

SUBMISSION OF FAIRWEAR

16 January 2012



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

Why we support this legislation

FairWear welcomes the opportunity to make a submission to the Senate Inquiry into the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011, referred for inquiry and report on 25 November 2011. FairWear is of the opinion that this Bill is an important step in the ongoing and difficult task of improving the conditions of these highly vulnerable workers.

Launched in Melbourne in 1996, FairWear is a national non-profit organisation incorporated in Victoria under the Associations and Incorporation Act 1981. The primary purpose of the organisation, as set out in the FairWear constitution, is to eliminate the exploitation of home-based outworkers and other clothing workers in Australia and internationally. We aim to assist workers in the Australian clothing industry to secure a living wage, to obtain safe and healthy working conditions, and to organise for their workplace rights. We do this in a variety of ways. Our primary activity entails educating the community about working conditions in the clothing industry and encouraging consumers to shop ethically. We encourage consumers to support us in challenging companies to take greater action and responsibility for the activities in their supply chains. We also work with home-based outworkers, and their advocates, to help ensure their voices are heard.

Based on our long history of interaction with a broad cross-section of the Australian community, and the widespread support received by FairWear, it is our view that, when informed, most Australians perceive the conditions experienced by outworkers to be unacceptable. We have been greatly heartened by the advances made thanks to the legal and non-legal initiatives of the last 10 years, including changes to the relevant Federal Award, state provisions deeming outworkers as employees, and the number of companies accrediting to Ethical Clothing Australia. Although the majority of outworkers are still receiving well below Award rates, our work with outworker advocates and community organisations informs us that the state laws are making a difference.

However, the differences between provisions in state legislation lead to confusion in an industry in which there is low legal literacy. In particular, there is confusion about the interaction of the Federal Award and state legislation that is heightened by having separate legal provisions supporting the Award in each state. One of the reasons we support the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011 is because it provides uniform rights for outworkers in each state, and would be easier to explain to employers and outworkers alike.

Summary

1. FairWear regards the Fair Work Amendment (TCF Industry) Bill 2001 as vital legislation, necessary to provide uniform, national legislation for the protection of outworkers and sweatshop workers in the TCF industry, and to assist industry with compliance.
2. The demographic of outworkers and workers in sweatshops is much the same. They are vulnerable to exploitation and often have unacceptable working conditions, such as low wages, no access to leave and other entitlements, no superannation contributions, no WorkCover and have insecure employment.
3. Supply chains are a complex web with the principal contractor often disinterested in enquiring into the conditions of those who ultimately perform work for them. There is downward economic pressure, which exacerbates the exploitation of those lowest in the supply chain: outworkers and workers in sweatshops.
4. Strong legislative protections are required to guarantee that outworkers have their basic rights and to provide mechanisms to ensure they can access those rights.
5. Deeming is the most relevant and useful way of ensuring compliance with legal requirements in respect of outworkers. Furthermore, outworkers wish to be treated as employees.
6. An effective mechanism to enable outworkers to recover unpaid moneys is necessary.
7. The creation of a uniform mandatory Code of Practice will ensure transparency of the complex supply chain and regulate the activities of all parties in a supply chain, enabling effective regulation of outworkers wages and conditions.
8. So as to be effective, the Bill must reflect the best aspects of the relevant state legislation. Protections for outworkers should not be lessened in any way by this legislation.
9. Amendments to the TCF special right of entry provisions are vital to the efforts to address exploitation of sweatshop workers and outworkers in the TCF industry.
10. FairWear wants to see the Australian clothing industry competing on quality, innovation and good ethics, not on who can get away with paying the lowest wages.

Who are “outworkers” or “homeworkers”?

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”.

The term “sweatshop” is used to describe a 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.

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 lead to a greater vulnerability to exploitation. This vulnerability is one reason why strong, uniform legislation is required.

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*).



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.

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.

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. She 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.

This legislation is needed so as to ensure that this vulnerable group of workers and their families are not trapped in cycles of poverty.

Sweatshop workers

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.

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

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.

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.

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.

Sweatshops are renowned amongst workers as high pressure environments, with pressure and verbal abuse from employers coupled with low piece rates for the 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.

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

Why additional regulation of complex supply chains is required

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.

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, 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 are 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.

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 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.

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.

These complex arrangements necessitate the legislative protections provided for in this Bill, including:

- 'ending the artificial distinction by deeming contract outworkers in the TCF industry to be employees, through extending the operation of most provisions of the FW Act;
- providing an effective mechanism to enable TCF outworkers to recover unpaid amounts up the supply chain;
- addressing a limitation that currently exists in relation to right of entry into premises in the TCF industry operating under 'sweatshop' conditions; and
- allowing for a TCF outworker code to be issued.'²

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 legislative protections are required to ensure exploitation is eliminated.

Outworkers as employees

FairWear strongly supports the treatment of outworkers as employees, in accordance with this Bill. In our experience, this is what most outworkers desire, although they are often told that they will not get work unless they register an ABN or (more recently) incorporate as a company. The deeming of outworkers as employees is also consistent with state law and the case law in the area.

