

the ark

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22 December 2011

Committee Secretary
Senate Education, Employment and
Workplace Relations Committees
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Dear Committee

Submission re Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011

This is a submission to the Senate Committee on the changes to the Fair Work Act ('FWA') as proposed by the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011 ('the Bill') introduced into the Parliament on 24 November 2011.

We, Christine Metcalfe and Jenny Layton, are Directors of The Ark Clothing Co. We design, wholesale and retail womens fashion in Melbourne where we directly employ approximately 40 staff. We use reputable manufacturers to make our clothes, who in turn use machinists who have been running their own businesses (registered with ABN) from their homes.

We have serious concerns that the amendments will inadvertently harm the very workers they seek to protect by restricting their ability to operate as independent and autonomous businesses. We believe that these amendments are responding to an outdated view of the industry, and that most of the workers this Bill seeks to protect do not see themselves as outworkers or employees, but as independent contractors working from home businesses.

Most of these home-based operations are mainly women-owned businesses working from home out of choice. Many have invested significant funds into these businesses in preference to working as an employee in a manufacturing plant or other out-of-home workplaces because of a desire to take control of their working hours and conditions. They are able to adapt to the seasonal nature of their work by bringing in other family members or friends to help with heavy workloads, or by working longer hours during these times. The home-based nature of their work means they are still available to look after and supervise their children as required.

The language in which the current legislation is currently expressed is confusing. The distinction between contractor and outworker is not clear to native speakers of English, let alone to those for who English is their second language, making compliance with the legislative requirements a challenge.

We would recommend that the Bill allow outworkers to operate as independent contractors and not deem them to be employees, as per existing FWA provisions for all sectors.

Many outworkers run successful businesses and have done so for many years. The current regulatory framework is proving inflexible and does not cater for those outworker businesses that are successful and profitable. In some cases, the need for those outworker businesses to begin receiving employment-like benefits poses a risk to the continuing operation of their businesses.

We have spent the last 20 years building a niche fashion business. We are innovative, determined and creative and have a 20,000 strong customer base of highly educated, engaging women who respect and appreciate Australian made fashion. It has been the basis and strength of our branding.

We have been strategically positioning our company for strong growth and future succession. Our vision is to foster a sustainable and successful fashion based business for the next generation of designers, patternmakers, retailers and e-tailers. Offshore production kills off opportunities for training, apprenticeships and internships to graduates.

If the FWA and its rigid attitude represent the future for Australian fashion and its related industries, it will result in the death of manufacturing (already grossly diminished) in the clothing industry in Australia. We will have no choice but to join a long list of others who have decided to have their clothing made offshore as a direct result of the outcome of this legislation.

Yours faithfully

Christine Metcalfe & Jenny Layton
Directors - The Ark Clothing Co