manufacturers have responsibility and, likewise, smaller employers have responsibility. It also links and supports important initiatives that promote Australian production that is carried out ethically.

We would like to see more focus on those positive aspects, such as Ethical Clothing Australia and the code, and we would like to see a conversation about ways that the industry can be improved to promote fair employment instead of relying on the exploitation of labour as a basis of our competitive advantage. We think that this bill is part of that package of initiatives that need to occur.



**CHAIR:** We might start with your invitation to Senator Back.

**Senator BACK:** I would be most interested. The secretary was explaining that, whilst you put a submission in, we were not aware that you were appearing some, so I have not had a chance to read it, but I will. Perhaps you might be kind enough to answer that question that I put to a previous witness: have we yet have enough time to find out whether the provisions of the new Fair Work Act, which I understand have been in place for a couple of years, are working or not working, from your research?

**Ms Marshall:** It is difficult to say, partly because there is a complex web of legislation and the award. The award does have deeming provisions which recognise outworkers as employees, and also there are the effects of state legislation. What I have seen in my research is that Victorian legislation, which is very similar to the bill that is before you at the moment, is having an impact. That is extremely heartening and it is quite new.

**Senator BACK:** That is anecdotal, is it?

**Ms Marshall:** No.

**Senator BACK:** You have had an opportunity to actually—

**Ms Marshall:** That is based on my research. I have been visiting outworkers' homes and examining the conditions of their pay but also the conditions under which they are working—health and safety and so forth. I have been looking at issues such as whether they have to get an ABN. At the moment, not only are outworkers being asked to get ABNs but they are also being asked to employ other people. The supply chain becomes even longer and they need to prove even more that they are really contractors and not outworkers. That is something that they are required to do currently to get work. The conditions are very mixed. There are some people who are currently receiving low wages—that is, \$4 to \$5 per hour, and that is translated from piece rates—and there are some people who are linked to supply chains with accredited companies under the Ethical Clothing Australia initiative, and they seem to be receiving full wages. So the legislation, in combination with voluntary initiatives, is having an effect, but that is different from the Fair Work Act.

**Senator BACK:** I was interested in some of your comments. You were talking about the fact that in developing countries the supply chain seems to be much more efficient. There is more investment. Then you mentioned competitive advantage. With everything I have heard and read, it seems to me that Australia has absolutely no competitive advantage at all. I think it was in the Textile and Fashion Industries' submission that we were given some figures from the federal review in 2008 into the sector. There were 48,000 people identified as being employed, and in December 2011 it dropped to 38,000—that is, a 20 per cent reduction. Ms Pham, through the translator, is there any trend as to where the 10,000 people over the two- to three-year period picked up alternative employment? I am very concerned. It is not an industry in which I have any experience. The states in which it occurs are not the states in which I have any involvement. If you were a business person you would not be investing in local manufacture in this country having seen or heard what I have heard today. The obvious question is: where do people find alternative employment? That is what concerns me tremendously.

**Ms Castens:** First of all, I will answer that and then I will hand over. The question you are asking is about people in the formal industry. Those are the formal industry figures rather than those for the informal sector, which is the outworkers.

**Senator BACK:** I would suspect that, if there are figures relating to the formal industry—to use your term—there must be an equivalent number in the informal or home based or outwork area. I would be surprised if, over time, those two proportions do not reflect each other. Maybe they do not. I am being a pessimist. Everything I have heard and my own experience of Asia particularly would indicate to me that we are just going to see an accelerated move offshore of the type of work that we are discussing here this afternoon.

**Ms Castens:** The New South Wales legislation was introduced in 2002 in the context of the Behind the Label strategy that the New South Wales government had. Part of that recognised that there was a change in the industry. The Behind the Label strategy included some retraining programs and training programs for outworkers, so a large number of outworkers at that point did have the opportunity to retrain for different industries. Some of those were able to gain work in those industries and others were not. I will hand over regarding which industries outworkers are finding work in when they leave work in the TCF industry.

**Ms Pham:** My experience is that I worked with outworkers for 10 years. I started work with Asian women through the New South Wales government Behind the Label strategy. I built up a group of outworkers in the community. They came to learn English. When they get enough English, they can get training. We do lots of courses and training relating to them, because they want to get out of the clothing industry. They try to retrain and get different skills. Most of the outworkers get training at TAFE. We are linked to TAFE and we do some courses like hospitality or it is linked with the local council to do a family day care course or some aged care industry

work. It is very successful. Some of them, for example, finish the family day care course and can work at home. So they are similar to the outworker they were before, but they get paid better for their work. They still contact us because they are successful in the way they improve their skills and contribute back to society. They feel proud of themselves.

**Senator BACK:** Would you be confident, if and as we see a change in this industry, that there will those alternative forms of employment? Are you confident of that? You sound very optimistic. The path you have just described to us would appear to be one that would be desirable to most of the people whom you represent.

**Ms Carstens:** Do you mind if I pick up on that first?

**Senator BACK:** By all means.

**Ms Carstens:** There seem to be three different paths for outworkers who have left the industry. Some of them have ceased to work at all and have become involved in looking after grandchildren and doing other things, and some of them have carried injuries that have meant that could not go into other work. Some outworkers have continued to seek employment and have had varying degrees of success with work in other areas and so have done bits and pieces of that. We have seen outworkers who have gone into the cleaning industry or hospitality, then come back to outwork and then gone into something else. So we decide that someone has really left outwork when they sell their sewing machine—quite often they have hung onto that because that has been the work they could fall back on. But we have had a number of women who have been able to move successfully into aged care and hospitality. Another victory was in the nails industry, for a number of outworkers.

**Ms Pham:** Yes, the nail industry, the beauty industry. Some of the outworkers who really like the clothing industry get recognition through courses at TAFE. They learn about clothing production at TAFE, recognise their skills and improve their skills by doing pattern or designing courses. Some from the community were interviewed for work in fashion houses in the city. They are very proud of themselves. They are around my age—around 50—and they are very excited because it is very hard to get a job here at their age. With that work they get \$50,000 per year with a lot of benefits, like entitlements to annual leave, and they come back to the community and say they are proud as an Asian woman to have moved up to that.

**Senator BACK:** I have one more question to direct to either Ms Carstens or Ms Marshall. Reading again from the TFIA submission, there are a number of appendices containing letters from people involved in home based or outwork activity whose experience is perhaps not consistent with what we have heard this afternoon. Are you of the view that this legislation will preclude them from pursuing the way in which they want to work? Will this become a catch-all so that, whether they want to or not, they will end up in this employee relationship that may not in fact suit their circumstances?

**Ms Marshall:** The first thing I would say is that, in all of the research that I have carried out and seen, I have not come across outworkers of that nature. I certainly have not come across an outworker who did not want to receive the award wage of \$17 or so forth, if they could. The flexibilities are not disappearing because of this bill and they will not. They certainly have not disappeared because of the similar state acts that are reflected in this national legislation. For example, the flexibilities that outworkers tend to want are the capacity to work at home and to be able to balance child care and so forth.

**Senator BACK:** To look after their families?

**Ms Marshall:** Exactly. So it is not about whether they are a contractor or whatever. For outworkers I have interviewed that is a technical thing. It is forced on them as a condition of getting the work. That is stuff they do not care about. What they care about is that they can be with their families, that they are able to work in an environment which is comfortable, because perhaps their English language skills are not so great. So this is great work: it means that you can work within your community, for example, and you are not struggling with language. The flexibility is the most important thing, at least in my experience with the research—that people are able to look after kids or elderly family at the same time. This does not stop that; this bill allows that to continue.

**Senator BACK:** How does that employer-employee relationship work then in the context of payment for numbers of items completed albeit at a different rate of payment? A normal employer-employee relationship is based more around time than it is around output. Does the proposed legislation take account of that so that, in this proposed employer-employee relationship, payment is still based on the output of garments, for example, completed?

**Ms Marshall:** This is something that I am sure the TCFUA or somebody within the industry could answer better, but payment is based on the hour but there is a common practice within the industry for a calculation to be made of how many items can be sewn per hour. Essentially, there is a translation that is made so that payment can

then be based on an hourly wage which is consistent with the number of pieces that are sewn within that hour. There is standard paperwork that allows for that to occur.

**CHAIR:** It has been suggested that there are already adequate laws and that if someone is being considered a contractor and being paid poor rates of pay they can take that person to court and get legal remedy for that. Can you explain to me how an outworker might be able to do that and whether you think they could do that? And what would be the consequences of doing that to the person that provides you with work in the first instance?

**Ms Pham:** The outworker as an employee knows about the law. If she feels it is not fair she will talk to the TCFU and ask for help or she will ask the community Asian women's group to help, because she does not want to attend the English class and so the community and TCFU will inform us. When she knows the contractor gives her the job and does not give her the right pay, sometimes she feels it is very unfair so she speaks out to the community worker or she speaks out to the union about conditions.

**Ms Carstens:** But, added to that, the question is: would she take a case to the court to try and say that this is an unfair contract and that she wants to get fair pay under this contract? Is that something that she would do? Would she go to court as a contractor or is that something that is a barrier for an outworker?

**Ms Pham:** If it is taking the contractor to the courts, I cannot do it because if I speak out I lose the job. The contractor does not give the job to me.

**Senator THISTLETHWAITE:** Just following on from that, for someone like Ms Nguyet, what is the practical effect of these proposed laws for her situation? Will there be an improvement for someone like an outworker in her position?

**Ms Castens:** The proposed laws provide a framework in which the union or the government inspector, whoever is going to make use of the code, would be able to look at assisting—sorry, I will go the other way first. The difficulty for the outworker coming forward and making a claim to get improved wages for herself is the likelihood that she will no longer get any further work from that contractor. So coming forward for individual assistance is something that has been a problem for a long time. However, if the outworker is able to talk about the contracting chains in which is working they can be looking at that in terms of their being outworkers in the supply chain and they can be using the codes and other mechanisms that are there to identify what is going on without having to identify the outworker who has come forward to say there is a problem in the supply chain. In a sense, by working from the top down in the supply chain to look at where the responsibility lies and sharing that responsibility and getting everybody involved, we are able to change things around for outworkers without individuals losing their job because they have been identified.

