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Committee Secretary  
Senate Education, Employment and  
Workplace Relations Committees  
[eewr.sen@aph.gov.au](mailto:eewr.sen@aph.gov.au)

Dear Committee Members

**Supplemental submission re Fair Work Amendment (Textile Clothing and Footwear Industry) Bill 2011**

We read with concern the transcript of the Public hearing that took place in Melbourne on 2 February 2012. Our concern stems from the lack of information that the committee was provided in a number of vital areas. The specific areas are identified below. Unfortunately, we did not have the opportunity to address you at the public hearing.

Without full and complete information, the Committee may draw incorrect conclusions about what is happening in those areas of the industry where things are working well and all people in the supply chain are being legitimately treated.

Ironically if the Committee proceeds with the bill in its current form, those people will actually have choice further removed from them and become subject to less advantageous conditions. The changes in the Bill and other recent changes to the Fair Work Act will inevitably, and swiftly, push the remaining Australian Made clothing labels offshore. As we are sure this is not what the Committee intends, we are providing this supplemental submission further to our original submission dated 22 December 2011.

**Questions that need to be looked at in the context of the industry as a whole and not just in the context of those who are exploited.**

The following is a list of questions and comments made by the Committee members during the 2 February 2012 public hearing that need to be considered in the light of those parts of the industry that are working and not only in the context of workers who are exploited.

1. 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? (Senator Marshall)
2. If you have a better way to suggest for us to stop it [unacceptable exploitation] then do so (Senator Marshall)
3. Don't the circumstances justify these changes [the introduction of the new right of entry provisions] (Senator Thistlethwaite)
4. What's the problem with extending them [the NES provisions]? If people are doing the right thing, there is no issue (Senator Thistlethwaite)
5. You might find one for me [an example of an individual who legitimately wants to be an independent contractor]! (Senator Marshall)
6. 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? (Senator Marshall)
7. Again, there may be a reason why the supply chain is five or six links long. I have not heard one yet (Senator Marshall)
8. 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? (Senator Back)
9. 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 (Senator Back – in expressing a concern that there would be increased outworker unemployment in the industry)
10. 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? (Senator Back)
11. Are outworkers able to negotiate a fee, or are they told, "this is what you do and this is what you get"? (Senator Bilyk)
12. How widespread do you think that sort of activity is? Do you have any idea (Senator Bilyk – asking about contractors being paid piece rates in sweat shop conditions)
13. I do hear that [that the Bill will, according to the CTFUA, remove the grey area "that is manipulated by unscrupulous makers and contractors who . . . simply



want to shift the risk to the home-based contractor, so called"] 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 (Senator Fisher)

14. 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? (Senator Marshall)
15. 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? (Senator Back)
16. 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 turn take out worker compensation insurance. Further to that illustration would that prime party know about my employees in my independent business? (Senator Back)
17. Why is there considered to be a need to vary the enterprise flexibility provisions in terms of outworkers? (Senator Fisher)

In our 20 years of experience in the fashion industry we have worked with individuals across the full spectrum of the supply chain and it is wrong to proceed on the assumption that all subcontractors are exploited and wrong to assume that all businesses set up by subcontractors exist solely to enable exploitation to occur. The vast majority of subcontractors enjoy a strong bargaining position and have set up businesses to take advantage of the opportunities that they provided for flexible and tax effective working arrangements.

We will start to address the questions and queries raised by the Committee members by explaining a bit about The Ark and about the Australian made clothing industry. However, we do not have the answers to all the questions raised by the Committee members, and neither does the Committee. Full and complete answers should be obtained before progressing further with the Bill.

### **The Ark Clothing Co**

The Ark is a boutique sized women's fashion company which has deliberately chosen to design and manufacture in Australia. Local manufacturing, design and production allow us to cater to the requirements of Australian women who want a more individual garment that is locally made. Manufacturing in Australia also enables us to have more control over, and confidence in, the supply chain.



The Ark supplies to over 100 retail outlets across Australia: the vast majority of which are boutiques. We also have our own retail outlets, where we not only sell our range of garments and accessories, but also provide workshops on how to pick the clothing that's right for you and how to achieve a great working wardrobe. Australian women deserve to look and feel great in Australian fashion!

