



FairWear

PO Box 253, Bankstown 1885
Ph 0437 879 442
fairwear@awatw.org.au

5th April 2013

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
adjudication@acc.gov.au

Re: Reauthorisation of the Homeworkers Code of Practice

Dear Dr Chadwick,

FairWear is writing to support the reauthorisation of the Homeworkers Code of Practice for a further five years. FairWear also supports the revisions of the Homeworkers Code of Practice being put forward by the Homeworkers Code of Practice Committee (HWCC/ Ethical Clothing Australia).

FairWear is a community organisation which has been working continuously for over 16 years to challenge companies, ask governments and invite consumers to be active in addressing the exploitation of arguably the most vulnerable workers in Australia. FairWear has grassroots links with outworkers in NSW, Victoria and South Australia, which give us a strong base to understand the issues from their perspective and experience. We also have extensive networks of community organisations, churches, women's groups, unions, student groups, academics and general community members who are concerned about the protection of vulnerable migrant women workers, and want to be involved in making a difference.

In addition to the specific comments in this letter related to this reauthorisation application, we are attaching our recent detailed submission to the Fair Work Commission hearings into the Review of Modern Awards. That submission outlines in some detail the situation of outworkers and sweatshop workers, the complexity of supply chains and how those impact on the outworkers and compliance activity in

the industry, and some historical context as well as current realities. We ask that the ACCC read that in detail as background to the submissions in this letter.

Long suffering outworkers in the textile, clothing and footwear (TCF) industries across Australia are finally starting to reap benefits from increasing industry participation in the Homeworkers Code of Practice. The Homeworkers Code of Practice is a significant TCF industry initiative to address the gross exploitation of outworkers in these industries in Australia.

It is very important this work continue with further authorisation of the Homeworkers Code of Practice for another five years.

Nature of Outwork and Realities for Outworkers

Some TCF Outworkers continue to tell us they are paid as little as \$3 to \$5 an hour. Many work seven days a week for more than 12 hours a day in the busy season and then have periods of no work and no income at all. These largely migrant women with low level English skills are vulnerable because there are limited jobs in Australia they can access. While some are learning what their rights are and speaking up, and securing some improvements in wages and conditions for themselves, alone they cannot negotiate for minimum legal wages and conditions because of the complex supply chains and industry structures which have based their competitiveness on exploiting workers.

This contrasts with the experience of outworkers who are in supply chains which have been investigated and companies are changing their practices and requiring their suppliers to change their practices. Some of these outworkers are moving into factory based employment, others report significant wage increases and others report heightened awareness by their employers that the union is “checking up” on them so they can't get away with what they have in the past.

Ongoing Exploitation of Outworkers

We understand suggestions have been made that the exploitation of outworkers is no longer a significant issue in the TCF industry. This is completely outside FairWear's experience.

FairWear member organisations continue to have contact with large numbers of outworkers who are receiving well below award payments and conditions. The witness statement of Bich Thuy Pham, Community Worker from Asian Women at Work, from February this year gives something of a sense of the recent picture or reality. It can be found as appendix 4 to the FairWear submission to the Review of the TEXTILE, CLOTHING, FOOTWEAR AND ASSOCIATED INDUSTRIES AWARD 2010 by

the Fair Work Commission. Ms Pham was an outworker herself before working for the last 10 years with Vietnamese outworkers in Sydney. Also in that submission appendix 2 and 3 are outworkers' stories in their own words, talking about their work and life situations. Further, Appendix 1 of this letter includes 3 other outworkers talking about their current reality.

The situation of outworkers is elaborated more extensively in the Award Review submission referred to above.

FairWear is happy to arrange for ACCC members to meet with outworkers themselves if that would assist in gaining a clearer understanding of their reality.

Nature of the Homeworkers Code of Practice

The Homeworkers Code of Practice (the Homeworkers Code) plays an essential role in addressing the exploitation of outworkers in Australia. As a joint union and industry initiative, the Homeworker Code Committee (HWCC) administers the Ethical Clothing Australia accreditation and labeling scheme which provides assistance to textile, clothing and footwear businesses in Australia who choose to take practical steps to ensure that workers throughout their supply chain receive the correct pay and entitlements according to the relevant Australian laws.

In any industry, pressures to force down costs inevitably impact on wages within the industry and potentially the quality of work. The Textile, Clothing and Footwear (TCF) industries have not been immune from this pressure and the most vulnerable workers at the bottom of the chain have been historically the most exploited.

The Homeworkers Code has a history of bi-partisan support from industry and workers' representatives to ensure standards regarding wages and working conditions are maintained for all workers – homeworkers and factory workers covered by awards alike.

The Homeworkers Code, like other industries, has been driven by consumer expectations about ethical practices – in this case the provision of award wages for sewing outworkers most likely to be exploited in the manufacturing/retail chain. Other industries have similar pressures driven by consumer expectations ie that terms like 'free range' and 'organic' as they apply to poultry, egg and pork production are accredited and audited within the industry or by an external independent agency.

The Homeworkers Code is voluntary. If a business wants to show it is doing the 'right thing' in paying award wages to all workers in the manufacturing chain then they elect to sign up to the Code to provide evidence of their ethics. Just as there are Codes and associated costs to using terms like 'free range' and 'organic' so there are

in being able to label Australian made wearable apparel as 'ethical'. One aim is to provide an advantage in attracting consumers.

WWC SA receives around one enquiry each month from individuals seeking the names of ethical manufacturers and retailers of Australian made garments. FairWear offices in NSW and Victoria receive regular enquiries, by phone and through our website. These enquiries come from individual consumers, conference organisers wanting conference apparel like T Shirts and conference bags, organisations and businesses wanting corporate wear suppliers and so on. There is widespread interest in ethical clothing standards. Promotion of companies that can meet these expectations is provided via the ECA website. We don't have the means to quantify the payback to industries that are signed up to the Homeworkers Code but suggest it would well and truly cover their costs in signing up to the Code.

The basis of any Code of this nature is consumer belief in an agreed and acceptable standard of the treatment of sewing outworkers. Homeworkers in our experience do not on the whole have sufficient knowledge of the complexities of workplace laws to know their rights and are unlikely to contact bodies like the Fair Work Ombudsman or the Fair Work Commission to advocate on their own behalf. Lack of understanding of the language used and fear are often barriers for sewing outworkers. These workers rely on the lawful protections written in to awards and employment standards and depend on other advocates like community groups and the union working together to enforce these standards. Without the means to do a cost analysis of this we would submit that this is a fairer and more economical base from which to operate a business than to expose the business to claims of underpayments, workers compensation costs and public awareness of unethical practices that erode consumer confidence.

Groups like Fairwear, Asian Women at Work and Working Women's Centres use the existence of the Code to encourage men and women to come forward often as a group and seek support, often with Union involvement.

Workers can only insist on their entitlements at law if indeed they have any such entitlements. Companies operating in Australia to produce Australian made garments/apparel have a vested interest in operating lawfully and the Code is the means by which they show they are doing this. Unfortunately sewing outwork or homework has long been hidden so extra measures are required to ensure transparency and consumer confidence. The cost to business of providing proof of ethical behaviour is minor compared to the cost of defending claims of underpayments or of breaches of workplace health and safety claims. The voluntary code is a recognition by industry that lifting the standards of accountability to workers and consumers alike is an effort it is willing to make to ensure confidence and competitiveness.

Unfortunately, despite the best efforts of many, exploitation of sewing outworkers

continues today, even with clear laws in place.

Compliance with the Code

The Homeworkers Code is a way to operationalise the award requirements. It can be considered almost as an enterprise agreement for the TCF industry, in providing a way to operationalise award compliance, and work towards ensuring outworkers in supply chains are not exploited.

Much of the Homeworkers Code application and reporting requirements are no more onerous and require no more paperwork than what a business already needs to operate lawfully. In many ways, the Code provides tools and support for companies to operationalize their compliance with the relevant awards and laws in place to run a business in this industry.

ECA's importance as an advisory body which assists industry move to better practices cannot be overstated. In our view and experience ECA has no interest in making accreditation to the Code difficult or costly.

FairWear has always been very supportive of resourcing education for both outworkers and companies. We are therefore very supportive of the ECA model that includes this education. The role of ECA Accreditation Advisor is well established and very effective. FairWear has worked with these advisors from time to time. ECA's development of a simplified award guide, and translation of this into relevant community languages, is to be commended as an effort to provide accessible resources to TCF companies to help them comply with their legal obligations and participate effectively and efficiently in the Homeworkers Code of Practice.