**Ms Marshall:** In my research I have interviewed outworkers who were contractors and were being paid very poorly and have recently become employees because of the effect of state legislation, which is similar to this legislation. What they told me was that the effect on their lives was amazing. It is not the pay per se; it is the fact that, because they are being paid more, they do not have to work 14 or 16 hour days. People just were not getting time to cook for their families and try to do things when they were working incredibly late hours. The biggest thing these people told me was that they actually had time to watch television or just occasionally have some leisure time, which they had not had for the last 20 years. I was at one family's home when their first superannuation letter arrived. They have not had the capacity to save. The idea that money was being put aside for them was so foreign to them, yet it is something that, as an employee, I have expected my entire working life. Those are the incredible tangible differences that being an employee makes to somebody's life because they are being paid higher wages and getting additional benefits. It is quite extraordinary to see it in person.

**Senator GALLACHER:** Is it your experience, Ms Castens, that, where these provisions have been operating—in New South Wales, for example, they have been going for 10 years—they have had a practical effect and improved the lives of outworkers?

**Ms Marshall:** They are certainly starting to. It takes time. It requires compliance and it requires that they are actually forced, and that requires funding as well because, unfortunately, many employers are not doing this without getting a little prod.

**Ms Castens:** The legislation, the mandatory code, has been in place in New South Wales since 2005. Immediately we were facing Work Choices, and employers did not respond to the code because they figured it was not going to exist anymore after Work Choices had come in. So there was a period of time where it was not active in a sense. But really the difference has been since Ethical Clothing Australia has had money to pursue compliance activity and draw on all the networks of mechanisms that are there that we have started to slowly see the changes occurring. But a lot more needs to be done. As we have said before, having this national framework and something consistent nationally will be an important part of that.

**Senator BILYK:** Are the outworkers able to negotiate a fee, or are they told, 'This is what you do and this is what you get'?

**Ms Pham:** A worker now can negotiate with the boss. For example, if they get the order and it looks like the order is a very complex order, very hard to make, they can ask more money. And sometimes the boss just tries not to get less profit, so he says: 'Oh, that's sad. It's very hard. Less jobs like this if you don't get the order. I'll give it to someone else.' One who is high skilled like me can make a dress like this and she can ask more. If she realises this order is very hard, this garment is very hard to make and she needs more time to do this, will she ask more, like 50c more an hour, \$5.50 per hour—just go up a little bit? Will she be confident to ask the boss, because she knows a minimum wage for employees is more than \$15 per hour? Does she know about that? Will she accept \$5 or \$6 per hour? There are lots of areas. For her, it is very hard to get another job, so she stays in the clothes industry as a worker with different reasons. But now she can negotiate with the boss like this, yes. It looks like she understands the law, but she still wants to keep her job.

**Ms Carstens:** I think the work that we have been doing with outworkers to empower them to speak out, to have greater confidence and to learn more English has resulted in them gaining some capacity, but outworkers cannot negotiate award wages and conditions.

**Senator BILYK:** No, and that was my next question.

**Ms Carstens:** Our experience has been that there needs to be some—

**Senator BILYK:** Would they be able to negotiate better working rights and conditions? Obviously, if you can only negotiate 50c or a smaller amount then it is going to be hard. I know that the majority of people working in the industry may well have low English and literacy levels. They are predominantly female, I presume. Is that correct?

**Ms Carstens:** Yes, and isolated.

**Senator BILYK:** That is right—and isolated. The Australian Industry Group claimed that it would be unfair for the union, the TCFUA, to have any special rights of entry to outworkers' places of work. I am just wondering if FairWear have any comment to make on that issue.

**Ms Marshall:** My experience is that outworkers have only gained their rightful entitlements where there has been an inspection. Without that capacity, unfortunately nothing happens. It is an integral part of this bill, really. Unless there is enforcement, unless there is the capacity to trace all the way down the supply chain, outworkers stay invisible. Outworkers do not have any way to know what they should be getting, so, unless it happens that way, that there is tracing and enforcement, unfortunately outworkers' conditions are not improving.

**Ms Carstens:** And that is for sweatshop outworkers as well as home based outworkers.

**Senator BILYK:** When you are talking about 'sweatshop outworkers', who employs them?

**Ms Carstens:** These are women who are not necessarily working in their own home but are in a sweatshop. An example of a sweatshop that I personally know about is workers that have worked in the boss's garage at the back of a house. They arrive at work between 6.30 and seven in the morning and when they walk in the door, once everybody is there at seven o'clock—there are five or six workers in this particular factory I am talking about—the doors are locked. The garage is very small, but five or six of them are working in that small space. There are things stacked all over the place. So there are lots of breaches of occupational health and safety. There are a number of risks around the way that the workplace is constructed. And then these workers are being paid only \$4 or \$5. They are being paid piece rates, which we calculated to be only about \$4 or \$5 an hour. That is the sort of sweatshop environment I am talking about.

**Senator BILYK:** Would those workers that you just talked to us about be deemed as contractors, self-employed or employees?

**Ms Carstens:** They are being treated, I suppose, as contractors in the sense that they are being paid a piece rate.

**Senator BILYK:** I am interested in what they are actually being called.

**Ms Marshall:** Yes, they are being called contractors, even though they would have a right to be employees, obviously, under the law.

**Senator BILYK:** How widespread do you think that sort of activity is? Do you have any idea?

**Ms Marshall:** It is so difficult to estimate. There have been a variety of estimates, but because it is hidden it is so difficult for us to know. We know that the proportion of outworkers or sweatshop workers compared with

factory workers is possibly around 15 to one. We have figures about formal workers, and they are based on factory workers, so we think that there are now—the numbers of formal workers were read out earlier—

**Ms Carstens:** It was 38,000.

**Ms Marshall:** So it is 38,000 times whatever we think the proportion of sweatshop workers and outworkers is compared with those formal workers. We are talking about hundreds of thousands of workers but we do not know—

*Member of the audience interjecting—*

**Ms Marshall:** The truth is that we do not know. There simply needs to be research in order to find out. But one of the things that we think is just that it does not necessarily matter exactly what the numbers are; the fact of the matter is that as we come across homeworkers we find shocking conditions, and those conditions need to be addressed.

**Ms Carstens:** In terms of the numbers, the TCF Union will probably talk to you more about the sorts of investigations that they have done, where they have gone to look at a supply chain and in that process have discovered that there are some 340 workers that are actually involved in doing the work but originally there were 35 workers on the books. So that is 35 workers formally employed that they would have encountered in statistics but actually 340 workers in one particular supply chain whose detail I am aware of. They could tell the story over and over again of situations where, in the process of looking at what is going on in a supply chain, they have uncovered hundreds of outworkers in individual supply chains. So the numbers are clearly high, but, as I said, we do not have those figures at the moment.

**CHAIR:** Ms Marshall, you might just give that question some more thought and if you think you can give us a more definitive position—

**Ms Marshall:** In terms of numbers?

**CHAIR:** Yes.

**Ms Marshall:** All I can say as an academic is that it is something that requires study. There are methods for studying the number of informal workers but they require the assistance of the Australian Bureau of Statistics or they require something called very, very broad snowballing survey techniques, and unfortunately that has not happened. We do not know. All we can talk about is the proportions that we know about, for example.

**CHAIR:** And they are based on your experience in academic study?

**Ms Marshall:** Exactly.

**CHAIR:** Thank you for that. We are out of time, so thank you for your presentation and your attendance at this committee today.

**Proceedings suspended from 15:03 to 15:14**

**DANG, Ms Anh, Private capacity, through interpreter**

**MACPHERSON, Ms Elizabeth, President and Organiser, Victorian Branch, Textile, Clothing and Footwear Union of Australia**

**O'NEIL, Ms Michele, National Secretary, Textile, Clothing and Footwear Union of Australia**

**TRAN, Ms Susan, Private capacity, through interpreter**

**WILES, Ms Vivienne, National Industrial Officer, Textile, Clothing and Footwear Union of Australia**

**CHAIR:** Welcome. I understand you have some visuals to present to us. At the completion of your presentation we will move to questions.

**Ms O'Neil:** I appreciate greatly the opportunity for the TCFUA to appear before the committee this afternoon. I acknowledge the considerable number of outworkers who have joined us and I appreciate their attendance today. In November of last year, as part of the union's activity in looking at what is happening in the industry, there was a very short story about exploitation shown on Channel 9, and we have a very short presentation of that for you today.

*A DVD presentation was then shown—*

**Ms O'Neil:** In addition to a short opening statement I will make, you will hear today from both Susan and Anh, who are going to share with you some of their experience of the daily reality of being an outworker in Australia, and in particular they will talk about sham contracting arrangements. Beth Macpherson will give you some evidence on the prevalence of sweatshops that exist within supply chains, and also the myriad difficulties we face in terms of compliance with Australia's current minimum requirements. She will also give you some graphic examples through photographic evidence of some of the workplaces that we have recently uncovered. We believe this evidence is going to starkly illustrate why the provisions of this bill are so critical to enhancing industrial compliance and minimal safety net conditions for outworkers and sweatshop workers in this industry. We believe this bill is essential for ensuring extension to these workers of the basic rights that apply as a matter of course to all other Australian workers. I am going to address briefly the following points: that there is a demonstrated need for this bill; that it is long overdue; that it is not radical in its effect but, in fact, largely consistent with existing provisions that apply in most states; that it does 95 per cent of the job, and requires some minor amendments; and that opposition to this bill is misinformed or ignorant of the current regulations which apply to protect these vulnerable workers.

There is a significant need for this bill. Over the last 25 years there have been numerous inquiries, reports and research that have shone a light on the mostly invisible world of outwork in this industry. The findings have been shocking in their consistency. Outworkers as a class have been and remain one of the most vulnerable groups of workers in the country. The level and degree of exploitation of these workers, who are predominantly women from non-English-speaking backgrounds, is endemic in the TCF industry.