Because outworkers are not treated as employees, they not only fail to receive fair wages but they also do not receive holiday pay and are not covered by workers compensation schemes. They have limited capacity to put away savings for their retirement, which leads to a considerable risk of poverty in old age.

Outworkers wish to be treated as employees

We work closely with community organisations that support outworkers, such as Asian Women at Work. The broad network of outworkers that we come into contact with through this work are in support of stronger legislative protections, and wish to be treated as employees. They are often told that they must get ABNs or sometimes incorporate proprietary limited companies so as to get work from the outworker boss. However, these women in general do not consider themselves to be 'entrepreneurs'. They see themselves as workers who are trying to make a living for their families by

² TCF Bill 2011; Senate, Second Reading Speech (Senator Chris Evans) 24 November 2011

whatever means possible. The flexibility afforded by working at home can be beneficial, but outworkers wish to be treated in the same way as factory workers.

Dung, an outworker, said in a recent speech “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.” Dung welcomed the new laws which would clarify outworkers’ status as employees.

Outworkers have limited control over the payment and conditions they experience. Many outworkers have stories of trying to ask for a higher rate of pay for garments and being told there are other workers who will do the job for that rate so they will get no work at all if they don’t agree. Outworkers have limited control over the size of the orders they are required to complete or the timeframe in which they must complete them. Outworkers consistently talk of having to work long hours, seven days a week, to complete orders in unrealistic timeframes. This sometimes extends to working overnight. Some outworkers have reported being repeatedly given large orders to complete in timeframes that are impossible to meet if they work alone, so they have been forced to share the volume of work with another outworker. This runs the risk of making them look like an employer themselves, and appears to be a deliberate strategy to blur the boundaries of the legal definition of an employee.

Outworkers have a limited capacity to negotiate the details of their employment arrangements, so to suggest they are contractors with freedom to negotiate their contracts does not reflect the reality. Deeming outworkers as employees is essential to ensure a clear framework of fair wages and conditions, even if this can only be accessed when another party intervenes to force outworker employers to act according to the law.

There is strong judicial and state support for deeming provisions to overcome sham arrangements

The wide range of employment relationships outworkers experience are due to considerable efforts made by their employers to avoid responsibility for providing fair wages and conditions for those outworkers. It is typically the employer that requires an outworker to set themselves up in a particular way so as to avoid the appearance of an employment relationship. These types of arrangements have been recognised by the courts to be ‘sham’ arrangements, aimed at avoiding typical employment responsibilities.³

The relevance and usefulness of deeming provisions for outworkers has been established through the extensive research and debates in the course of developing State legislation to protect outworkers, and deeming laws are already in a majority of State industrial relations laws. Those states are New South Wales, Victoria, Queensland, South Australia and Tasmania.

³ Justice Gray, Judgement Section 35, *Re Clothing and Allied Trades’ Union of Australia v J and J Saggio Clothing Manufacturers Pty Ltd* [1990] FCA 279; 34 IR 26 (9 August 1990) , FEDERAL COURT OF AUSTRALIA; <http://www.austlii.edu.au/au/cases/cth/FCA/1990/279.html>

Amendment Required

FairWear regards the deeming of outworkers as employees as vital for the protection of outworkers nationally. We are concerned, however, that the provisions in the Bill may inadvertently fail to cover all outworkers and further amendment is required.

The complex manner in which the corporations powers have been used for these provisions allows for potential gaps that are not present in the existing, simpler state legislation. The Bill must reflect the best aspects of the relevant state legislation. FairWear asks for the Bill to be amended to address this issue.

Outworkers recovery of unpaid wages

FairWear strongly supports the recovery of money provisions for outworkers.

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.

Recovering outworkers 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.

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.

The provisions in the Bill extend nationally the provisions for outworkers to recover money which already exists in Queensland, New South Wales, Victoria and South Australia.

Amendment Required

FairWear is concerned that 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, as in most cases the outworker only has a name (and possibly an address) of their immediate employer. They do not know who the potential contractor gets work from, or any other details of the supply chain other than the name of the label. The Bill also places

the onus of proof on the outworker. We seek amendments that reflect the provisions in state outworker legislation.

Importance of a TCF Code of Practice

FairWear strongly supports the Bill's provision for the creation of a national mandatory code for TCF industries, modelled on the existing codes in New South Wales, South Australia and Queensland.

As outlined earlier in this submission, supply chains in the TCF industry can be long and complex, and contribute to the considerable difficulty of monitoring the wages and conditions of the largely hidden workforce of outworkers and sweatshop workers.

Another consequence is the dispersed responsibility for the wages and conditions of workers in TCF supply chains. While the direct employer of outworkers is legally responsible for the pay and conditions of their employees, the price for contracts and many of the conditions under which they will be delivered (including turnaround times) are defined by the principal contractor. The activities of agents, makers and other sub-contractors in the supply chain also have a bearing on how much money is passed through the contracting chain to pay the workers and also affect the conditions under which the workers must complete the work.