The Ark carries a range of basics that are available all year round and we top that up with the seasonal fashion garments, accessories and footwear. Obviously the clothing in the seasonal ranges differ in terms of design, fabrics, trims etc.

At The Ark, we do our designing in-house. Starting with the fabrics, we determine the shapes, the pattern, the sizing and usually make up the initial samples. We then work with 4-5 local manufacturers to get the garments cut, made and finished. We provide our factories with all the necessary fabric, patterns, threads, trims, buttons etc.

At The Ark, we just are not big enough to have our own factory, fit it out with all the different machines we would need and employ workers with all the different skills we require. The range of machines and skills is just too wide and the workflow too variable to make this economically viable. So we contract out the manufacturing and, given the variability in the rate of work we require, we do not expect our manufacturers to work just for us. On average our manufacturers also work for 4 or 5 clothing labels (although this is steadily decreasing as more labels move offshore). These flexible working arrangements allow for a more even workload spread across the factories and, in turn, across the subcontractors they use.

We have worked with our manufacturers for many years - some as long as 10 years; all for a minimum of 4 years. These relationships are really important to us. They are relationships built on trust. After all, the work done by the manufacturers is very much what our customers see and purchase.

Our philosophy is simple - everyone in the supply chain needs to be able to make a living from his or her work. We are not into squeezing prices down, as that would simply have an adverse impact on the quality of the work that was performed.

We negotiate prices with our manufacturers. In our minds we start from the price paid in an earlier season for a similar garment. We also take into account how long it takes our in-house machinists to run up the samples. Mind you, our machinists are "red hot" and we do not expect others to necessarily be able to make as swiftly as they can. So we know from our own personal experience that, for example, a pair of pants will take between 6 and 15 minutes to make depending on the types of fabrics involved, the level of detail and the trims etc. and we factor that into our initial pricing discussions.

The pricing conversation is a two way street. The manufacturers will from time to time come back, having spoken with their makers, and tell us that they need a higher price. This would happen if the makers think that the time will be longer than allowed by the factory or if in working with the fabrics they find that they are behaving in an unusual or unexpected way that means that it takes longer to make the garment.



So there is negotiation both between the label and the factory and between the factory and the makers (as well of course between the label and retail). All of this feeds into the final price charged to us by the manufacturers. And, there may be times when to achieve the required retail price point (with everyone making an appropriate return on their time and labour), we have to change a design so as to reduce the level of time taken to make the garment and thus the associated cost. For example, this could be done by removing decorative features or by using standard buttons (which are sewn by machines) rather than shank buttons (which need to be done by hand).

Our manufacturers are always free to tell us that they need a higher price per garment or even to refuse a job. We see it as a partnership and we would not penalise our partners for those types of decisions. However, we have never had a manufacturer refuse a job on the basis of price. Whenever we have been given reasons why a higher price is needed, we have listened and come to a mutually acceptable compromise. The only refusal of a job has been when one of our manufacturers was not able to meet the timelines as one of their makers was away. There were no hard feelings on our part; we were just glad to be told the honest truth, and not promised something that they could not deliver. And yes, where necessary we are also open to negotiation on delivery times.

### **Specialisation and efficiencies are the reasons for the multiple links in the supply chain of the Australian made clothing industry**

There is nothing insidious about the fact that there are multiple steps in the clothing supply chain in Australia, especially when you are dealing with relatively small runs of garments. In fact, the different levels in the supply chain are a result of specialisation and efficiencies. It is part of the competitive advantage of manufacturing in Australia.

Small seasonal runs are not big enough to justify a full-time manufacturing workforce – there just is not enough work to keep them all in business all the time. Our business goes through big peaks and troughs around the seasonality of the ranges. For example we are usually designing 6 months out from delivery and usually manufacturing 3-1 months from delivery. We make to order so if there are no orders, then we do not produce. This means there are weeks of high manufacturing demand and weeks with little, if any, manufacturing demand. Not only does demand fluctuate, also the types of skills and machines needed changes with the items in the seasonal ranges.