Outworkers exist at the end of a complex labyrinth-like supply chain and have little, if any, bargaining power in relation to the work they undertake. Research has consistently found that the average outworker in the industry works excessive hours on both a daily and weekly basis, receives dramatically less than what is the award minimum rate of pay, has difficulty actually getting paid for the work that they do and do not receive accrued leave, public holidays, superannuation or workers compensation. And they work in poor and unsafe conditions.

Similarly, we have seen a spread of sweatshops in the industry as TCF supply chains have adapted to a contracting-out model in which price paid for goods is constantly being squeezed at every level. Sweatshops may be difficult to define, but you know one when you see one. Sweatshops are characterised by groups of workers labouring under appalling physical conditions and receiving under award rates of pay and conditions. Commonly, sweatshop workers are subjected to unrealistic deadlines, intimidation, harassment and threats to their job security. Sweatshops flourish because they operate with no, or extremely low, levels of scrutiny and transparency. By their nature, sweatshops do not announce themselves. Sweatshops and their workers are often very difficult to locate, follow and monitor, making intervention and compliance on their behalf nearly non-existent.

Given the nature of both outwork and sweatshop work in the industry, the need for specific industry regulation which addresses these conditions is clearly demonstrable. I want to give you a couple of examples of supply chains. In the second half of 2011, a company advised Fair Work Australia and the union that they had eight factories that were making work for them in their supply chain. Upon union investigation we uncovered an additional 15 factories that were making this one company's work, and an additional 58 home based workers who were making for this company's label. That goes from a company declaring publicly, as they are legally obliged to

do, 'We have eight factories that are making for us,' and us uncovering here in Melbourne in the last part of 2011 another 15 factories and another 58 workers making their label at home. This investigation continues today, and we continue to uncover more workers in the supply chain.

During the course of checking that supply chain we found that most of the companies we found that have not been disclosed were, in fact, sweatshops, and that their in-house workers and the workers working from home were receiving less than the award rate of pay, had no WorkCover insurance and had no superannuation being paid. There was no accrual of sick leave, annual leave or long service leave. There was underpayment of wages and there were serious occupational health and safety hazards.

In New South Wales over the last two years the union has commenced work with two large Australian clothing labels who wanted to cooperate to ensure that their supply chains were both transparent and ethical. In these instances the companies actually thought they knew their supply chains; they thought they knew where their work was being done. They were fully cooperative in disclosing where their work was going.

In the first example, the company believed that there were 87 workers who were employed making their products in Australia. They were in various locations, but they understood that 87 people were making their work. After approximately 12 months of union checks, we found close to 400 workers who were making that company's work.

In the second example, the company believed that there were 50 workers working in Australia to make their work and, again, with their cooperation and the involvement of the union we uncovered 549. So, the company believed 50 and we found 549 workers making their work. This bill is long overdue. The TCF bill represents an important part of regulating this information, but in fact the Senate first recommended key aspects of the bill you are considering today back in 1996. There has been a longstanding bipartisan approach to try to address this issue but, unfortunately, without this final step in the process we still have a significant problem to address.

The bill essentially acknowledges that as a fundamental principle, whether you work in a factory environment or a home environment, you should be entitled to the same dignity and respect—and, importantly, the same minimum pay, conditions and rights—as any other worker in the country. It also acknowledges that rights are limited if they cannot be effectively enforced. There is no point in theoretically saying that someone is entitled to something if you cannot ensure that it is actually delivered.

The majority of the provisions of the bill deem contract outworkers to be employees. This simply recognises the principle of equal treatment for the performance of the same work. The provisions of the bill that permit outworkers to claim unpaid moneys up the supply chain is also recognising the persistent difficulties, some of which you have already heard about today, in recovering wages and other entitlements from the direct employer who gives work to these workers. They also make for a national outworker code, which will make consistent the transparency of the supply chain right through from a retailer to the manufacturers and factories that we have spoken about.

The provisions of this bill are not radical. I want to draw to your attention that already in Australia today we have a set of rights that apply to this industry. This bill is an attempt to make these rights nationally consistent, an important principle—and I was pleased to hear earlier today that the AIG supports the notion that we should have nationally consistent provisions in this area. It seeks to harmonise those provisions and make sure that workers are employed under secure, safe and fair systems of work.

Already in Australia some of these provisions exist in the majority of states where the great bulk of this work is done. Five states—New South Wales, Queensland, South Australia, Victoria and Tasmania—have passed laws that deem outworkers to be employees. There are also state and federal awards that apply, and there are already comprehensive provisions that regulate giving out work in this industry. Things like the NES already apply according to the TCF federal award. Recovery of unpaid money already exists in state legislation in four states: New South Wales, Queensland, South Australia and Victoria. An outworkers code of practice—a mandatory code—exists in three states: New South Wales, Queensland and South Australia.

So it is both timely and necessary to develop a consistent national approach to what is a shameful problem in our history. It is most pressing because this industry operates across state boundaries and is commonly structured, as you have heard, across complex and long supply chains that have multiple layers to them. We think the bill does 95 per cent of the job. We think some small amendments are necessary to meet that standard of nationally consistent, strong protection for these workers. We believe these amendments would not be difficult to achieve, and we would encourage the committee to consider them in its report. The importance of these amendments is that they will make sure that, in whatever circumstances, workers are able to be recognised as employees and that the recovery of money is as effective as what already exists in the states I mentioned earlier.

We think the opposition to the bill is largely ill informed and that it misunderstands current provisions. You have already heard today the AIG response on the issue of the NES—national employment standards already provided for TCF workers, whether they be employees or contractors under the provisions of the TCF award. There is not sufficient time to cover all the areas in which we think there is some misunderstanding, but I would be happy to answer questions about it. We do think that there is fairly widespread ignorance and misunderstanding of how the state outworker laws already work, as well as the federal law. In fact, some of the concerns that have been raised have been about provisions that have been in existence for these workers over many, many years. This bill ensures national consistency and a capacity to make sure that those provisions are delivered to these workers. I want to just make sure that we comment today that, to ignore this, to allow unscrupulous parts of this industry to continue to profit at the expense of these workers, is not good for our industry. It does not deliver a future for jobs in this country. There is no future based on a race to the bottom. If we are going to continue to have a TCF industry in Australia, we should proudly be striving for one whose difference is the fact that workers are treated with dignity and respect and that they receive fair wages and conditions. Part of our capacity to market ourselves domestically and internationally rests on those very points.

In conclusion, we reckon it is about time. The reputable parts of the industry are already under pressure and should not be undercut by unethical businesses who are engaging in sham and exploitative arrangements. We do not think it is radical and with some minor amendments it will do the job. We think that most of the opposing submissions have been ill-informed in terms of the current provisions. Let us not enhance this industry's demise by allowing a race to the bottom. Let us actually ensure that we have a local industry that we can be proud of.

I would like to take the opportunity to refer to Beth Macpherson. You already have in front of you some of the material that Beth is now going to refer to.

**Ms Macpherson:** I welcome the opportunity to show you today some of the work that I deal with every day. My role in the union is mainly to do compliance work. I visit workplaces and talk to outworkers in relation to the work they are given by companies, either at the top of the supply chain or down the supply chain. I look at compliance with the TCF award 2010, in particular schedule F, which is the outwork related provision. In addition to that I look at occupational health and safety and whether superannuation and WorkCover are being paid for these people. I have provided a booklet that is a copy of this PowerPoint presentation. I will not speak to all the photos, but I want to draw your attention to some of the photos I have presented here today.

The first five photos are actually of outworkers' homes. The first one is an example of a poor working area. When we spoke to this outworker she said that her employer, the person who was giving her the work, had never visited her workplace. They had no knowledge of the type of environment which she was working in. As you can see, the chair is a problem. One of the common problems when we go to visit outworkers is that their seating is not ergonomic—it is not an adjustable chair. The cushioning they apply to the seats actually causes long-term back and neck injury. We spoke to this outworker about those sorts of things and she acknowledged to us that she had been given no assistance or information from her employer about how things should be set up and how things should work.

The next photo is in the back of a home. This person has been an outworker for over 10 years and has worked for various labels over that time. She was saying to us that she works very long hours. On most days this is the area that she is in for in excess of 12 hours. She is getting very low pay. If she were working in a factory, she would get assistance in how to handle the work as it comes in, during the operation and when it is ready for dispatch. She would get assistance on manual handling. As you can see, it is quite a mess there and she is bending over to pick up that bundle. There are a number of health and safety issues that she faces and we have been able to speak to her about that, but the responsibility lies with her employer. Again, she said she has not seen or heard from her employer at her premises. No-one has really taken any responsibility for her in that work environment. She also spoke in particular about this. The person that she was getting work from traded between outworkers. So a person would come to her or talk to her on the phone and say, 'Will you take this work? We'll give you \$7 to do this dress.' She would say, 'Oh, no, that is too low.' So they would say, 'But Jo around the corner will do it for \$5. So if you want it you'll do it for \$5.' She said a lot of times she had to take it as she had no choice but to take that work for \$5 an hour as she had a family, a mortgage and—like everybody else—bills to pay. So she is forced to take it and work extremely long hours to try to make not even minimum rates of pay. Again, that is a very confined space for an outworker. I have here this, another outworker's work environment. As you can see, it is in a back bedroom of a home that she uses as a workroom. Obviously, she struggles for space in this small room. There is no storage for materials as they come in and out, which is a common problem for outworkers because they have a restricted area in which to work. As you can see, she purchases all the cottons herself. Under the law the employer is to provide the cottons. She spoke to us about how she had got quite a storage area for cottons



because everytime she gets a different order or a different colour she must then go and purchase that cotton and she has to pay for that out of the income that she gets. In addition to that, she has got to pay other associated costs such as power and machine maintenance or for machinery if they require different types of work to be done.

**CHAIR:** Ms MacPherson, I am a little bit concerned about the time. I am wondering whether you might be able to quickly summarise the rest for us.

