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Dear Committee Secretary,

Please find enclosed Oxfam Australia's submission to the Senate Education, Employment and Workplace Relations Committees Inquiry into the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011 (the Bill).

The Bill takes a significant step towards improving labour rights compliance in Australia's TCF sector, by introducing a national legal framework for the protection of Australian outworkers. Oxfam welcomes the adoption of this framework, which will enhance protections for one of the most vulnerable categories of workers. Progress in strengthening worker protections in TCF (Textile, Clothing and Footwear) supply chains also demonstrates Australia's commitment to promoting good corporate citizenship, including respect for workers' human rights.

In the enclosed submission Oxfam Australia supports the adoption of a national framework of outworker protections and suggests a number of key amendments which we believe will strengthen the effectiveness of the new legislation.

If you have any enquires in relation to this submission, please do not hesitate to contact me.

Yours Sincerely,

Kelly Dent

Advocacy Coordinator—Economic Justice Team Lead



## **Inquiry into the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011**

**Submission to the Senate Standing Committees on Education, Employment  
and Workplace Relations**

## 1 Introduction

- 1.1 Oxfam Australia is an independent, not-for-profit, secular international development agency. We are a member of Oxfam International, a global confederation of 15 Oxfam affiliates that work with others to overcome poverty and injustice in 98 countries around the world. Oxfam Australia's vision is of a fair world in which people control their own lives and possess full access to their basic rights.
- 1.2 Oxfam views the promotion of decent work for all—including universal implementation of ILO standards—as fundamental to the alleviation of poverty and social injustice on a global scale. Oxfam has had a long history of constructive engagement with communities, governments and the private sector to strengthen the implementation of universal labour rights.
- 1.3 Since 1995 Oxfam Australia has worked to promote the human rights of workers in the global textile, clothing and footwear (TCF) industry. Our work has included in-depth field research; dialogue with workers, companies; and multi-stakeholder initiatives; public education; public campaign activities; and the production of detailed evidence-based reports. We are widely recognised as an important voice in the global debate regarding Corporate Social Responsibility. While the focus of our work is in Asia, we have contributed to efforts to prevent exploitation and improve conditions for Australia-based TCF workers, supporting initiatives and organizations such as Ethical Clothing Australia and Fair Wear.

## 2 Supporting decent work in the TCF sector

- 2.1 Throughout the world, substandard pay and poor working conditions are endemic in the TCF sector. Exploitation in this sector impacts the welfare of women workers, who constitute the majority of TCF employees and the vast majority of outworkers.<sup>1</sup>
- 2.2 As in many other parts of the world, in past decades the Australian TCF industry's reliance on outworkers has dramatically increased<sup>2</sup> and outworkers now make up an estimated 70% of Australian TCF employees.<sup>3</sup> Outworkers in Australia are mostly women from non-English speaking backgrounds. These women are widely recognised as being amongst the most vulnerable workers in Australia.<sup>4</sup> Faced with a lack of adequate legal protections, it is often very difficult for these workers to access their basic rights. For example, Australian outworkers have been found to receive pay as little as \$2–3 an hour.<sup>5</sup>
- 2.3 In light of this ongoing exploitation, Oxfam Australia strongly supports the introduction of a national framework of legal protections for TCF sector outworkers.

## 3 The Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011

- 3.1 The Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011 (henceforth, the Bill) seeks to create consistency across Australian jurisdictions by providing specific legal protections for outworkers, largely based on similar provisions in New South Wales, Victoria, Queensland and South Australia. The Bill addresses ongoing exploitation of Australian outworkers by implementing protections that recognize their unique vulnerabilities. The Bill makes

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<sup>1</sup> Women are over-represented in low-paid informal or non-standard wage employment; although fewer women than men are in the labour force, in many countries women represent 80 per cent or more of industrial outworkers. See Chen M et al., [Mainstreaming informal employment and gender in poverty reduction: A handbook for policy-makers and other stakeholders](#), IDRC, 2004.