The Union is the body charged with ensuring Code compliance. They have recognised expertise and industry specific knowledge that means they are well placed to ensure Code compliance. FWO can also investigate workplace breaches.

Innovative Program and Multi-Stakeholder Approach

The Homeworkers Code of Practice sits in the centre of a range of activities of the Homeworkers Code of Practice Committee (HWCC) and Ethical Clothing Australia. Associated with the Code, ECA undertake education and support of companies, compliance activity, outworker education and consumer awareness. There is a strong recognition that all of these elements are essential to bring about the change in the TCF industry required to address this systemic problem of outworker exploitation.

It is important that outworkers do not have to sit and wait for improvements to “trickle down” to them as a result of compliance work, education of employers and consumer pressure. Providing education and opportunities are essential. Education about rights at work and the compliance activity being undertaken to address their issues at an industry wide and company-wide level is empowering to these workers. Opportunities to access information, support, skills recognition and other skill training are also important to the empowerment of outworkers. This must start with outreach to this hidden workforce, including the building of trust and networks of support. ECA and its partners are employing a range of effective strategies to reach out to, support and educate outworkers.

In turn, these outworkers are standing up for themselves more with their employers and are providing information that can aid the compliance and consumer awareness activity.

With the complexity of the issues for outworkers and the TCF industries, and the multiple points of entry to address the exploitation of outworkers, it obviously follows that a multi-stakeholder approach is essential to the effectiveness of ECA. ECA engages with and works closely with a wide range of partners in order to undertake this broad spectrum of work. ECA is not seeking to undertake this broad spectrum of activity alone and draws on the expertise, relationships, and status of the many groups involved. FairWear is committed to continue as one of these partners.

HWCC/ ECA Engagement with Industry

FairWear understands that employer and employee groups have been working constructively together towards streamlining the process for accreditation to the Code. A wide range of initiatives have been undertaken in response to requests from employers and employer groups, in order to make the Code workable. The most public of these has been the re-branding of the label to Ethical Clothing Australia, but the majority of the revisions to the Homeworkers Code that are the subject of this application are also in response to requests for streamlining and clarity from employer groups.

We commend the significant efforts of ECA in ensuring this engagement with and listening to industry.

Code in Relation to Other Instruments and Processes

Existing laws that cover all other workers are barely enough to prevent exploitation and unlawful treatment across the breadth of enterprises operating in Australia in some cases. Because of the unique nature of the wearable apparel industry sector

and the extent of contracted labour in this industry extra protections are required for homeworkers.

FairWear was integrally involved in the introduction of additional outworker protections in various states, and most recently federally. In NSW and Victoria we were members of the Ethical Clothing Trades Councils, alongside employer groups and the union, that recommended the introduction of mandatory codes in both states. In South Australia and Queensland, FairWear were key stakeholders involved in discussions that led to creation of the mandatory codes of practice in those states.

The state mandatory codes of practice for the TCF industry allow for companies to be exempt from the mandatory code if they maintain accreditation under the voluntary Homeworkers Code of Practice. This exemption was included at the request of the industry as they preferred the voluntary mechanism over the mandatory mechanism. If the voluntary Code was to be rendered unworkable then the industry would expose themselves to a far more onerous mandatory process in South Australia and New South Wales.

Various legal and voluntary instruments form a series of interlocking provisions, that together provide a network of protections for outworkers. Some of these protections are in the form of entitlements, and others are mechanisms for those entitlements to be enforced. The award provides the initial building blocks on which the legislation and voluntary mechanisms have been built. These mechanisms do not stand alone but work together to provide a system of protection.

Public Benefits of the Homeworkers Code of Practice

The public benefits provided by the Homeworkers Code of Practice include -

- increased compliance with relevant Australian laws by textile, clothing and footwear businesses;
- improved flow of information to outworkers about their entitlements, and improved confidence among outworkers in reporting non-compliance and accessing support to bring about changes in their supply chain;
- reduced risk of exploitation of outworkers, and other workers in the TCF industries;
- increased access to award pay and conditions for outworkers and other workers in TCF industries;
- improved occupational health and safety for outworkers;
- improved quality of life for outworkers and their families;
- consumer access to readily identifiable ethically made clothing;
- a platform for businesses to promote their ethical credentials to the growing consumer base interested in purchasing goods that are made in Australia under fair working conditions.

The only possible adverse effect of the Code is on unscrupulous employers who refuse to comply with Australia laws and continue to exploit outworkers. The level of extreme exploitation in the textile, clothing and footwear industry has led to these measures needing to be taken.

Impact of Revisions to the Homeworkers Code of Practice

FairWear welcomes the revisions to the Homeworkers Code put forward by the HWCC. The revisions are a response to issues identified and represent a streamlining and positive development of the Homeworkers Code. We welcome their responsiveness to industry on these matters, and appreciate their commitment to make the Code work. There is no point in maintaining a Homeworkers Code that is complex, if no-one is going to participate in it.

The Homeworkers Code also needs to be able to deliver on its purposes, ensuring outworkers and all TCF workers are receiving their legal entitlements. The capacity to insist that companies follow through on the accreditation process, rather than sitting in the middle of the process being inactive or unco-operative, is important to ensure productive engagement.

FairWear has undertaken not to target companies which have been found to be exploiting workers if we know they are in the process of seeking accreditation, and therefore cleaning up their supply chain. Similarly, the TCFUA and even the Fair Work Ombudsman might be asked to hold off legal actions if a company is seeking to address the issues in their supply chain with the assistance of the accreditation process of the Homeworkers Code. However if a company is not genuinely seeking to change the practices in its supply chain then they should not be given the “protection” from legal activity or consumer sanctions.

Coverage of the Homeworkers Code of Practice

The Homeworkers Code has always covered all workers in supply chains, and we welcome this being made explicit in the revisions to the Homeworkers Code.

The purpose of the Code has always been to address non-compliance with legal wages and conditions in the wearable apparel industries, most notably in the clothing industry. This is most sharply experienced by homeworkers, and they are the primary focus of the Code, but exploitation is also experienced by others in TCF supply chains.

The account of the complexity of supply chains in our submission to the award review gives some indication of why ensuring compliance right throughout that supply chain also ensures the outworkers or homeworkers at the bottom of the

supply chain receive their entitlements. In bold terms, to clean up the industry for outworkers it is necessary to clean up the whole industry.

FairWear's experience with the TCF industry has not been of two contrasting sectors – the 100% compliant and the 100% non-compliant. Rather, the TCF industry is more of a continuum between full compliance and non-compliance, with many in the middle who are partially compliant to a higher or lesser degree. For example, some factory based workers attending English classes with Asian Women at Work reported receiving award rates of pay, but did not receive overtime pay when they worked extra hours in the evenings or on weekends. Sometimes this is through a lack of knowledge by employers, sometimes this has been undertaken by deliberate intention to flout the law to maximise their own income. An example of the latter is a Chinese worker who questioned her boss that she was asked to sign a document that said she worked 20 hours a week at the award rate, when she actually worked more like 60 hours a week for a fraction of the award. The response was “don't worry about it, my accountant has it all under control”. Regularly, this lack of compliance is driven by the pressure from higher up the supply chain to produce the order for very low prices in very short turnaround times.

FairWear notes that the Homeworkers Code of Practice could just have readily been called the Outworkers Code of Practice, as outworker is the term more commonly used in Australia. And outworker is a broader term as it takes in anyone working “outside” a formal factory. However at the time of the Code being originally negotiated in 1996 there was a concurrent, successful international campaign for the introduction of an International Labour Organisation (ILO) Convention on Homeworkers. So the internationally recognised term was adopted for the name of the Code.

TCF Businesses which make Australia Proud?

FairWear does not deny the hardship faced by the textile, clothing and footwear industries in the current global and national economic climate. We refer the ACCC to clauses 68 to 85 of the attached submission to the Fair Work Commission, for more detail.

However we totally reject the suggestion that compliance with state and federal laws, compliance with the modern Federal award and participation in the voluntary Homeworkers Code of Practice are responsible for the hardship. The TCF industries have to find a new model of efficiency to deal with the global and local realities which isn't based on exploiting workers.

Australia's textile, clothing and footwear businesses should be competing on skill, innovation, design and quality, rather than by flouting the law and exploiting outworkers.

The activities of ECA and its partners need to be sustained over many years to challenge and change the prevailing culture in the industry. The operation of the Homeworkers Code of Practice is central to this activity.

FairWear wants a TCF industry that all Australians can be proud of.