**Ms MacPherson:** All right, no worries. Again, here you see poor seating. I will take you through these ones. As you can see, there is no signage on the outside so you would not be able to tell it is a factory. This is the inside of that factory. You have got the photos to look at later. Obviously, there are occupational health and safety issues all through that: power cords; up in the right-hand corner you see a power board hanging from the roof. These are sweatshops. All these ones that I am showing you are what we would define as sweatshops. They are in the supply chains of well-known labels within Australia. These ones here are all based in Melbourne. This is another example of where sweatshops are, behind these blue windows, and that is the case with the next one as well. This is a tearoom of a sweatshop. You see there is a grinder. There is no table. It is unhygienic. In the next one, again it is very cluttered with nowhere for people to eat their meals. The next two photos are before and after ones. The before shot is when we came in. The after shot is after we were able to get the OH&S matter fixed. The next couple are considered severe hazards. There is one where there is a boiler with boxes; a gas cylinder; one that is disconnected from the mains and is a very common problem; one that is running from the gas cylinder; the fire extinguisher there is not accessible and, of course, there is the storage of hazardous materials. I will go on to some of the common problems like seating, where there should be an adjustable, ergonomic chair for people to sit on. That piece of cloth that is over that bar, in the right hand corner, is so people do not hurt themselves when they trip over the bar. Then there are unsafe or unclean areas. The next one is around storage. You can see that is a hazard. It could be knocked accidentally by someone and could fall on top of them. The next one is of an ironing press place. You can see the power board is a problem. There are the steam valves coming out of the wall. All that is right next to an eating area, a dining area. The next couple are mainly just hazards. I will just click through a couple. There are unclean, unsafe work areas. Storage is a major problem. Again, this is storage. Again, you can see these are sweatshops. We are trying to get access. That roller door at the back is the only in-and-out access, so we are at the back of the factory now looking forward and it was a minefield trying to get in and out of there. Again, it was a mess. There were hazards. Electrical wiring is a big problem in a lot of these places as well.

**CHAIR:** I think we are going to have to leave it there, I am afraid. I think just clicking through the rest of the photos just reinforces what you were going to say.

**Senator FISHER:** Yes, they speak for themselves.

**CHAIR:** Thanks for that.

**Ms O'Neil:** Thank you, Beth. We might pick that other point up in the questions. I would like to take the opportunity to first have you hear from Anh.

**Ms Dang:** My husband passed away when my only daughter was four years old. I went to school to study and got an aged care certificate, but I could not find a job. So, because I needed to find money to raise my child, I had to learn sewing and became an outworker. I have been working for one employer for four years, but I have not got any entitlements. My employer pays me about \$5 per hour. Whether I can make enough money or not depends on how difficult the job is. Sometimes I have to work day and night but I cannot make enough money because the work is so difficult to do. I virtually have to work 12 hours per day, including weekends. I do not have enough time for my daughter. I do not have enough time for myself. With the little money, not only do I need to spend very carefully on my living expenses but I also need to pay for other working expenses such as power, cotton, machine and other costs when the machinery is broken. My boss normally pays me two or three weeks after the delivery. If the work has any mistakes for any reason, I do not get paid until I have fixed all the orders. The employer wants me to show him my ABN before I can get the job. My life is so difficult. Sometimes I ask the boss for more money but he says can't pay more. If I ask too much he would stop the work and give to other people. I do not want to stop working or find another job because of my age. My daughter is in year 10 and I have to keep working to make money to raise her and pay for the rent.

I hope my work is more stable and I can make enough money for my living and have some rights and entitlements so I do not have to worry so much if my boss stops his work or make me redundant.

I really want to have more time for my family, for myself and I really want to get rid of all the cash-in-hand people so I can have more work. Thank you very much.

**Ms Tran:** Hello, everyone. In 2006 I discovered that my first son had autism. That was the time I started working from home. At the end of 2006 I gave birth to my second son and he also had the same problem as the first one. The reason I work from home is because I want to look after both of my two sons.

My husband left because he could not put up with his sons. My life is so difficult. Over the years I worked for different labels, different factories. They pay me by piecework. I estimate my pay to be about \$4 an hour without any other entitlements. Recently some employers asked me to have an ABN number—to set up a company to have a propriety limited—and employ some other workers in my home. Since they know it is hard for me to get to work, they were able to convince me to get paid in cash, but the cash pay is much lower. I have to work from home but, because of the low pay, I have to work very long hours—between 12 and 15 hours per day without holiday pay or super or other entitlements. On one occasion my employer did not pay me for four months, which they blamed on the fact that the principal company had not paid them. After that, my employer said they would pay me a bit at a time until they caught up. I am working here in Australia where workers have entitlements and rights, but unfortunately I do not have those. I hope that I can get the same rights and entitlements as the workers in the factory.

**Ms O'Neil:** We urge you to amend the bill in the way that we have proposed and also to ensure its rapid progression into law. We are happy to answer any questions.

**Senator BACK:** Has sufficient time been allowed to see if the new legislation—the Fair Work provisions—that came into existence two years ago is working. If not, do you believe those provisions were deficient or have they simply not been enforced?

**Ms O'Neil:** We think there has been sufficient time to make an assessment about whether the current laws are effective. We think that because, on a daily basis, the union is involved in the sort of activity you heard described from Bich Thuy today. In fact, over the period from 2008 to today, our union has been involved in compliance checking over 1,400 businesses of this sort and has been in direct contact with 5,870 workers. So the great bulk of that time has been since the new laws have been in place and these are workers who are working in the home based environment. Our experience has been that there are provisions in place that are not being complied with. So part of the problem is existing noncompliance. But, significantly, part of the problem is that there are inconsistencies across the states. There are also problems in our capacity to ensure two things—the transparency of the supply chain so we can accurately see where the work is being done and ensure that every step is checked and our ability to ensure that we can check every step. What this bill does is add the last pieces of that jigsaw so that you have not just the theoretical rights in place but a capacity for them to be enforced.

**Senator BACK:** You would have heard me ask previous witnesses about this. I understand that over the last several years the number of employees in this sector has decreased dramatically. I have seen the multiplier figure of I think something like 10 or 12 of those who are in factories to one of those who are not. Obviously I accept things like the high Australian dollar, which is probably going to stay high for some period of time; I do not think it is just a transitory thing. You and your colleagues must have given thought to where the relocation of workers in this sector will be as it inevitably moves at an even more accelerated rate overseas. Is that an unrealistically pessimistic view? We are going to get to the stage where the only local manufacturer in Australia will be high-value niche products—which, I understand, themselves have some export value, as well as those associated with defence, emergency services and other related apparel. Is that where we are going to see this in five to 10 years time?

**Ms O'Neil:** We are probably not quite as pessimistic about the future of the industry as that. We think there is the capacity for the Australian textile, clothing and footwear industry to survive and in fact grow in some sectors. Critically important is the ability to differentiate our industry from low-wage countries and countries that are doing high-volume mass production of cheap products. So I think you are right in one sense: I do not think it is likely that we are going to see the type of large clothing factories that make very cheap products in the Australian system going into the future.

But we do see great diversity in the local industry and some companies that are thriving. Where we do see that, it is related to great design quality, innovation and work put into the research, design and innovation aspects of their product as well as great customer service and responsiveness to the customer. That means quick turnaround times and quick delivery. Those of us who have an interest in women's fashion would notice that fashion changes very rapidly. That lends itself to having a local industry that can respond very quickly to trends and changes.

It is the case that the industry is under extraordinary pressure. The pressure we have seen in terms of job losses is primarily as a result of reduced tariffs, increased imports from low-wage countries, the effect of the high Australian dollar and of course some slump in retail in clothing and footwear. Also, as reported in yesterday's *Financial Review*, there has been a bit of a slow or ineffective response from the local industry to internet sales

and in its capacity to move into that type of approach to selling products. We think that is where the industry is struggling. It is not as a result of these laws.

In terms of where workers end up, we have tracked multiple workers—many thousands of workers over the last few years—who have lost their jobs, both home workers and factory workers. Unfortunately, a significant proportion of them never work again. Of those who do work, the great bulk are ending up in short-term insecure work. They are moving out of an industry where they might have seen, if they were in a factory environment, longer term, more permanent employment in a home work environment, into mainly hospitality and aged care, which are the predominant ones, with some in the retail sector as well. The majority of those jobs are short term and casual in nature. So, unfortunately, effective systems are not in place to ensure proper retraining and support for that type of transition.

**CHAIR:** The laws are similar in nature to what has been in place in other states for some time. Some of the critics of this bill have said that the introduction of these laws will actually drive industry overseas and in fact hurt those it is most intended to protect. Did we see that happen in other states?

**Ms O'Neil:** No, we have not seen that happen in other states. Where there has been a contraction in the industry, multiple studies, including the most recent very thorough study into the industry conducted by Professor Roy Green in 2008-09, show that it was the factors I mentioned before that had brought about a contraction in the industry and that there has been no research, either by the Productivity Commission or others, that has indicated that it is the regulation of this aspect of the industry in terms of home-based work or sweatshops that has led to any job losses. That is just not backed up by any of the evidence or any of the research that has been undertaken into what has happened to this industry over the last two decades. The fundamental provisions that apply for treating workers in the home environment, whether they be contractors or outworkers, as workers and having the same basic pay and conditions has been a feature of the award that applies in the clothing industry for more than 20 years. If you want to see a history of that I refer you to the submission from Slater and Gordon to this inquiry, which gives you a comprehensive picture of how long some of those provisions have been in place.

**CHAIR:** Why have you not been able to use effectively the existing legal framework to get redress on some of these issues, particularly in terms of what are obviously sham contracting-type arrangements?

**Ms O'Neil:** It is that part that is particularly difficult, because there is a huge amount of fear involved in terms of these workers pursuing their legal rights. It is a very courageous thing to have heard from Susan and Anh in the manner, as you did today. The responses we get from outworkers about why they are fearful in terms of pursuing their rights and what is likely to happen is completely linked to this issue about being told you are not a worker, you are a contractor; you must look after these things yourself.

**Ms Macpherson:** One of the common things said to us is that if they actually say they are an outworker, they get cut off—they are not given work at all. The fear is that if they identify to their employer, or the person giving them work, that they are in fact an employee and they are just working at home trying to make a living and they raise with the employer that they want more money for a garment or they want their annual leave or they are going to pursue those things, they will be automatically cut off. We have seen that happen quite a bit.