Our manufacturers do the cutting and the finishing (buttons and button holing, pressing, swing tags and labels, hanging and wrapping, pressing and delivery) but the actual sewing is usually contracted out to home-based makers' businesses. Different subcontractors can be used on the same garments because different machines and different skills are required eg buttonholing, straight sewing, twin needling, block fusing, overlocking, and pressing. Different machines and skills are also required for different fabrics eg silks and delicates, denim, knits, beaded fabrics. Not all makers can make all garments. Some makers specialise in jackets, pants, shirts or eveningwear and not all machinists can work with zips. The more limited the number of people available to do the work of course drives up their negotiating power (for example we



are only aware of 2 factories who have makers that can produce silk garments). And skilled makers are always in demand.

The fashion industry in Australia is going through hard times and the reputable companies are working hard to make it work and keep Australian manufacturing alive. It is not in any of our interests to rip people off. If we were after just quick profit, we'd have taken the manufacturing offshore already – our figures show us that we can decrease the manufacturing costs by up to 75% and if we kept our wholesale prices the same – that would be a huge increase in profit. But that is not what we are about.

**Home based workers are proud of the legitimate businesses that they have built over the years and highly value the flexibility and variety those businesses give them**

The makers that we have met – the people to whom our manufacturers contract out – are highly skilled individuals that have been in the fashion industry for years and chosen to build up their own home based businesses. They are predominantly women but there are men working from home too. All of them are seeking the opportunity to be their own bosses, control the amount and timing of their work; balancing the needs of work with family commitments in a way that they cannot fulfil if they are on the factory floor.

As a business run by women, for women, we at The Ark are especially proud that we are helping women run their own home-based businesses. We are proud of the choices and flexibility that this provides.

If we ever heard of one of our factories exploiting makers, then we simply wouldn't be doing business with that factory in the future. We would also look at what other steps should be taken such as reporting the matter to the proper authorities, such as the Fair Work Ombudsman, so that action could be taken.

So, for businesses with comparatively short garment runs like ours, it is not practical for either us or our factories to have all the necessary equipment sitting in the one place. It is not reasonable to expect that one individual would have the skills and expertise to operate all the different machines and carry out the different processes. It is reasonable and indeed prudent for people and businesses to choose to specialise in terms of the tasks that they wish to take on and how many labels they want to work for. This provides a steady stream of work from a variety of sources and spreads the inherent seasonality risk that exists in our industry (and also provides some protection against those businesses that are closing down or moving offshore). As your own boss, you get to negotiate a fair return for your labour and determine when and where you work.

From speaking with some of the makers used by our factories, those makers receive approximately 50% of the monies that we pay our factories. They are happy with those rates and those rates are above the award rates. We understand that typically they are earning \$20-30 dollars an hour and it can be even more than this if they are



as quick as our in-house machinist. No, they do not get holiday pay and overtime and they manage their own tax and superannuation, but they want to do that (and it is built into the above award payments that they receive). This is part of the reason that they set up their own businesses.

These makers have negotiating power, they know the industry, they know what is reasonable and what is not and they simply chose not to work with companies that do not treat them fairly. They do not want to be treated paternalistically and they categorically do not want their freedoms and flexibility taken away by being turned into employees against their will.

On 10 February we had a meeting at which a number of subcontractors were present to tell their stories. All were proud of what they have achieved. All were frightened by what the changes mean for our industry. None of them want to be deemed employees. All of them are earning above the award minimums.

Manny has been a clothing cutter for 12 years and works from home. He has a three year old daughter and is worried that he wont be able to put a roof over her head as he may have no job next month with the TCFUA threatening to prosecute the manufacturer he works for and close them down. He has a pre-approved home loan but is too worried about his job to actually buy a house. In his own words:

"I am very happy where I'm at. No one's come up to me and said are you happy with what you're getting paid.

I am probably one of the highest paid cutters. I have the flexibility to do as many hours as I wish when it is busy to make up for the quiet seasons. Hence I don't need to get a second, or a third, or a fourth job to pay for my kid's education or anything like that.

I don't want to lose my job and go and get an apprenticeship of \$200 a week being an electrician or something and starting over again at 34. It's hideous.

No one's come to us and asked us. We're happy. Its simple, leave us alone. Everything's paid by cheque. It's done professionally. It's not a cash payment industry.

If we lose our job, the unions will lose their job and everyone's going to go down; fabric suppliers, trimming suppliers. Everyone's going to go down, it's not just the manufacturers. Just leave us alone.