<sup>2</sup> See, e.g., Lozusic R, [Outworkers](#), Briefing Paper No 3/02, NSW Parliamentary Library Research Service, 2002; Family and Community Development Committee, Parliament of Victoria, [Inquiry into conditions of clothing outworkers in Victoria](#), No. 174 Session 1999-2002, 2002; Senate Economics Committee, [Outworkers in the garment industry](#), 1996-1999, 2003; University of Queensland Boilerhouse Community Service and Research Centre, [Vietnamese outworkers in Queensland: Exploring the issues](#), 2004.

<sup>3</sup> Manufacturing Skills Australia, [Environmental Scan 2011](#), MSA, 2011.

<sup>4</sup> See, e.g., Delaney A, 'Corporate accountability through community and unions: linking workers and campaigning to improving working conditions across the supply chain', MacDonald K & Marshall S, [Fair Trade, Corporate Accountability and Beyond: Experiments in Globalising Justice](#), 2010, pp 259-276.  
Harpur P, Deakin Law Review [Occupational health and safety duties to protect outworkers: The failure of regulatory intervention and calls for reform](#) Vol. 12 No 14, pp. 41-77, 2007.

<sup>5</sup> Kalia J, *Herald Sun* [Workers exploited in Melbourne sweat shops](#), 2010; Lillywhite S & Diviney E, [Ethical threads](#), Brotherhood of St Laurence, 2007.

significant progress towards ensuring that outworkers are able to obtain consistent and equitable protections under Australian law.

- 3.2 Streamlined provisions hold a number of advantages in ensuring better labour rights compliance in the TCF industry. Currently, TCF businesses must navigate state as well as federal laws. The relationship between these state and federal laws is complex and many TCF enterprises argue that compliance is difficult.<sup>6</sup> The introduction of more consistent regulations should make it easier for TCF enterprises to understand and uphold labour obligations.
- 3.3 Similarly, the legislation will strengthen existing initiatives designed to assist business in preventing worker exploitation in their Australia-based TCF supply chains. For instance, robust and consistent legal protections will benefit supply chain accreditation initiative Ethical Clothing Australia (ECA).<sup>7</sup> Based on our detailed study of similar schemes internationally, Oxfam Australia believes that ECA is one of the most credible and progressive accreditation systems in the world. The initiative has also obtained significant support from Australian TCF enterprises, with more than 60 brands successfully undertaking accreditation. With a more consistent national framework of outworker protections in place, the ECA will be in a stronger position to assist Australian businesses to improve their supply chain compliance and obtain accreditation.
- 3.4 More broadly, the Bill has potential to enhance efforts to ensure Australia-based enterprises uphold good corporate citizenship and comply with relevant international standards. These include ILO labour standards and the recently adopted UN Guiding Principles on Business and Human Rights, as well as the OECD Guidelines for Multinational Enterprises. A number of these international standards incorporate comprehensive requirements around responsible supply chain management, transparency and accountability. For example, businesses must undertake due diligence and be accountable for labour rights practices within their supply chains as well as work to prevent adverse impacts linked to their operations through business relationships, including via sub-contractors.<sup>8</sup> The Bill takes significant steps towards incorporating these norms within Australia's TCF sector regulatory framework.
- 3.5 It is also worth noting that the proposed legislation will have particular benefits for women and migrants who are globally recognised as more vulnerable to labour exploitation. For example, the proposed outworker legislation contributes to gender mainstreaming of the ILO's decent work agenda, by focussing on increased protections for a frequently overlooked category of predominantly women workers.<sup>9</sup> The Bill also addresses the challenges faced by workers from diverse linguistic / migrant communities. Workers from migrant communities in Australia can face a number of disadvantages including lack of vocational English language skills and lack of appropriate educational qualifications.<sup>10</sup> As a consequence, migrant populations have lower labour force participations rates, occupational and income distribution and earnings.<sup>11</sup> The need for Australia to address migrant workers' rights was highlighted in the January 2011 Universal Periodic Review. We believe that the Bill makes progress on this issue and will compliment other Government initiatives which aim to improve the ability of migrant populations in Australia to access their labour rights.<sup>12</sup>

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<sup>6</sup> A 2007 study of Australia's TCF sector demonstrated that companies had limited awareness and understanding of local laws on labour rights and many companies, especially smaller enterprises, believe it was difficult to comply with Australian law and the Homeworkers Code of Practice, see Lillywhite S & Diviney E, [Ethical Threads](#), Brotherhood of St Lorraine, 2007.