**Senator FISHER:** Why?

**Ms Macpherson:** Because the employer does not want the responsibility—they do not want to take these people on and have them on the books as employees because they want the cost to be borne by the person doing the work at home. They do not want to have to pay for their WorkCover insurance; they do not want to pay for their superannuation; they want to call them a contractor so they can agree between themselves 'You will do this job, this top, for \$5 and because you are a contractor you have agreed to that'.

**Senator FISHER:** How will the bill change that for the future, to make an employer be prepared to have these good people employed?

**Ms Wiles:** It indicates beyond doubt that this person, even though they work at home, is entitled to the same wages and conditions as someone who works in a factory or someone who is an employee outworker. The power of that cannot be underestimated, because it is that so-called grey area—although clearly there is not a grey area because the law now makes it clear that you are entitled to those things—that is manipulated by unscrupulous makers and contractors who, as Beth said, simply want to shift the risk to the home-based contractor, so-called.

**Senator FISHER:** I do hear that but I am looking for some evidence you might have that this will make employers want to continue to have this work done by these same people, albeit under the new regime.

**Ms O'Neil:** All I can refer you to is when I mentioned those examples of the supply chain and companies that are significantly-sized companies in the Australian context, who were reputable, ethical and wanting to ensure that their supply chains were also. Those companies were committed to keeping a local supply chain, and as a result of

that work uncovering all those extra workers and all those extra layers have not moved their work offshore. In some cases they have shortened the supply chain. There are often people in the middle who are adding no value; they are literally moving product from one person to another and are middle people taking a cut. So, in some cases they shortened the supply chain but they have continued to manufacture here.

Our experience is that reputable companies have done this, for the reasons I mentioned before about quick turnaround, responsiveness and, in some cases, government procurement. We work cooperatively with the industry to try to ensure—and this could improve—that governments do purchase products from reputable Australian made companies, and there are links to that requirement in ethical behaviour for government procurement also. So there are advantages.

**Senator THISTLETHWAITE:** In paragraph 57 of your submission you run through some of the concerns that the union has:

... in relation to the unnecessary degree of complexity of the provisions and the onerous burden they place on an individual outworker seeking redress.

Given that we have limited time, perhaps you could provide notice what some of those concerns are in a bit more detail?

**Ms O'Neil:** We would be happy to do that. Thank you for that.

**Senator FISHER:** Thank you to the witnesses who have come forward today. I think all of us do understand, and we wish that you did not feel the need to come and tell us your stories. They are very distressing. That sounds like an understatement, and I do not mean it to be.

I just want to ask one, perhaps two, questions, more about the principle. Ms O'Neil, you say that in terms of the bills what you are seeking is not radical. You just want national application or national consistency. What is then to stop others in other industries saying, 'Well, what we want is not radical. We want national consistency across all industries of the same sorts of things.' For example, deeming contractors to be employees, changed right of entry rules or allowing the supply chain to override, if you like, the indirectness—as the legislation calls it—of relationships? What is to stop that happening and being argued by others in other industries?

**Ms O'Neil:** All I could refer you to is what has been the history of these provisions. In fact, the very first time the outworker related provisions were put into the Clothing Trades Award was 1919. So we are getting close to the 100 years, and it is the case that over that time—and even if you just want to go back for the last 25 years where, really, very similar provisions to this have applied in the award—you have not seen the effect that you are proposing. There is a history of unique provisions for this industry that identify its particular problems as needing a specific, targeted approach. That would be my response.

**Senator FISHER:** Then to your colleagues in the building industry, what would you say when they say that there should be one set of laws for everybody and every industry rather than a unique set of laws in their case for the building and construction industry?

**Ms O'Neil:** I suspect that is a matter that is going to be dealt with tomorrow at this very committee.

**Senator FISHER:** Oh, good answer! What would you say to it? What do you say to your colleagues?

**Ms O'Neil:** I am happy to answer, Chair, it is up to you.

**Senator FISHER:** Thank you, Ms O'Neil.

**CHAIR:** I know that Senator Fisher is keen to have one set of laws apply to everybody. Ms O'Neil, you can answer that and then we will have to finish off.

**Ms O'Neil:** Thank you. I think that is particularly in relation to the powers in terms of interrogation of workers, and I would support that call—there is one set of laws that apply.

**Senator FISHER:** Like your colleagues in the building industry? Okay, thanks for the answer Ms O'Neil.

**CHAIR:** Yes, thank you. They are the same ones that apply to Senator Fisher.

**Senator FISHER:** Indeed!

**CHAIR:** We will save that for tomorrow, because I am sure you will give me many opportunities. Ms O'Neil, thank you for your presentation today. And I particularly thank those who have given us first-hand evidence of what happens in the industry—your evidence has been very valuable to the committee.

**JOHNSON, Mr Timothy, Director, Minimum Wages and Conditions Policy Section, Department of Education, Employment and Workplace Relations**

**THOMPSON, Mr Brett, Senior Government Lawyer, Safety Net, Organisations and Protections Branch, Workplace Relations Legal Group, Department of Education, Employment and Workplace Relations**

**WYBORN, Ms Jennifer, Acting Branch Manager, Safety Net, Organisations and Protections Branch, Workplace Relations Legal Group, Department of Education, Employment and Workplace Relations**

[16:11]

**CHAIR:** We now welcome the Department of Education, Employment and Workplace Relations. Thank you for your submission and your attendance today. I invite you to make some opening remarks and then we will go to questions.

**Ms Wyborn:** May I just open by saying that unfortunately the senior lawyer who has been managing this project has had to take some emergency personal leave. We will endeavour to answer questions to the best of our ability today, but we may need to take some notice. Other than that, the department stands by its written submission and is happy to take any questions.

**CHAIR:** In terms of where we are at today with the industry itself, some critics of the bill have argued that the bill relies on evidence that is several years old and is a response to past practice not present practice. I am just wondering what you would say to that.

**Mr Johnson:** Much like some of the earlier witnesses have said, we are not aware of there being any more recent evidence than back to 2007 or 2008. In our research behind this, there is no recent ABS data that goes to the numbers of businesses that directly engage outworkers or even the number of outworkers, as others have mentioned before. We concur with that.

In terms of the need for the bill, I guess the government in reaching its decision considered the evidence that these practices are still going on in the same way that the witnesses said earlier today. I think that would be our response to that question.

**Ms Wyborn:** Absolutely. The academic literature around this, as we have heard from a number of other witnesses today, clearly demonstrates that the issues this industry faces are systemic and ongoing. Even though there is no recent data, in the last couple of years, there is no doubt that the research would stand.

**CHAIR:** In terms of the legislation bringing national consistency, can you take us briefly through the regimes that are already in place and the impact that this legislation will actually have on industry players?

**Ms Wyborn:** I might take the committee to our submission, if that is a helpful in running through the laws that are already in place. We can start at page 5 of the submission. In the national scheme we already have the Fair Work Act and the TCF award, which have a pretty broad coverage of the national scheme. Those provisions came into place in the Fair Work Act in 2009. The contents of this bill and the provisions that form the basis of it were also contemplated in the context of some transitional arrangements that were passed through parliament at that time. The government held them off for various reasons at that time, so they have been thought about and considered for a very long period of time and they are part of the scheme that is going to complete the picture on a federal scale. Moving then to other areas, the state laws that are in existence are covered on pages 7 to 10, primarily, of the submission. In particular, I draw your attention to the table on pages 9 to 10. It is a nice, quick reference summary of the way that state legislation currently operates in relation to the key provisions of the bill.

**CHAIR:** You have talked about the anticipated impact of the bill. Can you point specifically to anywhere it is going to have a significant impact or a detrimental impact on anyone?

**Ms Wyborn:** No. The department has not been able to identify any areas where there would be a significant detrimental impact from the bill.

**CHAIR:** The bill deems outworkers to be employees. If someone is paying someone at the minimum award rate with all the award conditions attached, it becomes somewhat of a moot point whether they are a contractor or not and what they consider themselves to be. Is that the case?

**Ms Wyborn:** As far as I understand it, yes.

**CHAIR:** If someone said, 'I actually want to be an independent contractor,' as long as they were getting the minimum award conditions and everything that goes with that they could call themselves that if that was what they wanted to be. Isn't the purpose—

**Mr Thompson:** As long as the person engaging them complies with the requirements of the act then, yes, that would be the case. The deeming provisions apply for the Fair Work Act alone. In that sense, in a broader context, they would still be contractors.

**CHAIR:** So the purpose of that element of the bill is clearly to ensure that people cannot be put into a position where they are forced to be a contractor against their will in order for the person providing the work to avoid other employee entitlements, such as superannuation, holiday pay, sick pay and other conditions that apply to an employee with a responsible employer. That is the purpose, isn't it?

**Mr Thompson:** That is correct, except for the superannuation entitlements, unless there is an award entitlement. They do not arise under the Fair Work Act. So, again, the deeming would not apply in that case. But, otherwise, that is correct.

**CHAIR:** So someone who is picked up by the deeming provisions does not get superannuation entitlements?

**Mr Thompson:** They do not necessarily. They do not derive the super entitlement itself from the act.

**CHAIR:** From this act?

**Mr Thompson:** From the Fair Work Act, sorry.

**Ms Wyborn:** There is separate legislation dealing with superannuation.

**CHAIR:** So once they are deemed an employee they will ultimately be covered by workers compensation and that will trigger the application of the superannuation act; is that right?

**Ms Wyborn:** Can I get you to repeat the question? There was workers compensation and superannuation mentioned—

**CHAIR:** Sorry, I am using the words interchangeably and I do not mean to. I am talking about superannuation, sorry.

**Ms Wyborn:** Once they are deemed an employee, under the Fair Work Act do they then automatically become—

**CHAIR:** Do they get superannuation?

**Mr Thompson:** Not necessarily because the bill deems contractors to be employees for the purposes of the Fair Work Act. The Fair Work Act does not provide superannuation. That is under the superannuation guarantee act. If that employee or contract outworker does not already have that entitlement, the bill will not affect that arrangement.