In conclusion

FairWear wholeheartedly supports the submissions of the HWCC/ECA for a further five years of authorisation for the revised Homeworkers Code of Practice, as the centrepiece of their effective and innovative program to address a long term social justice issue in our Australian community.

If you require any further information about FairWear or this submission, please do not hesitate to contact Debbie Carstens on 0437 879 442 or by email on fairwear@awatw.org.au.

Yours sincerely,



Debbie Carstens
FairWear NSW



Sandra Dann
FairWear SA
Director, Working Women's Centre SA

Appendix 1

Dung, Outworker, November 2011

I want to tell you a bit about my story.

I migrated to Australia in 1999, and I live in Sydney. In Vietnam, I was a garment factory worker.

I started sewing from home a few months after I arrived in Australia. At first, I was making only parts of a garment. I was paid per piece. I was earning – roughly, an average of \$6 an hour. After a while, I was confident enough to make whole garments – skirts, pants and dresses. For a year, I worked and worked and worked. It was very stressful. Sometimes there was too much work to be finished in too short a time. I had to work very long hours and had very little sleep. Sometimes, there was not enough work so I worried about paying bills and other basic necessities.

When my friend told me that a new clothing factory has opening I saw my chance to escape. I applied for a job there and was successful. I was given a full time job. I was paid \$14 an hour for a 38-hour week. This was a much better rate than when I was working from home! But it meant travelling everyday from Cabramatta to the City – that's over 2 hours travelling time in a day.

I stopped working in the factory after 3 years when we started a family. I now have 3 young children, and I am back to sewing at home. As a mother, it is very convenient for me to work from home – I can look after my children while I work to get money for my family. But the rate of pay is really low compared to the factory.

I sew in a shed at the back of my house. I have 3 sewing machines, including an overlocker. At one stage, I was making complex garments for a well-known fashion label. The boss said it takes one hour to make the dress but actually, very skilled garment workers could finish the garment in one hour because it was very complex. For this work, I received only \$8 an hour. Those garments would sell for over \$100 in the shops.

Can you imagine what it is like to have an urgent order of these complex garments? And a strict time limit to complete something that you cannot do in the time the boss says? I am sure you would be as stressed as I've been.

So I stopped this work and I am currently sewing school uniforms from home. The pay is very low but it's less stressful – and that is better for me and my family.

At one stage my boss asked me to get an ABN number, which I did. I heard later that bosses are doing that to try to pretend that we are contractors when we are really employees. I want to have the protection of being an employee and getting legal, award rates of pay for my skilled work. I don't like bosses being tricky to avoid their responsibilities.

I want fair pay for the skilled work I do, as well as the flexibility to work from home and be with my family. I don't want my family's life to be stressed and I don't want it controlled by unrealistic deadlines.

We, outworkers deserve to be treated like any other worker in Australia. We should be paid correctly and should receive our basic entitlements – superannuation, annual leave and workers compensation – as well.

Ms Nguyen's Story, 2011

I came to Australia in the early 1980s as a refugee from the Vietnam War. At the time I had two young children and had another one on the way. We were new to this country and didn't have any relatives to rely upon. My partner and I needed to find work in order to feed ourselves and establish ourselves. We were very poor. We would often eat rice mixed with tea and dried fish. We slept on old mattresses that were found on the side of the road. Life was tough.

We started looking for work advertised in the Vietnamese newspapers. My partner could speak a little bit of English but I barely knew anything, so I needed to work in an environment where I would be able to communicate. This was where my career as an outworker began.

I had previously learnt how to sew during high school textile classes but my knowledge was quite basic. Using this knowledge I gained work at various clothing factories that were willing to accept and teach me. This work was valuable, because it was work and I was getting paid, albeit cash-in-hand. This was the only work that would be offered when you rang up to answer newspaper ads and I took it and was thankful I had it.

My partner and I soon invested in an industrial sewing machine so I could start sewing from home because I had given birth and now had three small children that needed to be looked after and this was when I started to sew clothes at home. I would get instructed on how to piece together a garment and I would be given a sample piece to take home.

Back then if you worked in the factory you could earn about \$5 an hour cash-in-hand. Working from home, payment was calculated per garment and you could earn about \$3-5 per garment. These days, as I'm more skilled, I try to secure work on more expensive high-end fashion brands which pay a higher rate of \$10 a garment or up to \$13-\$14 per garment for more technically difficult work, which take about two hours or more to complete. The less expensive fast-fashion and youth brands only pay \$2-3 per garment so I only take on that work if there's nothing else.

These days, sometimes Centrelink helps me find work by locating clothing factories that are willing to employ and train potential staff. Centrelink is able to locate these places as they have agreements to take new people on a 6-month contract and Centrelink subsidises my pay by 80% for that period. After that, the companies are then able to decide whether they want to keep me on or not. But obviously they don't. If you were an official worker at the factory, you get paid \$15 an hour, whereas people working cash-in-hand get paid about \$7-8. There's a lot of administrative overheads for officially paid staff members so there's no real incentive for them as it costs them both money and time.

So I take on these contracts every few months. I usually get signed on for six months as a part-time employee and work 15-20 hours a week. Most of the time, I'll do some additional work and get paid cash-in-hand rates for the extra hours that I work. Otherwise, I come home and work on clothes that I've taken from other factories.

I enjoy these periods where I'm working at the factory because I'm getting well-paid. But I also enjoy working at the factory in general because pay is predictable. If you feel tired one day and are not as productive as usual, you still get paid for however many hours you work. The only down side to working in a factory is that the managers pressure you to be productive. Also, in summer the conditions are dreadful. You usually work in a large warehouse without any insulation. There are generally fans but on 40 degree days a fan doesn't help. This is why I like to work from home where I have air conditioning. Work hours are also more flexible which is especially useful when I need to pick up my kids from school, but low productivity at home means low pay because you are paid per garment. This usually equates to about \$5 an hour when working from home.

I've been doing this for over twenty years now and I'd love it if someone could introduce me to an employer who would be willing to take me on as staff and pay the legal minimum wage. The only requirement I have is that they be able to speak Vietnamese so I can communicate. I'm confident with my abilities and I can get cash-in-hand work anywhere with my current skills.

I'm in my early fifties now and I think I'll continue to sew until I can't sew anymore because I still need to look after one more child who is almost finished high school. I'm now a single mother, I don't have any savings and I need the money to pay bills and the mortgage. I'm getting old, can't speak English very well and don't have any other skills. Sewing is my only way. Sewing is my only skill.

Thoa's story, a Queensland Outworker, November 2012

My name is Thoa. I have been in Australia for 18 years and have been an outworker for 17 years. I have worked for several different labels but for the last few years through to now I am working for a school uniform label. My employer pays me for each garment that I make. It means that he pays me per piece not an hourly rate. I have never been paid workers compensation, Superannuation, holidays or annual leave or sick leave. When I am sick, I can't work and I do not get paid.

If the work is urgent or I have to meet the deadline, I need to work very long hours in a day. Sometimes I have to work up to 11pm. I have three children, one boy and two girls. I know as an outworker I am not treated fairly but I have to work because of my family, because of my children.



FairWear

PO Box 253, Bankstown 1885
Ph 02 9793 9150 F 02 9793 9106
fairwear@awatw.org.au

27th February 2013

SENIOR DEPUTY PRESIDENT HAMBERGER
Fair Work Commission
amod@fwc.gov.au

Dear Senior Deputy President Hamberger,

Please find attached the submission of FairWear in relation to matter:

**TEXTILE, CLOTHING, FOOTWEAR AND ASSOCIATED INDUSTRIES AWARD 2010 [MA000017]
– Full Bench Outwork Matters**

FairWear will be represented at the hearings by Ms Shelley Marshall. We will call one witness – Ms Bich Thuy Pham, Community Worker with Asian Women at Work, a member organisation of FairWear. Ms Pham's Witness Statement is attached as Appendix 4.