<sup>7</sup> The Australian Government has committed to provide financial assistance over eight years (2008 to 2015) to support the promotion of Ethical Clothing Australia by increasing awareness and voluntary adoption of the accreditation program by businesses. See <http://www.deewr.gov.au/WorkplaceRelations/Programs/Pages/EthicalClothingAustraliaProgram.aspx>.

<sup>8</sup> See, e.g. [OECD Guidelines for multinational enterprises: Recommendations for responsible business conduct in a global context](#), Chapter II General Policies, Section A, Subsection 11-13; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, [Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" Framework](#), United Nations A/HRC/17/31, 2011, sections 13, 17 & 18.

<sup>9</sup> The ILO has identified the growing use of industrial outsourcing and precarious employment experienced by outworkers as a major challenge for women's participation in decent work. See International Labour Conference, [Gender equality at the heart of decent work](#), 98th Session, Report VI, 2009; Mayoux L and Mackie G, [Making the strongest links: A practical guide to mainstreaming gender analysis in value chain development](#), ILO, 2007.

<sup>10</sup> Teicher J et al., [Australian immigration: the triumph of economics over prejudice?](#), Monash University-ACER Centre for the Economics of Education and Training, Working Paper No. 33, December 2000.

<sup>11</sup> Ibid.

<sup>12</sup> For example, in 2009 an interdepartmental working group was established in 2009 to develop strategies for raising awareness amongst migrant populations of fair work issues in Australia to tackle labour exploitation; in October 2011, the Australian Government

- 3.6 As such, Oxfam endorses the Bill's significant progress in addressing outworker exploitation. However we believe there are a few provisions that could be further strengthened. These provisions are detailed in the below paragraphs, along with recommendations for amendments.

#### 4 Deeming provisions

- 4.1 Outworkers are often inaccurately described and treated as independent contractors, allowing those who benefit from their labour to escape employer obligations. In reality, the position of most contractors differs significantly from the situation of outworkers, who have little independent bargaining power and limited ability to demand even their most basic entitlements.<sup>13</sup>
- 4.2 Deeming outworkers as employees ensures that they can gain protection under the industry Award. As such, Oxfam Australia strongly supports the deeming provisions in the Bill. We are concerned, however, that the coverage of deeming provisions is limited to supply chains that involve corporations, whereas some outworkers are situated in supply chains that do not directly involve incorporated entities. As such, **we recommend that the scope of deeming provisions should be broadened to ensure that outworkers in all forms of supply chains are covered. (Recommendation 1)**

#### 5 Recovery of wages

- 5.1 Many outworkers have experienced unpaid wages due to underpayment (wages below Award rates) or refusal of payment altogether.<sup>14</sup> Recovering unpaid wages is extremely difficult for home-based workers due to language barriers, lack of access to relevant information and unequal power dynamics. Furthermore, outworkers often have limited knowledge of business relationships further up their supply chain, which means that if their direct contractor is unresponsive or "disappears" they have limited means to seek redress.
- 5.2 For this reason, we strongly endorse the introduction of provisions which strengthen the ability of outworkers to claim unpaid wages by allowing outworkers to approach the principle contractor for recovery of unpaid workers. However, we are concerned that the practical application of this provision may be undermined if the onus of proof to investigate supply chain relationships and identify responsible entities falls on the outworker. For this reason **we recommend that legislation clearly stipulates that the principle contractor has responsibility to disclose supply chain information and identify the relevant entities. (Recommendation 2)**

#### 6 A national TCF code of practice

- 6.1 **We strongly support the Bill's provisions for the creation for a mandatory national code for TCF industries.** As with the current state codes, a national code would require increased reporting and information sharing across TCF supply chains. This increased transparency allows unions and regulatory bodies to track movements of orders and more effectively monitor the employment conditions of outworkers. Increased supply chain transparency will also enhance the ability of Australian businesses to undertake their own risk assessments and put in place measures to ensure that exploitation does not occur within their supply chains.