**CHAIR:** Then isn't that a flaw in the bill?

**Senator BACK:** Can I ask: isn't the only circumstance in which that would be the case is if they did not earn sufficient money each week to trigger the superannuation guarantee fund?

**Ms Wyborn:** No, I think the issue is more the definition of 'employee' and the way it is structured for the purposes of the bill, the Fair Work Act and the superannuation act. There are a number of different definitions of 'employee', and the way they all interact is the issue here.

**Senator BACK:** Are there any circumstances in Australia where an employee, having earned whatever the minimum amount is each week, would then not be entitled to receive the employer funded superannuation contribution? I cannot think of any.

**Ms Wyborn:** Nor can I. The difficulty here is that what we have is a piece of legislation that is deeming independent contractors to be employees. These people are not in fact employees at common law. They are deemed by legislation to be employees for the purposes of another piece of legislation. However, that deeming is not broad enough to capture the superannuation in all circumstances.

**Senator FISHER:** Nor tax, I presume.

**Mr Thompson:** That is correct.

**Senator FISHER:** So if there is a gap in superannuation, Senator Marshall, and you want that filled, then I would expect that the logical consequence would be to argue that there should be tax obligations that flow to people who are deemed to be employees even if they are not. Is that something that you see as going hand in hand?

**Ms Wyborn:** That would be a question of coverage under the tax act.

**Senator FISHER:** Yes, it would.

**CHAIR:** Can you give a written explanation for the committee in respect of that proposition about where it interacts? The purpose is to get this right, finally, after all these years. We are not trying to get a second-rate employee here; we are actually trying to get people treated as employees.

**Ms Wyborn:** It would be useful for those purposes if we could have a clear question that you would like answered.

**CHAIR:** I want to be assured, but you said you cannot give me an assurance. I want you to clarify in writing why the deeming provisions of this bill do not ensure that someone who has been deemed to be an employee gets superannuation.

**Ms Wyborn:** In all circumstances?

**CHAIR:** Yes, just so we can look at that.

**Senator FISHER:** Can I add to that: 'why taxation and taxation provisions do not apply'?

**CHAIR:** You will get to ask your questions in a moment, Senator Fisher.

**Senator FISHER:** I just have asked that one.

**CHAIR:** You have come into this inquiry halfway through it and I would appreciate it if you would just wait your turn, seek the call in the normal way and behave appropriately.

**Senator FISHER:** Thank you, Chair.

**CHAIR:** You are welcome. Senator Back, do you have some questions?

**Senator BACK:** I do. You may have studied the submission to the committee from Textile and Fashion Industries of Australia. They make the plea that the bill should allow outworkers to operate as independent contractors and not deem them to be employees. Can you explain to me so that I am clear on it whether, under the provisions of the proposed bill, an outworker can still present themselves as a contractor for the purposes of undertaking their work, or does this preclude them from that course of action?

**Mr Thompson:** For the purposes of the Fair Work Act, the contractor in your question will be an employee for that act. How that applies for other pieces of legislation is not really a matter that is covered by the bill.

**Ms Wyborn:** The specific issue that I suppose you are getting to is whether the person can present themselves as an independent contractor for the work that they are doing. The answer is yes, but the effect of this piece of legislation will be to deem them to be an employee for the purposes of this piece of legislation.

**Senator BACK:** So if they have an ABN and they present their BAS every quarter, and if they employ people and go through the PAYG provisions and all those sorts of activities, what are they under Australian law? Are they an employee or are they a contractor?

**Ms Wyborn:** They will be different things in relation to different pieces of legislation, and that goes to the heart of the issue that Senator Marshall was raising before in relation to superannuation and Senator Fisher's question about taxation as well. This is, as I am sure you will appreciate, an incredibly complex area of the law. Identifying the relevant legal status of these bodies is a very difficult issue that is overlaid with constitutional questions and not something that is easily managed.

**Senator BACK:** I think I now understand the second recommendation from that organisation—that the bill 'should exclude a special class of independent contractor home based workers from employment-like protections'—because that opens yet another can of worms, doesn't it? As you say, this whole area is headed to the High Court.

**Mr Thompson:** If we excluded home-based contractors, the legislation would have nothing to do. That is the central tenet of the bill.

**Senator THISTLETHWAITE:** From what I read, for the purposes of the Independent Contractors Act, if someone wants to establish themselves as an independent contractor then they still can, but for the purposes of the Fair Work Act they are deemed to be employees to ensure that the award and the relevant laws—the NES and such—cannot be undercut.

**Mr Thompson:** That is correct.

**Ms Wyborn:** Exactly.

**Senator THISTLETHWAITE:** That is a pretty simple explanation of how it works, isn't it?

**Ms Wyborn:** Yes.

**Senator BACK:** I suppose that as an employer I could pose a circumstance of something like workers compensation insurance. If contractors themselves have employees, I would think they would have to take out

workers compensation insurance. Under fair work legislation, does the party for whom they are making garments also have to take out workers compensation insurance? Is there a double-up there? That is just one simple example.

**Ms Wyborn:** Is there a double obligation to take out workers compensation insurance?

**Senator BACK:** Would there be a double-up? Suppose I am the independent contractor and I am perfectly happy with it. I have my employees. I work wherever I work and they work with me. I comply, by which I mean I take out workers compensation insurance, but under the provisions of this legislation I am now also deemed to be employee like or an employee of Marshall Apparel. If that organisation deems me to be an employee then they must in their turn take out workers compensation insurance. Further to that illustration, would that prime party know about my employees in my independent business?

**Senator THISTLETHWAITE:** The answer to that is that the relevant state workers compensation legislation would have to deem that person to be an employee for that to apply, because the Fair Work Act does not deal with workers compensation.

**Ms Wyborn:** That is right, and to the extent that there would be any double-up the federal law would override the state law to the extent of any inconsistency under the Constitution.

**Senator BACK:** All right. I have only one other question, because of time. You have heard me ask this question of other witnesses as one who—clearly, from my questions—knows nothing about this particular industry. There has been a dramatic decline in the number of people employed in this industry. I understand it is from something like 400,000 down to 40,000—and that is not including those who are outworkers, at some multiplier of about 10—whether it is because of this legislation, currency fluctuations or all sorts of other reasons. Has the department modelled the possible impacts in terms of numbers of persons employed in the textile, clothing and footwear industry, be it as a result of this or as a result of worldwide economic conditions?

**Mr Johnson:** No, we have not. To give a more detailed answer, we would not have the resources to do that. We would have turned to our colleagues in the industry department, who would look more broadly at those kinds of issues around the changing nature of the manufacturing workforce, and in this industry as well. In particular, that broader question is not something in which we have any expertise.

**Senator BILYK:** We have heard from some other witnesses that there is a great chance that the manufacturing industry within Australia may well, for lack of better terminology, go down the gurgler or people might move offshore or any of these things might happen if the bill goes ahead. I am just wondering if you have any comments to make in regard to that. In my eyes, having a safe workplace and decent working conditions does not necessarily mean that the industry will not survive. Do you have any comments to make about the bill in regard to that area?

**Mr Thompson:** Only similar to what I explained to Senator Back, in that in our research behind the bill we did not come across any strong evidence either way, really. Certainly there were those arguments and then there were arguments the opposite way as well. There were arguments that, yes, this will lead to the impact of manufacturing going offshore. The other side of the argument was that a lot of the manufacturing that could go offshore, because it came out of factories, has already done so. With respect to low-end manufacturing, short-run work that is done largely by outworkers, if it could have gone it already has. There is probably always going to be some market left for outworkers in Australia. So, because of that lack of data, even talking to our colleagues in other departments who work on this much more closely, they did not have analysis or modelling either way to the best of our knowledge or in our conversations with them. We cannot make a call on it. It is certainly an issue we considered, but we do not have the resources to make a call on that either way.

**Ms Wyborn:** Having said that, there is obviously research and information that run alongside all of our legislative projects that we take into account that demonstrate things like, for example, the importance and effectiveness of nationally consistent schemes that improve access to justice and those sorts of considerations.

**Senator BILYK:** Thank you. I am a senator from Tasmania and I understand that in Tasmania there is some legislation already to help protect this type of worker. I am wondering if any inconsistencies will arise as a result of having national legislation when there are states that already have legislation in place.

**Mr Thompson:** The bill relies on the Commonwealth's core constitutional powers, except of course in relation to right of entry on the referral. So, in that sense, to the extent of any inconsistency in state systems, the bill will prevail once in the Fair Work Act. Of course, the Fair Work Act does permit some scope for state outworkers to continue but, again, that is a concurrent operation. It does not override the constitutional inconsistency rule. So, yes, the bill will prevail where inconsistent.

**Senator BILYK:** Is there currently a code of conduct in the industry?



**Mr Thompson:** As we have heard, various states—I believe New South Wales, Queensland and South Australia—have codes of practice. At the federal level Ethical Clothing Australia exists, which is a voluntary code of practice. Where the codes of practice exist in each state, the state codes provide an exemption from their requirements if a body or a company is compliant with the requirements of Ethical Clothing Australia.

**Senator BILYK:** So will this bill introduce a mandatory code of conduct?

**Mr Thompson:** The bill contains the capacity to create a mandatory code of conduct through regulations, and that is something that is a matter for the government. But the capacity to make one is contained.

**Senator BILYK:** My last question relates to the supply chain and ensuring that people get paid and things like that. What benefits will the proposed bill have with regard to those issues and those concerns that we have heard about from witnesses today?

**Mr Thompson:** Basically the bill is intended to operate as a package. I guess that is the best way to describe it. As we have heard, a lot of these entitlements already exist in various places, but the bill will create visibility, I guess, by putting them in the Fair Work Act. Then it is likely that a code of practice in the future, similar to the state codes, will contain monitoring and compliance measures to allow transparency in the supply chain. Provisions to do with right of entry and the recovery of unpaid amounts allow both monitoring and compliance and enforcement action. Plus the Fair Work Ombudsman has a slightly greater role under some of these provisions. Because they already exist, there is one argument that the impact of the changes is not that significant. But it is the way they are presented in the act and the following provisions that increase the benefits for the industry.