Yours sincerely,

Debbie Carstens



FairWear

PO Box 253, Bankstown 1885
Ph 02 9793 9150 F 02 9793 9106
fairwear@awatw.org.au

FairWear Submission 27th February, 2013

2012 REVIEW OF MODERN AWARDS
**Review of the
TEXTILE, CLOTHING, FOOTWEAR AND ASSOCIATED INDUSTRIES
AWARD 2010 [MA000017] – Full Bench Outwork Matters**

The Ark Clothing Company (AM2012/93)
The Australian Industry Group (AM2012/225)
Council of Textile & Fashion Industries of Australia Ltd (AM2012/248)
Textile, Clothing and Footwear Union of Australia (AM2012/273)
And FWC Technical/drafting matters

Interest

1. FairWear seeks to intervene in this case to advocate for the maintenance of the vital outworker protections in the Textile, Clothing, Footwear and Associated Industries Award.
2. FairWear is a coalition of churches, community organisations, women's organisations, migrant organisations and unions, which has been working for over 16 years to address the exploitation of outworkers in the Australian clothing industry. Over 30 organisations are involved nationally.
3. FairWear was formed in December 1996, at the time when retailers from the Australian Retailers Association first rejected participating in the then newly developed Homeworkers Code of Practice. FairWear has worked tirelessly for 16 years to improve the wages and conditions for outworkers by seeking to engage consumers, retailers, manufacturers, outworkers and government in understanding

the issues and sharing in the responsibility to stop the exploitation of outworkers. This activity has included making submissions to the award modernisation process in 2010 and other processes in the Australian Industrial Relations Commission prior to that.

4. Many of our member organisations have direct contact with outworkers, including Asian Women at Work in Sydney and the Working Women's Centre in South Australia. Some peak organisations became involved because their constituents were raising concerns with them, for example priests were reporting concerns about exploitation of outworkers to the Australian Catholic Social Justice Council.
5. We are motivated by the ongoing low wages and poor conditions for many outworkers in the clothing industry, who we directly encounter through our work.

Nature of Outwork and Outworkers

6. The origin of the term "outworker" is someone working *outside* the formal factory. In Australia, "outworker" has become synonymous with someone who works at home, although workers in informal factories and sweatshops are also covered by the original definition. Home-based outworkers are sometimes referred to as "homeworkers".
7. The term "sweatshop" is used to describe premises where people work in unfair conditions. Sweatshops can be factories or small factories in sheds and private residences. Much of the reality documented for home-based outworkers is also true for sweatshop workers.
8. Outworkers come from a wide range of cultural backgrounds. Most are women and many have migrated to Australia. In recent decades Vietnamese and Chinese migrants have come to be the majority of home-based workers in the industry. Low English literacy and legal literacy, particularly about workplace laws, lead to a greater vulnerability to exploitation. This vulnerability is one reason why strong, uniform legislation is required.
9. Numerous Senate inquiries, Federal reviews, and Australian Industrial Relations Commission and Federal Court decisions have recognised the particular exploitation that takes place in clothing production 'supply chains'; a complex web of interconnected subcontracting relationships that characterise the organisation of work in this area where homeworkers are engaged under 'sham contracting'

arrangements in order to receive work. These studies and inquiries have shown that the majority of garment workers working at home receive unacceptably low payment for their work, sometimes as little as \$4-\$5 an hour. In addition to low pay, outworkers will often not get regular work. At times they go without any work and income for long periods, while at other times they can be expected to deliver a large order in a rush. This leads to them having to work long hours each day often without any days off or weekends. (See reference list of research and inquiries at Appendix 1).



10. In many cases outworkers:

- Will not receive superannuation, which has been established to help provide an income for workers when in retirement;
- Will not receive any WorkCover or workers compensation in an industry where injury rates are high compared with other industries;
- Can cease receiving work from their employer at any time, without notice or severance pay.

11. The proportion of clothes made in Australia by home-based outworkers has grown markedly in the last 20 years. Although estimates regarding the number of workers vary, it is generally agreed that the proportion of outworkers is greater than factory workers employed in Australia.

12. Endemic underpayment of outworkers not only impacts on the workers themselves, but also their families. As one daughter of outworkers writes:-

There were 9 women, seated at 9 industrial sewing machines, in a room of 4 x 4 metres. They worked five days a week, 7am to 7pm. I remember seeing a cheque for a full week's work, of \$126. As a 10 year old, [in the early 1990s] I did not recognise this amount as a lot or a little. [My Mum] worked for 15 cents per item, making Espirit, Country Road, Fiorelli and Bonds. That is 840

articles of clothing made each week. One can only speculate how much those items were worth altogether once sold in stores.

Obviously, on her and my father's combined income, we lived sparingly, in a single room in an apartment. When rent would rise, we would find another, cheaper apartment to move into around Sydney. Within three years, we lived in six different apartments.

In order to make enough money to keep up with rent, my family started taking sewing work home. We had two home machines, so often my father and mother would sew until after midnight each weekday, and all day on the weekend, while I would cut the threads between the fabricated pieces. We would produce thousands of articles each week when we worked together. We kept a record in a little red notebook. I remember my father's beard grew faster during the summers when we were producing these articles. He joked that the vibrations from the sewing machine coaxed the beard hairs out. We would break for meals, sleep, school and work. This was our daily home life. I was twelve years old.

Six years later, my mother applied for a position she had heard about from an acquaintance, at a car seat cover company. She started work there and was shocked and pleased to find that there she was earning over \$450 a week, doing the same thing as her previous job, but only 9am – 5pm, Monday – Friday. This was just above the minimum wage for her at the time.

13. See Appendix 2 and 3 for other outworkers' stories.

Sweatshop workers

14. The situation of sweatshops in Australia has not been as extensively documented as that of outworkers, although many of the inquiries into home-based outworkers have also given some outline of the situation of sweatshop workers.

15. The NSW Ethical Clothing Trades Council Twelve Month Report to the Minister for Industrial Relations 2003 and the Ethical Clothing Trades Council of Victoria Twelve Month Report 2004 both outlined some of the issues with sweatshops in their compliance reports. One example was:-

“An inspection at a small dye factory in Marrickville in November 2002 discovered a workplace where four persons were employed without wage records. When required to produce wage records the employer produced an A4 piece of paper which purported to record that employees were paid \$10

an hour for a forty hour week. The employer later conceded that he had drafted the document after the TCF Union had given him 24 hours to produce the records. The employer did not pay his employees superannuation nor did he have a current workers compensation policy. Employees were being paid less than the Award rate of pay and there was no apparent record of work, apart from the documentation produced in response to the TCF Union notification.”¹

16. In FairWear’s experience the demographic of sweatshop workers is much the same as outworkers, with the majority being migrant women with limited English language skills and limited understanding of Australian laws and systems. Many have had no alternative work experience in Australia and do not believe they have other options for work. Some outworkers move between home-based and sweatshop based work from time to time, depending on where and when work is available. Some sweatshop workers are also given work to complete at home. There are even cases of factories with some workers formally on the books at award rates of pay and some workers working for piece rates and not officially recorded in the employment records.
17. Sweatshop workers have described working 10 to 12 hours a day, 6 or 7 days a week. Even longer days might be demanded in busy periods. They are often paid cash in hand. Others are paid by cheque or transfer, with paperwork which records their hours of work as being only a percentage of what they actually worked. One sweatshop worker queried if she could get into trouble for signing a document that said she only worked half the hours she actually worked, and the employer assured her that it was fine because his accountant had it all worked out. Mostly pay rates are by the piece but in some sweatshops workers are paid an hourly rate. Whichever way they are paid, the rates fall well short of their award entitlement.
18. Sweatshops are sometimes located in the garage or rumpus room at the employer’s home. Other times they are in factory environments. There are also cases of whole houses that have been turned into an unregistered sweatshop factory. The highly transportable nature of sewing machines allows a range of working environments to be established.
19. Sweatshops are renowned amongst workers as high pressure environments, with pressure and verbal abuse from employers coupled with low piece rates for the

¹ New South Wales Ethical Clothing Trades Council Twelve Month Report to the Minister for Industrial Relations, 2003, p66

garments meaning that workers are working fast and under stress. Accidents and injuries are more common than in formal factories, but workers are reportedly told to go home and rest (without pay) and are not informed about any entitlement to workers compensation. A number of sweatshop workers have told FairWear they were aware of others from their workplace who went home to rest and were never invited to come back to work, consequently they are reluctant to report injuries to their employer in case they lose their job.

Relationships with Employers

20. It is well documented that migrant and refugee families from many nationalities are very driven to establish themselves in Australia, and therefore will take on multiple jobs and work very hard to build a financial base that allows them to buy a home and provide security for their family and children into the future. FairWear and our member organisations have seen this extensively among the outworkers with whom we work. In some cases, extended families work together to purchase a home so the extended family has a base in Australia. This drive often means outworkers will accept low wages and poor conditions in order to secure some form of income, and they are unwilling to complain or stand up to their employers who are treating them poorly.
21. Another feature of outworkers relationships with employers we have witnessed is an incredible loyalty to employers, and culturally based respect for them as authority figures in their workplace and in their community. We have seen this very strongly in Asian communities. There is a sense that the boss is their “patron” and will look after them even if in reality they are treated very poorly.
22. Many outworkers have told us “the boss is my friend”, while they were being paid the equivalent of \$3 an hour, or “she is a good boss because she doesn’t bully me or push me to work too fast, and she knows I have high skills” while she is being paid the equivalent of \$4 an hour.
23. Another example of this loyalty and respect for employers is Ms Y, a Chinese woman, who had 4 years of written work records proving she had worked six to seven days a week for long hours at low rates of pay and could have made a substantial claim against her Chinese employer. But Ms Y didn’t want him to lose face in the community and chose not to pursue the matter. All this despite the tragic consequences of her work.