And where are the new designers going to go. They start small and have to do it from home. Which factories are going to make 10 t-shirts? You'd have to charge them \$100 a t-shirt and sell for \$500. It doesn't work.

It's pretty simple; just leave us alone. Everyone is happy and everyone's flowing. Just let it go!"



Jo is a machinist who has worked in the industry for 20 years. She works from home and has worked with her current manufacturer for 2 years. She tells her story:

“I like this, what I am now. I don’t want the government to change this.

I look after the children. I must take them to school and pick them up. And I must look after my father because he is very old now. He is 85 years.

So I can’t work 38 hours a week. I only work 20-25. But if my father is well he can help me and I can work more. But if he is sick I must look after him and cannot do so much work.

I am free to tell Sam and Geoff whether I can do work. If I already busy I can say no. I know what I want and I can say no.

I worry too much about the changes and if these changes happen I lose my job and I cant find a job.

I am happy with what I am now. I don’t want to change.”

Rita is another home-based machinist. She has been working with her manufacturer for 8 years.

“I am very happy. They treat me like family. If some labels are difficult and I need to ask for more money then Arthur he asks for me.

We are happy with what we doing now.

I working from home and I do that while my children are growing up. I can look after them and do the housework and work too.

I very worried that we will get no work with the changes. It’s because of the not big companies that we have a job. All of the big companies have gone offshore. If these stop then what we do? We just gone.”

Hong is the second generation in his family business having taken over from his father when he retired. Father and son worked for the same manufacturer – in the father’s case for more than 20 years. Hong’s business is built around pressing, line stitching, hand stitching and blind hemming.

“I’m young, 20 with young kids and a young wife doing year 12. I take home work so that I can look after the kids while she is at school. It is very flexible for me to take care of them.

We a happy with what we are – contractors.

Just don’t touch us. Leave us alone. We are happy with what we are.



Before I worked for a big label who wanted to pay us 80 cents to press trousers. When Dad first came to Australia 20 years ago he would have said yes. But now, I know the industry and if I was offered such work I would say no and I skip it. I have experience so I know what's going on and I get better work and I ask a price that shows my experience."

But do not just take our word for it – if you want to hear their voices directly, call us so that we can put you in contact for a face-to face discussion about the successful parts of the industry that are working as they are supposed to.

### **What is the size and extent of the problem of exploited workers?**

From everything that we have heard and read to date, and as acknowledged on 2 February by Australian Industry Group, FairWear and DEEWR, no one has worked out the answer to this question. The size and extent of the problem has not actually been determined and yet solutions are being put in place. Not only has no one looked at the size of the problem, no one has looked at what percentage the problem represents compared with the industry as a whole. As a result we have solutions being imposed on people who are not doing anything wrong and no one is really thinking about the adverse impact those solutions will have on those legitimate business.

The background to the Bill and the second reading speech made on 24 November 2011 by Senator J Ludwig refers to payment for the work of outworkers for as little as \$2-3 per hour. This encapsulates the main concerns of the Committee and the TCFUA - the low pay that some outworkers in the industry receive for the work they perform.

We agree this needs to be redressed, but not in a way that assumes that all outworkers only receive these amount or only receive amounts that are less than the award.

The source of the information that outworkers are paid \$2-3 per hour is 2007 research by the Brotherhood of St. Laurence and that was based on a sample of only 13 outworkers! In their report the Brotherhood of St Laurence indicated it was difficult to ascertain the number of outworkers in Australia at the time, but they provided a figure range as follows: between 23,650 (Industry Commission 1997) and 329,000 (TCFUA 1995).

The sample of 13 outworkers equates to .054 % of the Industry Commission figure and .0039 of the TCFUA figure. Is a sample this small the basis upon which this Government wishes to amend the Fair Work Act in relation to "outworkers"?

The rest of the research is at least 10 years old eg The Brotherhood of St Laurence report also cited Cregan 2001, which stated that outworkers average \$3.60 per hour.