**Ms Wyburn:** It is about enhancing the existing provisions, increasing their visibility and making sure that there is access to those provisions for people with poor English skills, access to justice difficulties or access to enforcement difficulties.

**CHAIR:** It is envisaged that the act will make it easier for investigation and prosecution by the workplace ombudsman?

**Ms Wyburn:** Absolutely.

**CHAIR:** Has there been a consultation process with the ombudsman's office?

**Ms Wyburn:** There has been and it is ongoing.

**Senator FISHER:** I have three areas of questioning. Before I ask my questions, lest anyone here think that my late arrival is somehow out of disrespect for the issues at stake, let me hasten to say that up until I hopped in the taxi to come here and arrived here, I was performing my duties as deputy chair of another Senate committee which was meeting up the other end of the city. Why is there considered to be a need to vary the enterprise flexibility provisions in term of outworkers?

**Mr Thompson:** In terms of the provision that stops the flexibility agreement altering affected outworker—

**Senator FISHER:** Yes, it says what you can do for everyone else you cannot do in respect of outworkers.

**Mr Thompson:** Obviously that is a policy decision but I believe that is just a recognition of the status of outworkers in terms of power relationships and that outworker terms are there specifically to provide robust protections for vulnerable workers and the flexibility arrangements permitted under the act are, as you say, assigned different treatment in respect of those.

**Ms Wyburn:** And assume an equal footing.

**Senator FISHER:** Assume an equal footing?

**Ms Wyburn:** Of the parties negotiating.

**Senator FISHER:** What does?

**Ms Wyburn:** The availability of the flexibility term would assume an equal footing. All the evidence and all the research that this bill is based on indicates that outworkers and the principals in these relationships are not on an equal footing.

**Senator FISHER:** The government does not consider the power imbalance to which you refer, Mr Thompson, to be evident in any other industry, presumably, otherwise it would be replicating these provisions for another industry in which there was seen to be the same power imbalance.

**Mr Thompson:** I cannot speak for the government.

**Senator FISHER:** In terms of making these provisions nationally consistent across the TCF industries, is it likely that others in other industries would seek the extension of these provisions to their industry?

**Mr Thompson:** I cannot answer that.

**Ms Wyburn:** I cannot predict the actions of other industries.

**Senator FISHER:** Has the government sought your advice on the prospect of that?

**Ms Wyburn:** Not that we are aware of.

**Senator FISHER:** In respect of these provisions meaning that there will be different rules for one industry, so a different industry has different rules, Put it this way do you agree that this bill means that there will be a different set of rules for industry than the sets of rules that apply to any other industry?

**Mr Thompson:** Yes.

**Senator FISHER:** What then is the response to people who say of the building and construction industry that there should be one set of rules for everybody and, therefore, there should not be a special set of rules for the building and construction industry that is different from the rules that apply to other industries?

**Ms Wyborn:** That is purely a matter of policy—

**Senator FISHER:** You are right. Has the government sought your advice on that?

**Ms Wyborn:** No, certainly not from me personally.

**Senator FISHER:** Has it sought the department's advice on that?

**Ms Wyborn:** I cannot speak for the whole department. I am not aware of any briefing request that has gone through the department.

**Senator FISHER:** I cut you off, Ms Wyborn; you were about to say something else.

**Ms Wyborn:** I was just going to say that it is purely a matter of policy and that there are various policy arguments and very strong literature out there that single out the particular reasons why this industry should be treated differently. The power imbalance of which we just spoke is one. That certainly does not apply in the same way to the building industry—

**Senator FISHER:** So you are accepting that if there are compelling reasons for different laws then different laws should be made? That is what must flow from what you have just said.

**Ms Wyborn:** I am not accepting anything. I am not putting forward a personal opinion. I am not taking a particular stance on this issue. I am merely resummarising the policy positions behind this particular bill.

**Senator FISHER:** Do you agree that in a policy sense it would flow?

**Ms Wyborn:** I have no view on that.

**Senator McKENZIE:** I have a question around compliance and how that will occur and who will be responsible to do it. I do not have a legal background and, hence, from the answers previously about which bits and definitions are attached to which acts and for what purposes I just want it clearly stated who is going to have responsibility for the enactment of this legislation if it is passed in its current form.

**Ms Wyborn:** The Fair Work Ombudsman.

**Mr Thompson:** Deemed employees, outworkers and their representatives also have standing under various provisions to bring their actions. For example, the unpaid announced provisions allow the outworkers, the union and the Fair Work Ombudsman to make an application to recover the amounts.

**Ms Wyborn:** Absolutely. Of course individuals and other organisations will have standing to bring actions. But in terms of a body that will have an enforcement role, it would be primarily be the Fair Work Ombudsman.

**Senator McKENZIE:** Is it envisaged how much that particular body will cost?

**Mr Thompson:** They are already funded—

**Senator McKENZIE:** To do this?

**Mr Thompson:** Yes. I am not aware of, specifically—

**Senator McKENZIE:** Is there any additional resourcing that may be required?

**Mr Thompson:** Not that I am aware of.

**CHAIR:** Thanks to the department for your submission and your appearance before the committee today.

**Committee adjourned at 16:43**

COMMONWEALTH OF AUSTRALIA - Official Committee Hansard

SENATE - Education, Employment & Workplace Relations Legislation Committee

To inquire into and report on: Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011

[2012] (Public) THURSDAY, 2 FEBRUARY 2012 MELBOURNE

**Page 24 Senator MARSHALL (CHAIR)**

**JOHNSON, Mr Timothy**, Director, Minimum Wages and Conditions Policy Section, Department of Education, Employment and Workplace Relations

**THOMPSON, Mr Brett**, Senior Government Lawyer, Safety Net, Organisations and Protections Branch, Workplace Relations Legal Group, Department of Education, Employment and Workplace Relations

**WYBORN, Ms Jennifer**, Acting Branch Manager, Safety Net, Organisations and Protections Branch, Workplace Relations Legal Group, Department of Education, Employment and Workplace Relations

**CHAIR:** You are welcome. Senator Back, do you have some questions?

**Senator BACK:** I do. You may have studied the submission to the committee from Textile and Fashion Industries of Australia. They make the plea that the bill should allow outworkers to operate as independent contractors and not deem them to be employees. Can you explain to me so that I am clear on it whether, under the provisions of the proposed bill, an outworker can still present themselves as a contractor for the purposes of undertaking their work, or does this preclude them from that course of action?

**Mr Thompson:** For the purposes of the Fair Work Act, the contractor in your question will be an employee for that act. How that applies for other pieces of legislation is not really a matter that is covered by the bill.

**Ms Wyborn:** The specific issue that I suppose you are getting to is whether the person can present themselves an independent contractor for the work that they are doing. The answer is yes, but the effect of this piece of legislation will be to deem them to be an employee for the purposes of this piece of legislation.

**Senator BACK:** So if they have an ABN and they present their BAS every quarter, and if they employ people and go through the PAYG provisions and all those sorts of activities, what are they under Australian law? Are they an employee or are they a contractor?

**Ms Wyborn:** They will be different things in relation to different pieces of legislation, and that goes to the heart of the issue that Senator Marshall was raising before in relation to superannuation and Senator Fisher's question about taxation as well. This is, as I am sure you will appreciate, an incredibly complex area of the law. Identifying the relevant legal status of these bodies is a very difficult issue that is overlaid with constitutional questions and not something that is easily managed.

**Senator BACK:** I think I now understand the second recommendation from that organisation—that the bill should exclude a special class of independent contractor home

based workers from employment-like protections'—because that opens yet another can of worms, doesn't it? As you say, this whole area is headed to the High Court.

**Mr Thompson:** If we excluded home-based contractors, the legislation would have nothing to do. That is the central tenet of the bill.

**Senator THISTLETHWAITE:** From what I read, for the purposes of the Independent Contractors Act, if someone wants to establish themselves as an independent contractor then they still can, but for the purposes of the Fair Work Act they are deemed to be employees to ensure that the award and the relevant laws—the NES and such—cannot be undercut.

**Mr Thompson:** That is correct.

**Ms Wyborn:** Exactly.

**Senator THISTLETHWAITE:** That is a pretty simple explanation of how it works, isn't it?

**Ms Wyborn:** Yes.

**Table 1. Compliance Programs Reviewed**

Compliance Program	Program Origin	Intervention Approach	Emphasis on Consumer or Industry Facing	TCF Industry Focus
<b>Ethical Production Compliance Programs &amp; Certifications</b>				
<b>Ethical Clothing Australia</b>	AU	Company accreditation	Consumer	TCF manufacturing
<b>SA8000</b>	Global	Factory certification	Industry	General manufacturing social compliance
<b>Fair Wear Foundation</b>	NL	Code of Conduct	Industry	Apparel cut make trim
<b>Fair Labor Association</b>	USA	Code of Conduct	Industry	Textile manufacture and apparel cut make trim
<b>GoodWeave International</b>	UK	Product certification	Consumer	Rug manufacturing
<b>Business Social Compliance Initiative</b>	Belgium	Business support & engagement + Code of Conduct	Industry	General supply chain
<b>Supplier Ethical Data Exchange (SEDEX)</b>	UK	Reporting tool	Industry	General supply chain
<b>Better Work Programme / Better Factory Program</b>	Global	Tools & projects	Industry	General supply chain
<b>Textile, Clothing, Footwear &amp; Associated Industries Award</b>	AU	Government legislation	Industry	TCF manufacturing
<b>ILO Conventions</b>	Global	Government framework	Industry	General supply chain
<b>OECD Guidelines for Multinational Enterprises</b>	Global	Industry guidelines	Industry	General supply chain
<b>ISO 26000</b>	Global	Industry guidelines	Industry	General supply chain
<b>Ethical Trading Initiative</b>	UK	Business support & engagement + Code of Conduct	Industry	General supply chain
<b>Combined Ethical &amp; Environmental Compliance Programs &amp; Certifications</b>				
<b>Global Organic Textile Standard</b>	USA, Japan, UK, Germany	Product certification	Consumer	TCF supply chain
<b>Fairtrade Mark</b>	Global	Product certification	Consumer	Cotton production
<b>Good Environmental Choice Label Australia</b>	AU	Product certification	Consumer	General supply chain
<b>Made-by</b>	NL	Product certification	Consumer	TCF supply chain
<b>BMP Cotton</b>	AU	Product certification	Consumer	Cotton production
<b>Global Reporting Initiative</b>	USA	Reporting tool	Industry	General supply chain
<b>Sustainable Apparel Coalition</b>	USA	Business engagement + tools and projects	Industry	Apparel supply chains
<b>UN Global Compact</b>	Global	Industry guidelines	Industry	General supply chains
<b>Nordic Initiative Clean and Ethical</b>	Nordics	Business support & engagement + tools and projects	Both consumer and Industry	Apparel supply chains
<b>DFID Responsible &amp; Garment Sector Challenge Fund (RAGS)</b>	UK	Government funding program	Industry	Apparel cut make trim