Tragic Consequences

Ms Y worked for 5 years sewing in a sweatshop in a garage at the rear of her employer's home. She was paid by the piece. Using her work record sheets, she calculates that her rate of pay was about \$4 an hour. She worked six or seven days a week.

Once in early 2002, her son was very sick with a serious cough and stomach ache. Because of the busy season for the clothing industry she had a lot of stress from work. She was too busy to go with her son to see the doctor. She said to her son: " I am sorry my son, mum is too busy to go with you to doctor. You just tell your symptoms to the doctor. The doctor will look after you."

In October 2004, her son was coughing a lot again. Her work was still very busy, she had to work 10 hours a day and sometimes had to work from 6:30am to 11 pm without a break. Her son again had to see doctor by himself. He took the medicine on his own. He cooked for the family, shopped for food and did the house cleaning.

In March 2005, her son's cough developed again and got worse and worse. He could not stand, and had to lie down in bed. Ms Y had to have a day off to take her son to see the doctor and requested the doctor take an X-ray of her son's chest. The results were shocking.

Ms Y stopped work when her 16 year old son was diagnosed with fourth stage lung cancer. He underwent operations and chemotherapy, but the doctors gave him only 5% chance of living. He died in Fashion Week 2006. His school created an award in his name for "the student who faces adversity with courage in their HSC".

Ms Y says "if I had worked the normal 38 hours I would have recognised my son's illness earlier and he might have been cured. If I had known my rights I would not have worked for as little as \$ 4 or \$5 an hour, without any entitlements. The employers know the law and they break the law. They know how to use the law to protect themselves and exploit workers.

"The law is standing there for many years, but still a lot of employers break the law. A lot of migrants work in awful and unlawful conditions. Who will care about us? I worked in small sweatshop with 7 people. How can we respond to the unfair treatment from our employers?"

24. Another feature of the relationship with some employers that outworkers have described is bullying and verbal abuse. In 1999 Mayhew and Quinlan² found that 49% of outworkers were verbally abused by their employers, 23% to threats and 7% to actual physical violence. Anecdotal evidence suggests that the level of threats and violence has reduced in recent years but harassment to work faster and complete orders continues.
25. Outworkers who have tried to speak up about rates of pay or hours of work have been told there are plenty of other workers who will do this work so they can take it at that price or leave it. Many outworkers are also told by their employers that the work could go offshore so they needed to accept the current rates of pay and conditions without question.
26. All these features of the relationship between outworkers and their employers mean outworkers are unlikely to complain to their employers or to other authorities, and may not dispute the employer's version of their wages and conditions or their satisfaction with their work situation, especially in front of their employer.

Complexity of supply chains

27. The complexity of supply chains has a number of consequences. Firstly, outworkers are difficult to trace. Secondly, there is strong downwards pressure (on payments and turnaround times etc) that exacerbates the exploitation of outworkers and also makes it difficult to hold one party responsible. Thirdly, there is great inconsistency in the treatment of workers doing essentially the same work.
28. The clothing and fashion industry is characterised by complex supply chains that often involve more than three or four contracting steps. Normally, the chain starts with a retailer and fashion house who enter into arrangements to source and have clothing made on their behalf. They may source the work to an Agent who sub-contracts the work further, or to a series of Makers who may directly employ some workers and/ or may contract the work further to others. Some retailers and fashion houses conduct some production in house. These long supply chains typically end with a group of outworkers at the bottom of the chain. In some cases there are sweatshops in the supply chain as well. These chains are extremely difficult to trace,

² Mayhew, C and Quinlan, M, "The Effects of Outsourcing on Occupational Health and Safety: A Comparative Study of Factory-Based Workers and Outworkers in the Australian Clothing Industry", *International Journal of Health Services*, Vol. 29, No. 1, 1999, pgs 83 - 107

because of their complexity, and normally outworkers only know the person who directly gives them the work.

One Example of a real Supply Chain

Fashion House A in Surry Hills contracted Agent B in Surry Hills to organise his production.

Agent B gave out the work to several Makers across Sydney including Maker C in south eastern Sydney.

Maker C employed several workers in his garage at the back of his house but also gave out work to several outworkers and to another Maker G. Maker G gave work to several outworkers.

The workers employed in the garage by Maker C were paid \$4-5 an hour in piece rates, depending on how fast they worked. The outworkers employed by Maker C received a similar rate of pay.

Maker C's sweatshop workers and outworkers were not only making garments for Fashion House A but also for Fashion House X and Z. All this work was coming to Maker C through Agent B, who has contracts with several Fashion Houses, and who hands on work to a network of Makers.

Fashion House A did not employ outworkers, and demonstrated no interest in finding out if any of the Makers at any level of his complex supply chain were employing outworkers.

29. Sometimes retailers and fashion houses have as many as 400 to 500 participants in their supply chains making products on their behalf. The complexity of the supply chains make it difficult to accurately map the chain and identify the number of workers involved and the conditions under which the work is done. The complexity of the chains encourages the abrogation of responsibility. Risks are passed down the supply chain from the fashion houses and retailers to those below them in the chain. This results in strong downwards pressure that exacerbates the exploitation of those lowest in the chains – outworkers.

30. A variety of production organisation methods can generally be found within each chain. There may (i) be contractors who do all their work in-house i.e. within a factory or commercial environment (ii) contractors that both operate in-house operations (often small to medium size factories), and give work out down along the

chain or (iii) contractors that have no in-house operations and simply give work out. One of the consequences of this is that there are people conducting the same work in different settings. Workers in formal factories receive Award wages, whereas those at home or in informal sweatshop factories, sewing exactly the same garments, receive far less.

31. Protections required are a combination of guaranteeing outworkers their basic rights, and providing mechanisms to effectively ensure they can access those rights. The culture of non-compliance in the TCF industry is so extensive that legislating rights alone has not led to improved wages and conditions for outworkers and sweatshop workers. The strongest legal protections are required to ensure exploitation is eliminated.

Importance of Award Protection

32. Award protections for outworkers have been key elements in the improvement in outworker's wages and conditions over the 25 years since they were first introduced. These award protections have been key building blocks on which state and federal legislation, and voluntary instruments, have been built to strengthen protections and provide mechanisms for those protections to be enforced.
33. FairWear opposes the employer applications to vary the outworker protections in this award - The Ark Clothing Co (AM2012/93); Australian Industry Group (AM2012/225) and Textile Fashion Industry Association (AM2012/248).
34. FairWear supports the Textile Clothing and Footwear Union of Australia (TCFUA) submission opposing these employer applications.
35. FairWear supports the TCFUA's application regarding outwork matters (AM2012/273) seeking minor changes for clarification of the award protections for outworkers.

Casual Employment

36. FairWear opposes the introduction of legalised casual employment for outworkers.
37. Casual employment is basically the reality for any outworker that is not part of a supply chain that is compliant with the award, except that they don't receive award

wages let alone the associated casual loading normally associated with formal casual employment.

38. Outworkers have described having to work 10 to 12 hours a day for seven days a week, including working overnight to complete an order for an unrealistic deadline, and at other times having no work or income for weeks on end.
39. These outworkers experience extreme income insecurity, and can never be sure when they will have work and income and when they won't. This leads to financial and emotional stress on outworkers and their families.
40. This "casual" approach to providing work also has a huge impact on children and other family members, as outworkers have minimal time to attend to other family members' needs if they are being expected to work 10 to 12 hours a day to complete an order.
41. Some outworkers have described a more predictable pattern of employment, with orders being delivered on a regular basis. The unpredictable component can be how complex a garment is and therefore how much time they take to complete a garment and the order. Such arrangements can be managed under the existing award with regular part time employment, and increasing the deadline for an order for more complex garments.