The voluntary Homeworkers Code of Practice (also known as the Ethical Clothing Australia Accreditation Scheme) was developed as a first response to this complexity and dispersed responsibility, and is a mechanism to engage all entities in TCF supply chains in a shared responsibility for fair wages and conditions of workers in their supply chain. A lack of response to the voluntary system, and evidence of ongoing, extensive non-compliance in the TCF industry led the New South Wales, South Australian and Queensland governments to introduce mandatory codes of practice to compliment the voluntary scheme.

The creation of a national mandatory TCF Code of Practice will provide a uniform scheme nationally, which will make it more accessible to industry and provide broader protection for outworkers and sweatshop workers.

The codes of practice require record 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. The codes also require all entities throughout the supply chain to take action against any of their suppliers who are failing to meet their obligations which ensure that the workers in those supply chains receive the wages and conditions to which they are entitled.

Without these important mechanisms, it is extremely hard 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.

But We Don't Use Outworkers ...

The TCF Union are uncovering large numbers of outworkers in supply chains where they are undertaking compliance activity for Ethical Clothing Australia.

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.

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.

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. Recording and reporting requirements through supply chains to the point where work is no longer given out is essential.

Where supply chains are short, and only limited work (or no work) is contracted out to other entities, the reporting obligations are reduced.

Special Right of Entry Provisions

FairWear strongly supports the additional special right of entry provisions in the Bill to allow the investigation and protection of the wages and conditions for all vulnerable workers in the TCF industries, both sweatshop workers and homebased outworkers.

The ongoing exploitation of vulnerable workers in our Australian TCF industry justifies these special provisions. The circumstances of sweatshop workers have already been outlined earlier in this submission. These sweatshop workers are similarly vulnerable to outworkers and deserve the protection of special laws.

The TCF Union has reported the frustration of identifying sweatshop situations, but being unable to investigate details without providing notice under the general right of entry provisions, resulting in workers being unavailable and the production of records that were clearly recently produced. In other situations they have had access to records pertaining to outworkers while visiting a factory that appears to be set up informally, but have not been able to access the records of those factory workers who appear to be working in conditions less than the award.

Sweatshop workers have reported to FairWear their reluctance to join the TCF Union because of potential consequences in their workplace (bullying, harassment, being given more complex work, or

not being given work at all). Yet they want the intervention of the union or industrial inspectors to “make our bosses follow the law”.

Without the capacity to enter sweatshops and monitor working conditions, other legislative provisions lack effectiveness. Outworkers wages and conditions may be improved, but the supply of work to award compliant outworkers may be undermined by the increased flow of work to the sweatshop workers in the same supply chain.

The additional special right of entry provisions are vital to the efforts to address the exploitation of sweatshop workers and outworkers in the TCF industry.

Education and Support for Industry

FairWear recommends this legislation be accompanied by pro-active education and support programs for companies, especially small to medium businesses, in the Textile Clothing and Footwear industries to ensure they have established, or are able to establish, 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 are advocating strongly for a reduction of obligations on retailers, Fashion Houses and contractors in the textile, clothing and footwear industries. Any reduction would represent giving up on outworkers and regarding their poor wages and conditions as acceptable.

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

Education and Support for Outworkers

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.

Outworkers have been given mis-information or no information about their rights and conditions in the Australian TCF industry over an extended period of time. Intensive work is required to undo the misunderstandings and clarify the reality. Many do not have even a basic understanding of the Australian legal systems and framework, on which to base their understanding of their own rights as a worker.

After entrapment in an exploited situation for a long time, outworkers can be fearful and unsure about the opportunities available to them. Some outworkers do not believe it is possible for their circumstances to change. They do not believe they can access award rates of pay with the support and intervention of the TCF Union or others. They are anxious they will lose the only work they have, and the associated income.

Ongoing education, in a supportive environment, is an essential element of the response to outworker exploitation.

Challenges for the Australian Clothing Industry

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

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.

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 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.

To suggest that the TCF Union's unrelenting pursuit of fair treatment for vulnerable migrant outworkers and sweatshop workers is singlehandedly responsible for the difficulties in the Australian clothing industry is ridiculous, and a distraction from the reality of the situation.

Moreover, no 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.

FairWear recognises the complex challenges to the Australian TCF industry are very real. However there needs to be different answers to these problems.

A Clothing Industry to be Proud of

FairWear wants to see the Australian clothing industry competing on quality, innovation and good ethics, not on who can get away with paying the lowest wages. The increasing number of clothing businesses who have become accredited under the voluntary Ethical Clothing Australia regime are testament to the fact that it is possible to maintain a viable clothing business in this country whilst also taking steps to ensure that workers making the garments receive their legal pay and entitlements.

Expecting high standards of our Australian TCF industry and supporting initiatives to build on our strengths is the way ahead, not watering down protections and leaving vulnerable workers entrapped and invisible.

Conclusion

FairWear strongly supports the passage of the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011, with the small number of amendments identified in this submission.

We also support the detailed submission from the Textile Clothing and Footwear Union of Australia regarding this Bill.

We congratulate the government on the introduction of this legislation to further protect vulnerable workers in the TCF industry.

We look forward to reporting on the changes in outworkers lives that result from the impact of this legislation alongside the interlocking laws, mechanisms and programs which work together to address the exploitation they have experienced for too long.

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

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.