At The Ark, the hourly rate for a shirt is typically \$22. This is a far cry from the \$2-\$3 or \$3.60 per hour quoted in The Brotherhood of St Laurence report. I have never heard of or seen any evidence of anyone being paid less than this for a detailed shirt. The issue here is that we have to ascertain what time an average machinist takes to



make a detailed shirt. A good machinist may take less than an hour, hence would be better paid. A slower worker may take longer than an hour hence would not be as well paid. However, it would be expected that as with other industries, the more experienced and the better one is able to perform the work, the better one becomes at the work and the better they will be paid. Certainly this is our experience of what happens and please listen to the stories of the people we use that actually do the work. Not everyone is being exploited!

The purpose of the Amendment is to deem all subcontractors who work from home to be employees, notwithstanding there is insufficient evidence to support such a wholesale change. Surely it should only apply to outworkers who are not achieving award wages!

At The Ark, we contract a patternmaker to make our patterns. We do not have enough work to keep her fully utilised. She works less than 20 hours a week for us. Denise usually but not always, works from her home studio. She had invested over \$20,000 in setting up her business and contracts to 5 other Australian clothing labels. Denise enjoys the variety provided by working for the different labels and of course benefits from the risk spreading. She is a good example of a contract outworker in the Textile Sector. Her contract rate with The Ark is \$55 per hour plus GST.

Denise is proud to own and run her own business. She does not regard herself as an employee and does not want to be an employee – she was in the past and now she owns and runs her own business! In her own words:

“I worked for various companies over the years as a full time employee. But my dream was to be able to work from home because I’ve got children and I’m a single mum.

I finally saved up enough to do that and bought my own business at home. Now I have to change all that and lose all the money I’ve spent.

I work for several companies – a few hours here and there and I love it. I love the flexibility and the variety. But there are not many companies that support Australian now.

I will have to sell my equipment which I’ve invested over \$20,000 and work as a full time employee. My wage will be a lot lower so I wouldn’t benefit. I’d be going down hill”.

By deeming all contract outworkers to be employees, the Bill will force Denise to cease her business and seek work as an employee. She will need to sell her equipment and will not get full price for it as it is now second-hand but nowhere near the end of its useful life. And who will buy it, as everyone else will be in the same boat – forced to sell up the assets of their legitimate business? Denise does not wish to do this and regards this as a clear restraint of trade of her work that the common law would not sanction.



## **Why are we comfortable that exploited workers do not exist in our supply chain?**

Our brand is important to us – we support Australian made and Australian workers. It would be disastrous for the brand, and contrary to our philosophy of a brand run by women for women, if workers were exploited in making our garments.

It is true that we do not personally know all of the makers who work as part of our supply chain, but we have met and spoke to a number of them and they all tell us very positive stories.

Yes, there is always the possibility of abuse of the system but our factories:

1. Pay their subcontractors between \$20 -30 per hour depending on the level of expertise involved;
2. Have worked with the same makers for many years – some are now working with the second generation of workers as the parents have retired, leaving the business to the kids;
3. Are often invited to the weddings and other important celebrations of their makers;
4. Know how many makers are part of each subcontractor business eg whether it is a husband and wife team, whether the sister also works there sometimes etc;
5. Regularly discuss pricing with their makers and feed that information back to us. They tell us if they cannot do a job because their makers are away on holidays etc;
6. Are approachable so that their makers can come in and have a coffee and sit with the in-house machinists to get advice or they can ring up and ask for advice. The factory and the makers work in partnership and want the makers to tell them if there is a problem so that they can help;
7. Run quality control across all our garments and can tell if multiple hands were involved in making a batch of garments. For example, the thread would be slightly different or the stitching length or the quality of the stitching or the number of stitches. If this doesn't match up with the number of makers they know were working on the job, then they make further enquiries and if necessary stop working with that maker;
8. Have refused to continue dealing with makers who are not open about how the work is being done – if a maker is cagey or doesn't welcome the factory dropping in to look at how a batch of garments is progressing then the factory will not give them any further work as this is grounds enough for believing that there is the potential for someone to be exploited and we all want nothing to do with that;