Flexibility on Hours of Work

42. The Ark submission refers to outworkers liking the flexibility of when they can work. Outworkers have also told FairWear that they like to work at home because they can choose the time that they work, ie when the children are at school and when they are asleep in the evening. But this does not mean they are keen to work more than 7 hours a day or more than 38 hours a week, or on weekends without some capacity to negotiate with their employer about this.
43. Outworkers do not wish to be expected to work 12 hours a day or 7 days a week. They want the capacity to say no. And for many of the reasons stated earlier, outworkers are keen to have the support of others in negotiating a fair arrangement with their employer so they are not pushed to work beyond what they want to work.

44. FairWear opposes the removal of the limitation on the maximum number of hours a principal can require an outworker to work in an ordinary working week, or the removal of the protections against a principal requiring an outworker to work on weekends or public holidays without the written agreement of the outworker.

Minimum number of hours for employment of an Outworker

45. FairWear wants outworkers to be guaranteed a minimum number of hours of part-time work if they are not engaged full time. FairWear supports the protection of the TCFUA being involved in agreements around any reduction in the minimum number of hours of part-time work. Outworkers have minimal capacity to negotiate and protect themselves.

Outworkers recovery of unpaid wages

46. FairWear strongly supports the recovery of money provisions for outworkers.
47. The single biggest issue that has driven outworkers to seek help from authorities in Australia has been the lack of payment of wages. Some outworkers have waited months for payments and kept working on new orders, only to have their employer close down or disappear. Some employers have deliberately changed their company identity to avoid their obligations, opening up with a new name in a different location. Other employers have become insolvent. Thousands of dollars for work completed under difficult conditions have been lost by many outworkers. This is only for their pay at the promised rates well below their legal entitlements. More extensive is the severe underpayment of wages for outworkers.
48. Recovering an outworker's under payment or non payment from their direct employer is often extremely difficult. Apart from the circumstances where the employer disappears or becomes insolvent, in some cases it is difficult to identify who is the employer. Many outworkers know very little about their employer, and have only simple contact details. This is particularly pronounced for outworkers who have their work delivered to them by their employer. They may have no address for the employer at all.
49. Further, it is not uncommon for sub-contractors to tell outworkers that they did not receive enough money from the principal contractor to pay outworkers their full wages and entitlements.

50. The recovery of money provisions ensures outworkers can recover the money owed to them directly from the principal contractor in the supply chain (usually the Fashion House) who gave out the work to the first layer of sub-contractors. The principal contractor can in turn seek to recover this money from the sub-contractor who failed to pay the outworker correctly in the first place.
51. Principal contractors sharing responsibility for wages also increases the incentive for principal contractors to ensure they are using reputable makers and to ensure they, as the principal contractor, are in fact paying enough in contracts to ensure award wages can be paid.

Registering to Engage Outworkers

52. The evidence shows over and over again that exploitation in this industry has been able to flourish because it is hidden. Having systems for registering the giving out of work, and therefore tracking where outworkers are employed, is all part of opening up this industry to transparency and protecting outworkers within this industry.
53. FairWear strongly supports the retention of the award provisions requiring principals to register when they are engaging outworkers and seek permission to engage more than 10 outworkers in their supply chain.

Keeping of Work Records and making them available for Compliance checking

54. The administration and record keeping component of any workplace can be annoying and cumbersome. But it is necessary for a range of purposes including reporting to funding bodies, accountability to members, and recording of compliance. The record keeping requirements have again been developed to bring transparency and address the exploitation that is occurring in this industry.
55. FairWear strongly supports the maintenance of the record keeping requirements and the requirement to make these records and any agreements available to the TCF Union if requested, to allow the monitoring of compliance and ultimately to ensure that outworkers are being provided with award wages and conditions.

But We Don't Use Outworkers ...

56. A complaint often made by Fashion Houses is “we don't even use outworkers” so we shouldn't have to do this recording and reporting. However, there is extensive evidence that any company contracting work out to someone else could potentially have outworkers or sweatshop workers in their supply chains.
57. The TCF Union are uncovering large numbers of outworkers in supply chains where they are undertaking compliance activity for Ethical Clothing Australia.
58. After participation in discussions with FairWear and the TCF Union about the proliferation of outworkers in the industry generally, a purchaser from a well-known Australian brand followed the vans from one of their contractor's premises to outworkers' homes and saw for themselves what was occurring, undeclared, in their own supply chain.
59. FairWear knows directly of a number of companies who had no knowledge (or claimed no knowledge) of outworkers in their supply chains until they were directly confronted by outworkers showing samples of the garments they had made for that label. FairWear Outworker Advocates have sought meetings with these companies to show them they had a problem in their supply chains which they needed to address.
60. Recording and reporting requirements through supply chains to the point where work is no longer given out is essential.
61. Where supply chains are short, and only limited work (or no work) is contracted out to other entities, the reporting obligations are reduced.

The Extent of Outwork and the Extent of Exploitation

62. The TFIA claims exploitation is not extensive in the industry and therefore does not require the response that has been taken. FairWear challenges this claim, and believes there is extensive evidence to the contrary.
63. There is no recent research on the number of outworkers. In the 1990s the TCFUA estimated over 300,000 outworkers (including family members and children of the primary outworker) were involved in clothing production. During this height of

outwork whole communities of migrants were involved. For example, in Sydney the Cambodian and Lao communities estimated some 70-80% of their community were involved in clothing outwork. The Chinese, Vietnamese and Korean communities were heavily involved, as were some of the European migrant communities including Turkish and Greek migrants.

64. In the 1980s and 1990s, when the tariff protections were initially reduced, clothing factories started to close but while some production went offshore a significant amount of production went into outworkers' homes and sweatshops here in Australia (Grieg 1998, *Twenty Pieces*). By the late 1990s and 2000s more production moved offshore and outworkers too started losing work. In early to mid 2000s Asian Women at Work was assisting a large number of former outworkers from Chinese, Vietnamese, Cambodian and Laotian communities to re-train for other industries as there was no longer enough work in the clothing industry. Community based research by Asian Women at Work at that time revealed that the final two makers in the Lao community had ceased operation and the remaining handful of Lao outworkers were working for Vietnamese makers. Similarly the Cambodian community indicated only a small number of Cambodian makers remained. There were and are still large numbers of Chinese and Vietnamese outworkers working, although there was a reduction in the number of full families involved in production, with women in the household undertaking most of the outwork sometimes assisted in the evenings by her husband, older children or other extended family members.
65. In 18 years of outreach work with thousands of outworkers in Sydney, Asian Women at Work has encountered less than 10 outworkers who received award wages and conditions without intervention from the Textile Clothing and Footwear Union. The circumstances for homebased and sweatshop based outworkers described in this submission are the normal situations, wages and conditions described by outworkers to Asian Women at Work, for themselves and the other outworkers they know also working in this industry. It was so much regarded as the norm that outworkers took some convincing to believe that there were actually laws that said their wages should be higher and their conditions should be better, and that as women working from home they could expect the protection of the law.
66. Asian Women at Work has worked closely with the TCFUA in NSW to help some clothing companies understand what is happening in their supply chains. Some companies thought they had cleaned up their supply chains, but then met with groups of outworkers who were not receiving their entitlements and they had to look more deeply at what was occurring in their supply chains and how they needed to address the issues. In one such supply chain the deep investigation uncovered

only some 90 workers formally “on the books” of suppliers in that supply chain, when the volume of production was enough to employ some 340 workers full time. That is 250 workers who were not covered by workers compensation, were not receiving superannuation, and many of whom were not receiving award wages.

67. FairWear understands this kind of scenario has been repeated over and over again as the TCF Union has worked with companies which have made the decision to seriously check out their supply chains and ensure they are compliant. FairWear understands that not every supply chain investigated has revealed this level of non-compliance, but that non-compliance is extensive even in supply chains where companies were motivated to do something about it. There are still many who have not.

Reflections on Economic and Trade Environment

68. FairWear strongly objects to the suggestion that legal protections for outworkers are responsible for the downturn in the Australian clothing industry.

69. There are a huge range of factors impacting on the Australian clothing industry.

70. International competition in the TCF industry is very high. China is a huge powerhouse of production based on labour costs well below minimum Australian wages. With improved quality of production, and improved internet and technology facilities, Chinese producers are able to provide an efficient service to Fashion Houses around the world. Further, with a highly transportable machinery base, clothing manufacturers can (and do) roam the globe in search of the cheapest available workforce. And exploitation of outworkers and sweatshop workers across the world is extensive. This is being increasingly documented by organisations like the Clean Clothes Campaign, Homeworkers Worldwide, Oxfam and others.

71. The steady reduction of tariff protections for the TCF industries in Australia over many years and the high Australian dollar of more recent times have had an overwhelming impact on the capacity of Australian TCF companies to compete with imported TCF products. And now international internet based retail is having a steadily increasing impact on the Australian industry. There are many other factors beyond the control of local industry which are also having an impact.

