

**Committee Secretary
Senate Education, Employment and Workplace Relations Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600**

Dear Committee Members,

Please allow me to introduce myself. My name is Stephen Spence and I along with my wife Julie are the Directors of Seaborne Clothing Manufacturers Pty Ltd a small Queensland based clothing manufacturer specializing in the local manufacture of uniforms and in particular school uniforms. We employ six staff and use the services of independent contractors during peak production periods. It is therefore in this capacity that I would like to lodge the following submission in regards to the Senate Inquiry into the "Fair Work" Bill and in particular the sections relating to the use of outworkers within the Textile Clothing and Footwear Industry.

The Federal Government has once again decided to ensure that outworkers working within the Textile Clothing and Footwear Industry are given special provisions within the Clothing Trades Award (as they should be) but it is done with total disregard for the right of an individual to own and operate their own independent contract sewing business. Therefore it is of major concern to me as well as most other small manufacturers to see this complete lack of recognition of the status of genuine bona fide common law contractors who make up a substantial percent of the workforce within our industry and without this valuable source of labor (who on average earn \$30 to \$35 an hour) you will quickly find more and more manufacturers sourcing their production offshore.

However let me stress right here and now that I do not in the slightest way condone the abuse of outworkers nor do I support in any way shape or form the use of sweatshops and any person doing so should be subjected to the full extent of the law and that all effort should be made to eradicate such practices.

That being said it is also of paramount importance to clearly differentiate between who is a genuine contractor and who is an outworker and once this is done Awards can be properly drafted so as to protect outworkers yet at the same time recognizing the rights of contractors.

Anybody reading this submission so far would say what's your problem, contractors are easily distinguished between themselves and outworkers/employees. Well that's true for every other industry except ours and that's because Section 48.1 of the Clothing Trades Award states that an employer MUST be registered by the Board of Reference before having ANY work performed away from his or her own workshop or factory as provided by

clauses 46 and 47 as well as further conditions laid out in clauses 48.2 through to 48.8.

To put this into perspective I give you the following example. There are four Pty Ltd companies that are identical in size and nature all of which meet all statutory requirements when it comes to their employees and none of them engage outworkers. Now that we've established the fact that these four companies are structurally the same we need to look at what they make. Companies A and B manufacture televisions whereas companies C and D manufacture clothing. Company A gets an order for a thousand TV's but realizes that they do not have the capacity to fill the order in the required time frame so they go to company B and asks them to manufacture five hundred TV's for them. Company B agrees to do them and wants to be paid \$500 per television and that they would complete the job in three weeks and at that everybody is happy.

Now company C gets an order for five thousand shirts but realizes that they do not have the capacity to produce that many items in the time frame required and so they go to company D and ask them if they could produce two thousand shirts for them. Company D agrees to do the work and that they want to be paid \$10 per item and that they will do the job in three weeks.

Now you say to yourself so what I can't see any difference between the two transactions they are both legal and would be considered to be standard trading practices. Well you'd be wrong if you thought that way because if company C is not registered with the Board of Reference they are liable for prosecution and even if they are registered but failed to provide all details of the transaction to the board and the Union they will also be liable for prosecution. I ask you how can there be one law one person and a different law for another in a country like Australia.

Now you might say well I agree and yes we may be able to resolve that particular issue but what about a contractor. It would most prudent at this point to tell you what the definition of an outworker is under the Clothing Trades Award. It states an outworker means a person who performs work as herein defined for an employer outside the employer's workshop or factory under a CONTRACT OF SERVICE. Those last three words are vital to this issue for a person who works under a contract of service is an EMPLOYEE with all the rights and obligations of an employee whereas a contractor is a person or organization that works under a CONTACT FOR SERVICE.

Again you may well say so what we all know the difference between the two but unfortunately the Clothing Trades Award does not distinguish between the two very different categories and lumps all and sundry into the outworker category. Section 46.1.1 states that an employer registered under clause 48 may, under certain conditions set out below, give work out to:

46.1.1(e) a non-respondent who will personally perform all the work (or to put that in simple terms an individual who has decided to start their very own micro business working from home.)

Now we come to the crux of the matter and that is the recognition of genuine contractors within the clothing manufacturing industry. When I speak of contractors I refer to those individuals who have a registered business name have bank accounts in that name, have an ABN, supply tax invoices, have their own machines, have the right to work for whoever they choose to, have the right to negotiate rates and work to their own time schedule, claim tax deductions for such items as motor vehicle expenses, insurances, depreciation, telephone etc. When I speak of an outworker I refer to a person that works from home using machines owned by the manufacturer and who is told when to work, how to work, how much they are to be paid, in other words they are an employee that happens to work from home.