Compliance Program	Program Origin	Intervention Approach	Emphasis on Consumer or Industry Facing	TCF Industry Focus
<b>Worldwide Responsible Accredited Production</b>	USA	Product certification	Consumer	General manufacturing (apparel cut make trim focused)
<b>Environmental Compliance Programs &amp; Certifications</b>				
<b>Oeko-Tex 100, 1000, and 100+ standards</b>	Austria, Germany, SUI	Product certification	Consumer	Textile manufacture and apparel cut make trim
<b>ISO 14001</b>	Global	Business process certification	Industry	General supply chain
<b>Certified Organic (various organic certifiers)</b>	Global	Product certification	Consumer	General supply chain
<b>Eco-Index</b>	USA	Assessment tool	Industry	Apparel supply chain
<b>EU Eco-label</b>	EU	Product certification	Consumer	General supply chain
<b>Forest Stewardship Council</b>	Global	Product certification	Consumer	General supply chain
<b>The Australian Carpet Classification Scheme - Environmental Certification Scheme</b>	AU	Product certification	Industry	Textile manufacture and carpet production
<b>Better Cotton Initiative</b>	Global	Production principles	Industry	Cotton production
<b>The Design Accord</b>	USA	Business engagement	Industry	TCF design
<b>Australian Packaging Covenant</b>	AU	Life cycle management system	Industry	General packaging
<b>Environmental Choice New Zealand</b>	NZ	Product certification	Consumer	General supply chain
<b>Blue Angel</b>	Germany	Product certification	Consumer	General supply chain
<b>MBDC Cradle to Cradle Certification</b>	USA	Product certification	Consumer	General supply chain
<b>Ecospecifier Green Tag Certification</b>	AU	Product certification	Consumer	General supply chain
<b>Carbon Reduction Label</b>	UK	Product certification	Consumer	General supply chain
<b>Australasian Furnishings Research &amp; Development Institute (AFRDI Standard 146 - Leather)</b>	AU	Product certification	Consumer	Leather production
<b>Green Leader Program</b>	AU	Business accreditation	Consumer	General supply chain
<b>DEFRA's Sustainable Clothing Action Plan</b>	UK	Government program	Industry	Apparel supply chain
<b>Bluesign</b>	SUI	Business tools	Industry	Textile supply chain
<b>Leather Working Group</b>	UK	Business tools and protocol	Industry	Leather production

# GOUDA Pty. Ltd.

a.b.n. 30 112 207 995

Factory 7  
25-27 Hocking Street  
North Coburg Vic 3058  
Phone 9354 0708 Fax 9354 1403

Dear Jo,

I am faxing to you the following: -

- 1/ Order from the Ark Clothing
- 2/ Special instructions
- 3/ Invoice to The Ark
- 4/ Order to contractor.
- 5/ Invoice from contractor
- 6/ Payslip (Example if home worker as employee only)

Hope this is what you wanted.

Regards

Arthur Thomas  
(Director)

*Arthur Thomas*  
17/4/2012



**The Ark Clothing Company Pty Ltd**

**MAKING SHEET**

**Maker** Gouda  
**Style Number** W12SH622 **Isadora Shell**  
**Pattern**  
**Sales Order No**  
**Making Cost** S-XL \$24.00

**Making Sheet #** 1047  
**Job Number**  
**Date Sent** 18-Jan-2012  
**Date Required** 10-Mar-2012  
**Page** 1 of 1

Colour	Sizes & Quantities											
	S	M	L	XL							Total	
<b>Black</b>												
<b>Make Quantity</b>	14	20	14	10								58
<b>Returned Quantity</b>												

Fabric Code	Description	Attribute	Weight	Width	Est 1	Act 1	Est 2	Act 2	Est 3	Act 3	Total
APF.Copy	Atish Baji R (beaded)	Black		110	0.75		0.00		0.00		43.50
APF.Copy	Viscose Georgette	Beige		110	1.20		0.00		0.00		69.60

Olive	S	M	L	XL							Total
<b>Make Quantity</b>	12	16	12	8							48
<b>Returned Quantity</b>											

Fabric Code	Description	Attribute	Weight	Width	Est 1	Act 1	Est 2	Act 2	Est 3	Act 3	Total
APF	Atish Baji R (beaded)	Slate green		110	0.75		0.00		0.00		36.00
APF.Copy	Viscose Georgette	Lierre-2011		110	1.20		0.00		0.00		57.60

<b>Total Make</b>	26	36	26	18							106
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**SPECIAL INSTRUCTIONS**

**THE ARK CLOTHING COMPANY** **ABN NUMBER: 57071107027** **BOR 2011/2649**  
 5 Harker Street  
 Burwood 3125  
 Phone 99122700 **Ark signature:** *[Signature]* **Date:** 14/2/10



**Maker:** Gouda Pty Ltd  
**Address:**  
 Factory 7  
 25-27 Hocking Street  
 Coburg North 3058  
 Phone 9354 0708 **Makers Signature:** *[Signature]* **Date:** 15/2/12

**CMT:** \$24.00

**MINUTES PER GARMENT:** 45 MIN.





2

STYLE: W12SH622 Isadora Shell

MAKE SHEET: 1047



\*Follow sample for stitching and construction details.

\*Black version has black beaded outer layer. Underneath is beige

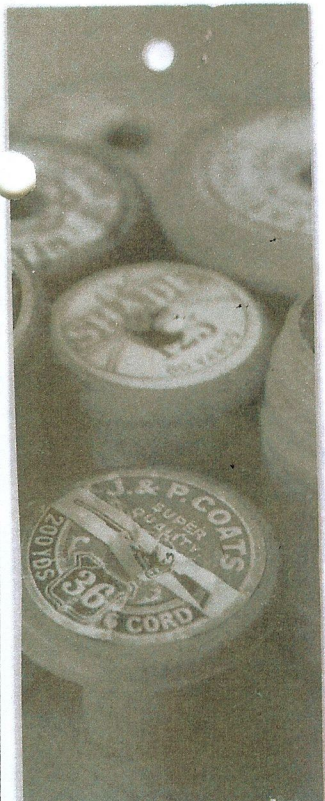
\*Olive version has slate green outer layer. Underneath is Lierre( green)

\*Vilene marker supplied for neckline and armholes.

\*Care label left side seam.

\*Cool press- **No steam- beaded will melt.**

\*Swing ticket attached through label using the new toggle cord.



Gouda Pty Ltd

3

TAX INVOICE

Factory 7  
25-27 Hocking Street  
Coburg North Vic 3058  
Phone 9354 0708 Fax 9354 1403

DATE	INVOICE
16/03/2012	4115

INVOICE TO
The Ark Clothing Co P L 5 Harker St. Burwood Vic. 3125

TERMS	ORDER NO.
Net 7 Days	1047

STYLE No.	DESCRIPTION	QTY	RATE	TAX 10%	TAX AMT	AMOUNT
W12SH622	ISADORA SHELL  S M L XL BLACK 14 20 14 10 OLIVE 12 16 12 8	106	24.00	GST	254.40	2,544.00
					<b>Subtotal</b>	\$2,544.00
					<b>Tax</b>	\$254.40
					<b>Total</b>	\$2,798.40



Company Business Number	30 112 207 995
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Gouda Pty Ltd

BOR 2011/2535


# Make Order

Order No.

128

From	To
Gouda Pty Ltd Factory 7 25-27 Hocking Street Coburg North Vic 3058	Thien Thanh Enterprises P/L 9 Burgess St Brooklyn 3012
30 112 207 995	61138644505

Date Given	Due Date
2/03/2012	13/03/2012

Style No.	Description	Customer	Units	Minutes	Total Hrs	Price	TAX
W12SH622	ISADORA SHELL 	The Ark Clothing co.	106	23	40	12.00	GST

Insurance & Superannuation Included in Price

**Tax** \$127.20

**Total** \$1,399.20

Gouda Signature

*Athanas*

Date

*02/3/2012*

Maker Signature

Date

5



**THEN THANH ENTERPRISES PTY LTD**

A.B.N. 61 138 644 505  
22 Lovain Street, Cobourg Vic 3058  
Mob: 0434 014 177

TO: Gouda p/l  
.....  
.....  
.....

DATE: 14/03/12

TAX INVOICE  
0420

Description	Qty.	Price	Total	Date Time
ISADORA SHELL	106	12.00	1272.00	
RECEIVED BY: <u><i>Affand</i></u>			<b>SUB TOTAL</b>	
DATE: <u>14/3/2012</u>			<u>1272</u>	
			<b>GST</b>	
			<u>127.20</u>	
			<b>TOTAL INC. GST</b>	
			<u>1399.20</u>	

# Pay slip (Example Only)

6

Date of payment: 16/3/12  
Pay period: 2/3/12 to 15/3/12

Employer's name: Gouda P/L

Employee's name: Trinh

Employment status: Part-time

Entitlements	Unit	Rate	Total
Wages for ordinary hours worked	40 hours	\$18.00	\$720.00
Payment for Annual Leave	3.1 hours	\$18.00	\$55.80
Payment for Personal Leave	1.55 hours	\$18.00	\$27.90
Workcover		3%	24.11
Superannuation		9%	72.33
<b>Gross payment</b>			<b>\$900.14</b>