72. Fairwear also notes the rise in the use of internet and social media sites to promote fashion design labels including niche labels that are often operating from homes.

These include women who design infant and children's labels and vintage, retro or other niche labels.

73. The extent of outsourced sewing work from this sector of the industry is not yet known due to its recent emergence and whilst this sector is probably not producing large runs of clothing items at this stage it may be contributing in a combined way to having an impact on the retail industry.
74. A case in point is Stacey Hendrickson as reported by *adelaide now*, 27 February 2013. <http://www.adelaidenow.com.au/entertainment/adelaides-stacey-hendrickson-fashions-global-fan-following/story-e6fredpu-1226586352673>
75. However, no national or international context, or level of international competition, or amount of exploitation in the industry overseas makes it acceptable for outworkers and sweatshop workers to be exploited in Australia. Reducing the very basic protections for Australian TCF workers, who are among the lowest paid workers in Australia, is not acceptable.
76. FairWear recognises the complex challenges to the Australian TCF industry are very real. However there needs to be different answers to these problems.
77. The Australian car manufacturing industry is struggling with similar or related pressures. When the Australian car industry struggles, no-one advocates for the workers to be cut to half pay or one third pay. Calls for flexibility or casual work in the car industry does not result in some workers only getting 10 hours work in some months and 100 hours a week in other months.

Why Have Award Protections for Outworkers become such a problem now?

78. Why did exploitation become rife in the Australian clothing industry? Because it could. Sewing machines can be put into homes; vulnerable migrant workers (mostly women) would work long hours for low rates of pay; middle men were prepared to engage workers from their own country of origin for piece rates that converted to as little as \$2-3 an hour; retailers demanded lower and lower prices in the face of competition from international markets; supply chains became longer to help hide the workforce and the list goes on.
79. Some of the saddest stories FairWear advocates hear are of outworkers who have “escaped” by becoming middle men or sub-contractors themselves and have continued the cycle of providing wages and conditions well below award minimums.

80. Why do we have such an extensive regime of legal protections for outworkers?
Because simple mechanisms and voluntary mechanisms didn't stop the exploitation. More was needed.
81. The objections made by the TFIA, AIG and The Ark centre on the difficulties they claim in the last two years since the introduction of the modern award. However the outworker provisions in the modern award were also in the previous Federal award and in several State awards for 20 to 25 years.
82. Why are industry bodies complaining so loudly now? Because they are finally being forced to comply. Resources and systems have been put in place for effectively monitoring compliance. A strong legal framework has been established state by state and then federally to support the award. The voluntary Homeworkers Code of Practice is now supported by the legal framework.
83. Now that we finally have a regime that is making a significant impact on the industry, is forcing compliance and is seeing the beginning of the end of the reliance on an exploited workforce is NOT the time to remove the protections. It is the time for the industry to be serious about systems that ensure that their supply chains are clean of exploitation. It is a time for industry to sit down with the union and ensure the systems can work. But not a time to remove the protections.
84. This is a turning point in the history of outworkers in Australia. Industry needs to face the fact that exploitation of outworkers must end, and that industry needs to be actively part of that resolution. Energy that is being put into fighting outworker protections can be put into working together with the union, government and community organisations to establish business models that protect outworkers and work in the existing economic environment.
85. FairWear desperately wants to be able to promote Australia's clothing industry as ethical and fair, to stand alongside clothing companies and the outworkers who make their garments to speak in support of great Australian products.

Conclusion

86. FairWear urges the Fair Work Commission to retain the vital protections for vulnerable outworkers in the Textile, Clothing, Footwear and Associated Industries Award.

87. FairWear is encouraged to see 82 companies now accredited by Ethical Clothing Australia, meaning they have been part of a voluntary process to check their supply chains and bring them up to full compliance where any workers were not receiving their full entitlements. As significant numbers of outworkers are now seeing improvements in their wages and conditions it is important to retain these vital award protections.

Both Shelley Marshall and Debbie Carstens have been involved in FairWear since its inception. Shelley is a senior lecturer in the Faculty of Business and Economics at Monash University and is internationally renowned for her academic work on informal workers. Shelley has worked closely with outworkers through FairWear and in her academic work. Debbie Carstens is chairperson of FairWear in NSW and was previously Co-ordinator of Asian Women at Work, where she worked extensively with outworkers.

Appendix 1 – Inquiries, Research, Reports

Inquiries

- Senate Inquiry into Outwork in the Garment Industry 1996
- Industry Commission Inquiry, The Textiles, Clothing and Footwear Industries 1997
- NSW Legislative Council Standing Committee on Law and Justice, Inquiry into Workplace Safety 1998
- Review of Senate Inquiry into Outwork in the Garment Industry 1998
- NSW Pay Equity Inquiry 1998 – Industrial Relations Commission of NSW, Justice Glynn
- Full Bench AIRC Decision on Outworker Clauses in Clothing Award 1999
- Victorian Parliamentary Inquiry (Family and Community Development Committee) into the Conditions of Clothing Outworkers in Victoria 2002
- Productivity Commission Inquiry into Textile Clothing and Footwear Industries 2003
- Review of Textile Clothing and Footwear Industries, Professor Roy Green 2008
- Senate Inquiry into the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011

Research

- Mayhew and Quinlan, “Outsourcing and Occupational Health and Safety: A Comparative Study of Factory Based and Outworkers in the Australian TCF Industry”, Sydney Industrial Relations Research Centre, University of NSW, 1998
- Cregan Christina, “Home Sweat Home”, Melbourne University, 2001
- Cregan Christina, “Outworker narratives: stories of despair” Melbourne University, 2002
- Sue Scull, “Vietnamese Outworkers in Queensland, Exploring the Issues” Boilerhouse, University of Queensland, 2004
- Nossar, I., R. Johnstone, et al. (2004) " 'Regulating Supply-Chains to Address the Occupational Health and Safety Problems Associated with Precarious Employment: The Case of Home-Based Clothing Workers in Australia'." Australian Journal of Labour Law **17**: 137.

- Brotherhood of St Laurence, Emer Diviney and Serena Lilywhite, “Ethical Threads – Corporate Social Responsibility in the Australian Garment Industry” 2007
- Marshall, S. (2010) “Australian Textile Clothing and Footwear Supply Chain Regulation”. Human Rights at Work: Perspectives on Law and Regulation. C. Fenwick and T. Novitz. Oxford, Hart: 555-585.

Reports

- Hidden Cost of Fashion - Outworkers tell the real fashion story TCFUA 1995
- Behind the Label Issues Paper (NSW Government) 1999
- The story of the No Sweatshop label - Homeworkers Code Committee 2000
- 12 month Report of the NSW Ethical Clothing Trades Council 2003
- 12 month Report of the Victoria Ethical Clothing Trades Council 2004

Appendix 2 - An Outworker in her own words

Tho's Story: "Shedding blood and tears for a pittance" (2011)

Tho has been sewing clothes for Australian fashion labels for 17 years. She shares with us her struggle to obtain decent pay and conditions, and a message for outworkers.

I have worked as a clothing outworker for 17 years, ever since I resettled in Australia in 1994. In this time I have shed sweat and tears in a job where the pay I receive is incomparable to my efforts.

There is a Vietnamese proverb which says "Fertiliser makes the rice good, silk makes the girls attractive".

The more our living standards increase, the greater and more complicated our needs and wants become. No matter what level of society, rich or poor, we all need clothes to suit our circumstances.

We, the wide network of homeworkers, have contributed our hard work and efforts to produce beautiful clothing for people. We have endured exploitation by the bosses, who rob us of our labour without care for how we feel. We have given the people all kinds of beautiful clothes, adorned all of society:

From babies to the elderly;

From workers to politicians;

From models to movie stars;

From students to high ranking officials;

From casual clothes to evening wear

From Spring to Summer then Autumn to Winter, we have created clothes for all the seasons.

We deal with so many styles and designs. Day by day they become more complex, and we work harder and harder. We put a lot in to the garments but get very little money in return. We work 14-15 hours a day on average, being paid around \$3-\$4 an hour.

If you can imagine a tiny room of a house or garage, with only 15-20 square metres, this is where we spend our lives. Everything is in there –an overlocker to join different parts of the garments together, a sewing machine for adding more detail to the clothes, such as flowers, leaves, branches. There are chairs to sit on, and boxes to store things in, including needles, threads, and sewing machine oil. Some of us try to make the work environment more positive and reduce our isolation by putting on the television or a movie, or listening to the stereo while we work in that small space.

