



## Australian Immigrant and Refugee Women's Alliance

Theo Notaras Multicultural Centre, Level 2  
180 London Circuit, Canberra city  
GPO Box 1392, Canberra City, ACT, 2601  
(T) 02 6257 1002

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Committee Secretary

Senate Education, Employment and Workplace Relations Committees

PO Box 6100

Parliament House

Canberra ACT 2600

Australia

[eevr.sen@aph.gov.au](mailto:eevr.sen@aph.gov.au)

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

The Australian Immigrant and Refugee Women's Alliance (AIRWA) is a peak advocacy body for immigrant and refugee women in Australia, with the Network of Immigrant and Refugee Women of Australia Inc. (NIRWA) as the lead agency.

AIRWA is one of the six National Women's Alliances that is funded by the Federal Office for Women to raise the concerns, views and circumstances of immigrant and refugee women to inform Federal Government Policies that impacts their lives.

AIRWA's mission is to represent the voices and interests of Immigrant and Refugee Women residing within Australia, in order to provide a single unified voice by which to advocate such women's issues, and concerns at the national level. In doing so, AIRWA aims to ensure these issues and concerns are considered in all government policy documents.

AIRWA's policies are informed through its extensive work with its network of peak and grassroots community women's organisations and individuals across all States and Territories.

AIRWA is gravely concerned about the ongoing exploitation of outworkers in the Australian clothing industry. We congratulate the government for introducing this important legislation to further protect these vulnerable workers.

Outworkers in the clothing industry represent one of the most vulnerable sectors of the Australian workforce, subject to extremely low rates of pay, long hours in order to meet tight deadlines, and little to no job security. Many outworkers are receiving around \$8-10 per hour, but there are still many being paid as little as \$4-5 per hour. Under the relevant award, they should be earning a little over \$17 an hour. Most are migrant women with low levels of English, a limited understanding of Australian systems and with very few employment options or who are keen to work from home.

We are heartened by the recent improvements in wages and conditions for some outworkers as a result of the combination of years of campaigning, improved legal protections at a state and federal level, funding for the monitoring activity which makes these legal protections a reality and increased commitment by some companies to address the issues for outworkers in their supply chains.

However, it is clear more needs to be done.

The Fair Work Amendment (TCF Industries) Bill 2011 lays out a series of provisions to protect outworkers in the clothing industry, and reflects similar provisions in State legislation in New South Wales, Victoria, Queensland and South Australia. National laws will assist this by providing the same requirements in all jurisdictions, streamlining the requirements that companies must follow.

#### *Recovery of unpaid wages for Outworkers*

Many outworkers have experienced not being paid by their employers at all for orders they have completed, even at the rates of pay well below their legal entitlements. Most outworkers have experienced severe underpayment of wages. Recovering their correct payment from their direct employer is often extremely difficult, especially when the employer “disappears”, closes down or changes company identity in order to avoid their obligations.

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.

We strongly support this provision to allow outworkers to recover their money.

Further amendment is required, however, as the Bill currently suggests outworkers would need to provide detailed information about their supply chain in order to make a successful claim. It is unrealistic for an outworker to access such information, and we seek amendments that reflect the provisions in state legislation which require the principal contractor to identify the entities in their supply chain, not the outworkers.

#### *Deeming Contract Outworkers as Employees*

Sham contracting has been regularly used in the clothing industry to avoid employment obligations. But outworkers have little or no control over their working conditions and pay, so to suggest they are contractors with freedom to negotiate their contracts does not reflect the reality. Deeming outworkers as employees ensures they are all protected by the industry Award, and can access basic entitlements to fair wages and conditions.

We strongly support this provision to deem outworkers as employees.

Further amendment is required to ensure the deeming provisions effectively cover all outworkers in the textile, clothing and footwear industries, as the state laws do. Some

outworkers in contracting chains that do not involve corporations may not be covered by the provisions in the Bill.

#### *TCF Code of Practice*

The Bill provides for the creation of a national mandatory code for TCF industries, modelled on the existing codes in New South Wales, South Australia and Queensland.

There are many layers in TCF supply chains, between the outworker who sews the garment and the consumer who purchases the garment. Long supply chains lead to complex relationships and have contributed to the poor wages and conditions of outworkers, as well contributing to the hidden nature of their work.

State Codes, and this new national Code, provide a mechanism to engage all players in the complex supply chains in taking responsibility for outworkers wages and conditions. The codes of practice require recording keeping and reporting throughout the supply chain. This allows regulatory bodies to identify what volumes of work are going where, and identify where outworkers are involved in supply chains, and under what pay and conditions. Without this important mechanism, it is near impossible to find outworkers and ensure that they are paid their legal wages.

As a result of voluntary and mandatory codes of practice in the TCF industries engaging all levels in the supply chain, thousands of outworkers have been identified and are now able to access their legal entitlements to fair wages and conditions. Tens of thousands more outworkers stand to benefit from a national code of practice.

We strongly support the provision for creation of national TCF Code of Practice.

#### *Special Right of Entry Provisions*

The legislation also improves the existing special provisions for union right of entry in the textile clothing and footwear industry. Right of entry is often controversial, but the ongoing exploitation of vulnerable migrant sweatshop and homebased outworkers in our own Australian clothing industry justifies these special provisions.

Without the capacity to enter sweatshops and monitor working conditions, other legislative provisions lack effectiveness. The current special rights of entry in the TCF industries give access to the records of outworkers employed by a contractor, but not to the records of the workers who might be working in the informal factory or sweatshop at the time of the inspection of the outworker records. These sweatshop workers are similarly vulnerable to outworkers and deserve the protection of special laws.

We strongly support the additional special rights of entry provisions to cover sweatshop workers as well as homebased outworkers.

#### *Education and Support for Industry*

We believe this legislation should be coupled with positive education and support programs for companies, especially small businesses, in the Textile Clothing and Footwear industries to ensure they have established the simple systems (already required in most jurisdictions) to comply with the requirements of the various

interlocking mechanisms in Federal legislation and awards, and corresponding State provisions if any remain relevant.

Some industry groups have advocated for a watering down of obligations on retailers, Fashion Houses and contractors in the textile, clothing and footwear industries. Such watering down would represent giving up on outworkers and regarding their poor wages and conditions as acceptable.

Instead, we advocate support for the industry to meet their obligations, and engage them seriously in addressing this long term problem of exploitation of outworkers in our Australian community.

Ongoing education and support for outworkers is essential, so that outworkers are aware of their rights and have the confidence and support to act on them.

Further, we support the detailed submission from FairWear regarding this Bill.

We reiterate our concerns for vulnerable outworkers in the clothing industry, congratulate the government on the introduction of this legislation and commend the requests for further amendments as stated.

Finally, whilst applauding the government's renewed initiatives to tackle the consequences of discriminatory practices in the workplace, we urge the government to go a step further to develop and introduce greater human rights protections for migrant workers within Australia, who remain disproportionately representative of outworkers in Australia, in order to more effectively address the underlying causes of foreign worker exploitation.

Consequently we recommend that the government as a matter of urgency to sign, and ratify into law the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. The ratification of this Convention by the government would help bring Australia into line with contemporary human rights standards, whilst demonstrating, both to Australia and to the broader international community, a real commitment by the government to the rights of migrant workers, and would ensure the implementation of best practice development and implementation of laws and policies related to migrant workers, including outworkers, into the future.

We look forward to witnessing the results of these new efforts in the lives of outworkers.

Yours sincerely,

Vivi Germanos-Koutsounadis  
Chair AIRWA and NIRWA.