9. Do on-site inspections of the work from time to time and can do so at any time;
10. Think about and control the size of the work that they contract out – they are contracts based on the number of makers involved, the skill levels of those makers and the timeframe that the work is expected to be reasonably done in – if it is a big job, they spread it across an number of subcontractor businesses or give them longer time;
11. Have co-operated with the TCFUA and provided details of their subcontractors. Some of the subcontractors are scared and do not want to talk to the TCFUA – this can be because they feel that their business is threatened or may also be due to negative experiences they have had with authorities in other countries. Our factories are keen to co-operate with the TCFUA, as stamping out exploited workers will mean that our factories are not undercut on price for the work that does remain in Australia. Accordingly if a subcontractor has not wanted to talk to the TCFUA, our factories have offered to go to the follow up meeting – this offer has not been taken up by the TCFUA to date; and
12. Have never had the TCFUA suggesting that they are underpaying or not paying any subcontractors.

### **What is wrong with the proposed amendments?**

The Ark cannot, for the legitimate business reasons given above, directly employ all the people that it currently uses in its supply chain. Even if we put them all on part-time contracts and tried to utilise the existing stand down provisions, the administration costs alone make this an unworkable option. We cannot be expected to employ people for a minimum of 20 hours per week and continue to employ them when there is no work – it is not right to have to employ people and then for long periods have them sitting around doing nothing. It is not right to have to sack people because there is no work; especially when you know in advance that there will not be enough work to keep them busy for 20 hours a week. Just imagine how and on again off again pattern of work would look to a bank if you were trying to get a home loan or buy a car. And there is no provision for casual home based employees.

For the same reasons, we cannot expect our factories to directly employ all the makers that we might need. Forcing them to employ makers as employees simply means that those people will have a lower hourly rate, and less flexibility in how and where they work. And our manufacturers will no longer have the capacity to do the work when we require them to. Flexibility is extremely important when you are a small company like The Ark. We need to be able to react quickly to survive, especially as we are not the cheapest on the market. Without our manufacturers having the capacity we need, when we need it our business will need to move offshore to survive.

We do not want the makers who work for our label to lose their businesses – businesses they have worked hard to build up. Those businesses are legitimate businesses that are based on innovation and specialisation and support Australia's competitive advantage in the clothing industry.



We cannot operate in a system where we are liable for all the payments in the supply chain. There is just too much uncertainty in that. We pay our factories on time and they pay their makers. But in the event of a dispute, we do not have access to the books and records of our factories (and nor should we). So how do we know the amount owing and whether it has been paid? Further, there is no explanation of what reasonable steps an “employee” must have taken before it can claim from an entity further up the chain.

These provisions are designed to catch unscrupulous businesses but they do not really provide any disincentive for those unscrupulous businesses. In fact they give them an easy way out – just point the workers up the line! And unscrupulous businesses will always ignore the law as long as they are allowed to. If the TCFUA or the Fair Work Ombudsman or Ethical Clothing Australia becomes aware of factories that are exploiting workers, then they should make this information public, so that we can all ensure that we do not deal with those factories.

Further, the Bill introduces provisions that just increase the potential for litigation by unscrupulous workers. The amendment attempts to make all those in the supply chain, responsible even though they cannot practically or legally investigate other businesses.

The proposed Rights of Entry provisions are absolutely contrary to the protection that the courts rigorously enforce in relation to search powers. The amendments give greater powers than those available to the police in this country and allow for entry to premises based on a mere suspicion of a breach. Surely more should be required in the context of a legitimate business with no right to supervise or otherwise control the performance of the work.

If an exemption is to be provided for retailers, then it should also be provided to legitimate businesses that have made enquiries and have no reason to believe there is anything other than compliance in their supply chain.

There is a carve-out for businesses that have been accredited but no explanation of what the accreditation process will be. Further if the process is to be anything like the process currently underway with Ethical Clothing Australia, the requirement for union involvement does not appear warranted and will mean that many companies will never achieve accreditation – the ECA process is not transparent and takes forever with little or no information being provided.

Although they are the driving force behind the changes, the TCFUA has admitted to our manufacturers that if the manufacturers are forced to close down, the TCFUA cannot guarantee that the makers will be able to obtain work elsewhere within the industry.

There is clearly irony in the clothing labels and manufacturers having to stand up to the TCFUA and Government to ensure that makers’ rights are not lost.