I ask this simple question why is it that a woman can set a business such as hairdressing, book-keeping, beauty product sales, computer repairs etc. all based at home without a problem but she can't run a sewing business even though she meets all the control tests used by the courts to determine who is and who isn't a contractor without being classified as an outworker and therefore forfeiting her right to work independent of an employer.?

My understanding of an Award is that it is a legal document put in place to protect the welfare of employees; I fail to see how it has the legal capacity to dictate how two legally constituted businesses can trade with each other.

When ever I explain this situation to people they shake their heads in disbelief and are stunned to learn that I along with scores of other small businesses were prosecuted by the Textile Clothing and Footwear Union of Australia for alleged breaches of the Clothing Trades Award in relation to outworkers.

On the 29th of December 2005 I received a fax from a one Jack Morel stating that he was coming to my premises to investigate alleged breaches of the Clothing Trades Award and stated that he had the authority to do so as he was the holder of a permit under the Workplace Relations Act 1996. He failed to mention however that in fact he didn't have the authority to enter my premises because none of my staff were members of his union. None the less I stupidly let him in because I believed I had done nothing wrong. When he arrived he asked me did I engage outworkers and the answer was no. He then asked if I used contractors and the answer was yes but what's wrong with that I asked. To that all he did was wave his arms in the air whilst informing us that there is no such thing as contractors and that women shouldn't work from home.

Anyhow on the 15th of March 2006 I received a large package from solicitors Slater and Gordon advising me that the TCFUA had begun proceedings against me in the Federal Court for breaches of the Clothing Trades Award. They then proceeded to tell me that there were fourteen breaches and that each breach carries a maximum penalty of \$10000 each and that the union would be seeking the maximum penalty. However they go on to say that the union was prepared to settle the matter out of court by me paying to them \$15000.00 as well as agreeing to other draconian conditions. I think it is important to remember that I am only one of hundreds prosecuted ALL of which had settled out of court. That certainly adds up to a lot of money.

However unlike my colleagues I decided not to pay even though the union had now dropped the amount required to \$8000.00 but chose to fight the matter in court. I engaged an industrial barrister and started the fight. After a lot of two and through lodging evidence etc. we had our first mediation. The union now wanted \$11000.00 but we rejected this and we continued preparing for court. When it became evident to them that we were intent on going to court they asked for another mediation. However things were a little different this time for after lengthy legal debate the union upon legal advice dropped all charges with no fines, penalties or conditions being imposed. My legal advice was that they realized that the use of genuine contractors was in fact legal and that the courts would have ruled that way. It is also my understanding that no further companies were prosecuted for similar alleged breaches from that day on.

The union wasn't finished with us however because they then began a campaign of harassment against my company. They tried such things as having the Education Department stop government schools from dealing with us. That failed. They then had the State Industrial Relations Minister order an OHS audit of our factory which we passed. They had the Minister order a Code of Practice audit which we passed. The best was saved for last when they had the Queensland Teacher's Union publish an article in their journal about us which started off with this paragraph.

"State school P & C associations have been warned to be wary of Sunshine Coast based clothing company Seaborne Pty Ltd as they may be providing school uniforms at a cheaper rate than other clothing companies because their workers are paid at less than award rates. It then proceeds to list lie after lie about our work practices. I showed my staff the article and they simply stunned that such untruths could be written about us." It went on from there.

The point I am trying to make here is that the Award in relation to home workers is fundamentally flawed and was used by the union for its own financial benefit and any future decisions MUST NOT make the same mistakes as what has preceded it. Everybody has the right to run a legal business from home including those in the clothing industry. I firmly believe that a lot of the problems that we face today as a society is a result of mums not being home for the kids because

they are at work earning a living and as such we should be doing everything we can to encourage home based businesses not discourage them.

This submission is late and for that I do apologies but it was due to circumstances beyond my control .I am also aware that I have missed the cut off date for requesting an opportunity to appear before the Committee but if there is any way that I could it would be very much appreciated. As the only person to have taken the union all the way on this matter I have learnt a lot and I truly believe that I could make a significant contribution to the inquiry for what I have written above is only a small portion of a large problem.

Thank you for your time and patience

Yours truly,

Stephen Spence