In the winter when it is very cold our hands feel frozen, but in the summer we sweat so much that our eyes hurt. Dust from all the fabric blows around the room and fills out lungs all year round.

We work until late at night, days on end. Those who have trouble getting to sleep at night will also understand how long the night can be.

The work, however, is irregular, and our income is not secure. Even when you do finish an order, you still have to wait 2 or 3 weeks to get the money. Sometimes we joke that asking the boss to pay you is like putting yourself in the firing line. And when the bosses do finally come to pay us, they always try to find a reason to pay us less, sometimes even pretending that we have made mistakes or that some of the garments have not been well sewn.

We know that we're being exploited, but we bite our tongues when they pay us such little money, because we feel that we have 'taken the knife by the blade'.

We the homeworkers have been robbed by these bosses year after year. Why? Perhaps because we didn't know we were being robbed, didn't know what our rights are, or perhaps because we were a bit older when we came as refugees to Australia. We had to look after our children and family, we spoke a different language, we accepted work as clothing outworkers, we worked in isolation at home and had no opportunity to go out in to society, to learn English, to learn about our rights. For these and so many other reasons we accepted this fate. We have worked secretly at home, hidden away in isolation, and our bosses have taken advantage of this.

Sometimes we cry out "oh god... why?!" but he does not understand our situation.

Australian society is a humanitarian one, with laws to protect workers, and organisation that struggle for the rights of homeworkers. If we want to escape this exploitation we have to dare to look for other work, to ask the government to support us in retraining, learning English, finding other work, and with the support of other organisations who are fighting for our rights. And we have a responsibility to speak up to our bosses when we are overworked and underpaid.

Here at the beginning of 2011, with the extreme heat of summer in Australia, I am expressing my feelings as a woman who has worked at home sewing clothes for 17 years. During that time a pretty young woman has been eroded, and become an older and weak woman with swollen arms, wrinkles and blurry eyes due to malnutrition and lack of sleep.

I wish all outworkers an opportunity to change career, or find a better job, and hope that there will be more improvements for all of us as outworkers in 2011.

Appendix 3 – Nguyet - March 2012

My name is Nguyet, I have been working as an outworker for nearly 22 years. I make ladies fashion dresses for several different labels from the high end of the Australian 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 one dress.

I choose to work from home because my daughter is autistic. I want to be at home so I can support her and supervise her.

I have gained a lot of skill and experience while I am working at home as an outworker, but my pay is still very low. I am paid around \$5 to \$6 per hour without any other benefits.

Low pay is the reason why sometimes I refuse to do some orders. With very complex garments, and too many colours to match up ... I felt too much pressure!!

This pressure comes from the short time I am given to complete each order. It is common for me to be given 100 garments to complete in one week. That is 100 hours of complex work on complex garments.

I have now told my employer I can only handle 50 garments a week. It means my income is now very low – only \$250 a week - but my body is tired and one of my legs is very sore, so I can't handle the heavy workload any more.

I would like to get the \$17 an hour which the law says I should get. For 50 hours work I should be paid \$850.

It is not fair. It is not fair to me, to my health and to my family.

To come here today I had to give up my English class on Saturday so I can complete the order on time. My family and I have to miss out on many things because of my work and that is not fair.

I want to have time to relax. I want to have time to spend with my family. I want my daughter to have a good life despite her disability. I want to make a contribution to Australian society.

My hopes for the future are the same as my friends - others who are working at home like me - all of us would like to get fair wages and better conditions!

Appendix 4 – Witness Statement – Bich Thuy Pham – 28th February 2013

1. My name is Bich Thuy Pham. I have been a Vietnamese Community Worker with Asian Women at Work since November 2001. Prior to that I spent 10 years working as an outworker in the clothing industry in Melbourne and Sydney.
2. For the first four years I worked with Asian Women at Work, I was employed to work specifically with Vietnamese clothing outworkers. Since then I have been working with clothing outworkers as well as other Vietnamese and migrant women working in low paid and precarious employment.
3. Through this work I have met some 400 Vietnamese outworkers. Many of these women have let me into their homes and their lives. I have shared in their celebrations as well as their difficulties. They call on me for support with family and personal issues, and share with me their stories and struggles at work and in their lives. So I feel privileged to be deeply trusted by these outworkers.
4. All of these Vietnamese outworkers speak Vietnamese as their first language. Most of them started with very little English and have improved through our Asian Women at Work English classes and through joining in our activities. Many of them continue to have limited English and require an interpreter for any formal communication.
5. I currently have contact with about 100 current outworkers.
6. The outworkers I currently work with are generally between the ages of 30 and 50, although a few are in their late 50s. Most of them have children, and some have grandchildren they help to care for. Some are single mothers and others are married. Those who are married generally have husbands working in a factory in low paid employment and the husbands help with the outwork in the evenings.
7. Most of these women have been working as outworkers for more than 10 years, and some for more than 20 years. These long term outworkers have generally settled on one label or type of garment they like to make and work for the one Maker making the one label. Sometimes they will change to making another label because their Maker has started to take work from more than one label, as a way of getting more work. There are a small number of these outworkers who move around working for different Makers trying to get better rates of pay and better conditions. This group are generally highly skilled so can more easily move from Maker to Maker.

8. Almost all of them are sewing and not doing any pressing, packing or cutting. Some of them have reported doing a small amount of cutting when they need to adjust something that has not been cut properly by the Cutter.
9. More than half of these current outworkers are doing high end fashion. Some of them do school uniforms and sport uniforms. One of them is doing embroidery. Some of them are doing bridal wear and evening wear. About 30% of them are sewing low end fashion. Sometimes the highly skilled outworkers choose to do the low end fashion because it is simple and they can work fast and earn more money than they can for the complex high end fashion garments.
10. They are all aware of what company is the Principal because they sew the labels into the garments. All of them are working for a Maker or sub-contractor not a Principal, and they all have contact with the factory where the Maker or sub-contractor is based. Some of them sometimes work in the factory and bring the orders home.
11. All of them are working full time when they have an order. In fact they are working more than 38 hours a week including evening and weekend work to complete the order.
12. Sometimes not all the parts of the garment or accessories are provided together, so the outworkers have to stop working while they wait for some parts that are missing. For example the zippers are not delivered until a week later, or the lining is not delivered with the order. So the outworkers are forced to stop working while they wait but when the parts arrive they are told to hurry to finish the order. The boss is always pushing them to finish quickly.
13. At other times they have no work, but they are waiting and will not make other plans because at any stage they might be given an order that needs to be completed quickly.
14. It is very hard for them to organise their time. And they are stressed and insecure because of this arrangement.
15. For me as a community worker it is difficult too. I try to organise healthy activities and education for these outworkers and some agree to attend but at the last minute an order arrives to they cannot attend.
16. There is only one outworker in this current group who has an agreement about hours of work and that is because the union assisted her to get her full entitlements.

17. Most of them have the work delivered and collected by their maker or sub-contractor.
18. Increasingly because of union and Asian Women at Work education, the outworkers are keeping their own work records. They all receive some paperwork from their sub-contractor with varying content. For the high end fashion they usually receive a record of the number of garments, a drawing of the garment and instructions for putting it together. For the lower end the information is written on the pattern pieces by the cutter saying if they are front or back pieces and what is the size and the style number.
19. If they have an order then they will work 7 days a week and public holidays for a minimum of 10 hours a day. Even for the high end fashion the skilled workers can only get about \$8 an hour because of how long it takes to make one garment. For example making a jacket for \$15 takes more than one hour. One outworker told me a story about feeling like she won lotto one time when she got an order that was quite simple and she was able to make them quickly and earn \$28 an hour.
20. These days most outworkers get paid for the orders they do, however sometimes they are forced to re-do an order without any extra pay. Usually the order was done incorrectly because of poor or incorrect instructions from the maker or sub-contractor, or because the cutter has cut wrongly.
21. In recent times some of these outworkers have started to try to negotiate the price they are paid. After completing the sample, if it was very hard, an outworker might ask the boss for more if it took a long time to make. Sometimes the boss will promise to give an easy order next time to compensate, but the easy order never comes. Sometimes the boss will agree to pay an extra 50 cents per garment.
22. Some outworkers required to have an ABN to get work and others are not.
23. Only the outworker who has been assisted by the union is paid annual leave or superannuation.
24. In the last few years the only changes have been a slight improvement in conditions. This has come about because of increased confidence the outworkers feel as a result of more knowledge of the law and break down of isolation through contact with Asian Women at Work and other outworkers in our network.