## **What will happen to businesses like ours if the Bill is allowed to pass? And what are the flow-on consequences?**

So if this all goes ahead, The Ark will be forced to consider moving its business offshore – we do not want to do this and it will fundamentally change our business and lose us the loyalty of those of our customers who really want the clothing industry to remain in Australia and are prepared to pay a premium on their garments to ensure this happens.

Moving offshore would result in The Ark:

1. Ceasing manufacture in Melbourne – without our support and the support of companies like us, this will result in the closure of local manufacturer. They do not have the option of just moving sourcing offshore. The makers that they contract will simply become unemployed (our manufacturers are already using about half the number of subcontractors that they did in the past simply because of the shrinking of the industry);
2. No longer sourcing any fabric or trims in Australia which would have a significant adverse impact on the 10 local fabric suppliers and the 5 local trim suppliers that we currently source from;
3. Probably making all its patterns in China (or similar offshore country) which would have a consequently loss of jobs in-house in Melbourne at The Ark;
4. Cutting the jobs of up to 10 Melbourne management and administration staff as these jobs would be moved to the country of manufacture;
5. An increase in the lead times for ranging, meaning a less flexible and less individual clothing range;
6. Experiencing a decrease in the manufacturing costs with an increase in profits but a total loss of the philosophy behind the brand and so, in the longer run, a loss of customers and a loss of profit; and
7. Experiencing a total change in the way we run our business and the lifestyle choices that we made.

All of the proposed changes are contrary to the push for innovation and work/life balance. The proposed changes would send us in the opposite direction to that in which we should be going.

The future of the Australian design industry also needs to be considered. There are full houses at the Australian Design schools. Those keen young designers really want to work. When you are a young designer starting out, you might make 20 dresses and sell them at the local market. To make those dresses, in your own design, you have to make them at home. Then you gradually build up and need some one to help you make the clothes, but it is a small business and traditionally a home based business. Most Australian brands have started in this way. But that option will no longer be



available and so how are our young designers supposed to get a start in the industry – they cannot all work for established brands. 2 young designers at The Ark (Dayana and Leanne) would like you to hear their voice:

“A lot of our friends cant find a job. These changes will make it more difficult. There won’t be any freelance jobs and we young designers need those. We have to start small as a home based business – design businesses start small with just a few (10 or so) garments. With no home based business we wont have anywhere to start from.

We designers have qualifications, we shouldn’t be defined as outworkers simply because we chose to work from home.

Some of our friends have started labels in Melbourne but that didn’t work so them moved manufacturing offshore but that doesn’t work either, as they don’t know the conditions.

We are taught at school to do things the right way and we want to do things the right way. We want to support Australian business.”

### **What are we asking you to consider?**

We trust that this information serves to answer some of the questions and comments asked by Committee members in the 2 February hearing and to present the industry in a different light – not everything is bad, not everyone is exploited and not everyone needs further regulation. We also trust that this supplementary submission shows that more information is needed especially about the size of the problem and the legal mess that comes from deeming legitimate businesses to be employees. The existing changes to the Fair Work Act for the clothing industry do not sit well with the tax, superannuation or work cover laws.

Accordingly we ask that:

1. Any amendments to the Fair Work Act should be delayed until the outcome of the Fair Work Act review is known and acted upon.
2. Further work is done to unwind the unintentional adverse consequences of the amendments that come into effect in 2011 which deemed legitimate businesses to be employees (we are writing separately to the Fair Work Act Review about this).
3. If after the review, changes to subcontractor arrangements are still deemed to be necessary, those changes should not be put forward until sufficient work has been done to determine the nature and extent of problem.
4. Amendments should only address the actual problem and, for example, there should be an exemption similar to the retail exemption for those businesses that do not control and cannot control the businesses down the line.



5. No solution to the existing problem should force legitimate businesses to become employees thus taking away their flexibility to work and their freedom to own and run their own businesses.
6. Certification requirements should be clear and transparent and solely managed by government instrumentality not by the TCFUA (who has an inherent conflict of interest and are not relevant in the context of makers who genuinely own their own businesses and have negotiating power)

We would welcome the opportunity to discuss this submission with you further or to provide contact details with the makers in our supply chain so that they can assure you that there is a different side to this story.

Yours sincerely

Christine Metcalfe and Jenny Layton  
Directors – The Ark Clothing Co.