#### 7 Special right of entry provisions

- 7.1 Implementing and monitoring enhanced protections for outworkers will be most effective where supported by strong right of entry provisions. While right of entry provisions are not common, the exploitation and isolation experienced by Australian outworkers, combined with the fact that abuse is often deliberately hidden, warrants a special approach. We support the current right of entry provisions that provide for access to records of outworkers employed by contractors. However **we recommend that the scope of these special provisions should be extended to**

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granted more than \$485,000 in funding to five organisations for projects that raise awareness about labour exploitation, and to provide advocacy and outreach to vulnerable industries or groups, such as migrant workers.

<sup>13</sup> Lillywhite S & Diviney E, [Ethical Threads](#), Brotherhood of St Lorraine, 2007.

<sup>14</sup> See, e.g., Family and Community Development Committee, Parliament of Victoria, [Inquiry into conditions of clothing outworkers in Victoria](#), No. 174 Session 1999-2002, 2002.

**situations where workers are employed in informal factories or “sweatshops”.** (Recommendation 3) Informal factory workers are similarly vulnerable and deserve coverage from these special laws.

## **8 Education and support for compliance**

- 8.1 To optimize its effectiveness, **we strongly recommend that the new legislation be supplemented by education and support programs to assist TCF enterprises—particularly small businesses—in achieving compliance.** (Recommendation 4) This may include programs that help businesses set up simple and efficient record keeping and tracking systems to make it easier for them to meet the requirements of Federal legislation and awards. We also support the Australian Government’s ongoing commitment to further develop such initiatives as supply chain accreditation body Ethical Clothing Australia which provides crucial support to Australian TCF businesses in improving their supply chain compliance.
- 8.2 We recommend the distribution of educational materials in plain language to make TCF businesses aware of their responsibilities. These business-oriented materials should be made available in community languages, as many TCF contractors are from non-English speaking backgrounds.
- 8.3 Support for ongoing education and awareness programs targeting outworkers will also be crucial to the success of the proposed national framework. **We recommend support for outworker-focused publicity campaigns in community languages, utilizing community media outlets such as radio.** (Recommendation 5) **We also recommend the establishment of support services such as a phone-line for advice, including Vietnamese and Chinese language options.** (Recommendation 6) These education and awareness efforts could be implemented via community organizations, such as Asian Women at Work, and independent bodies, such as the Fair Work Ombudsman.

## **9 Summary of Recommendations**

1. Oxfam recommends that the scope of deeming provisions should be broadened to ensure that outworkers in all forms of supply chains are covered.
2. Oxfam recommends that legislation clearly stipulates that the principle contractor has responsibility to disclose supply chain information and identify the relevant entities.
3. Oxfam recommends that the scope of special right of entry provisions be extended to situations where workers are employed in informal factories or “sweatshops”.
4. Oxfam strongly recommends that the new legislation be supplemented by education and support programs to assist TCF enterprises—particularly small businesses—in achieving compliance.
5. Oxfam recommends support for outworker-focused publicity campaigns in community languages, utilising community media outlets such as radio.
6. Oxfam recommends the establishment of support services such as a phone-line for advice, including Vietnamese and Chinese language options.

## **10 Conclusion**

- 10.1 Oxfam Australia reiterates its support of the proposed national framework for outworker protections. Already thousands of Australian outworkers have benefited from increased protections at the state level. We now look forward to seeing many more thousands of outworkers benefit from the creation of a harmonised national framework.
- 10.2 To ensure the new legislation is effective in tackling exploitation in Australia's TCF sector, we encourage the incorporation of the above recommendations. We also endorse the recommendations of community organisations, Fair Wear and Asian Women at Work, who have extensive experience dealing with the challenges faced by outworkers in Australia.