



TEXTILE CLOTHING & FOOTWEAR UNION OF AUSTRALIA

**National Secretary**

Michele O'Neil

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9 April 2009

Committee Secretary  
Senate Standing Committee on Education,  
Employment and Workplace Relations  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [ewer.sen@aph.gov.au](mailto:ewer.sen@aph.gov.au)

Dear Committee Secretary,

Please find enclosed the submission of the Textile Clothing and Footwear Union of Australia (National Office) to the Senate Standing Committee on Education, Employment and Workplace Relations Inquiry into the *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009*.

If you have inquiries into this matter please do not hesitate to contact me on [moneil@tcfvic.org.au](mailto:moneil@tcfvic.org.au) or 03 9639 2955.

Yours Sincerely

A handwritten signature in blue ink, appearing to read 'Michele O'Neil'.

Michele O'Neil  
National Secretary

**Enc.**



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**TEXTILE, CLOTHING & FOOTWEAR UNION  
OF AUSTRALIA  
(National Office)**

**Submission**

**to**

**Senate Standing Committee on Education, Employment  
and Workplace Relations**

**Inquiry into the Provisions of the**

**Fair Work (Transitional Provisions and Consequential  
Amendments) Bill 2009**

**Submission**  
**to**  
**Senate Standing Committee on Education, Employment and Workplace Relations**  
**Inquiry into the**  
**Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009**

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**Submission  
authorized by:** Michele O'Neil (National Secretary)

**Senate Standing Committee on Education, Employment and Workplace Relations  
Inquiry  
into the Provisions of the  
Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009  
("T&C Bill")**

**Introduction**

The Textile Clothing and Footwear Union of Australia (TCFUA) supports the submission made by the Australian Council of Trade Unions (ACTU) to the Senate Inquiry regarding the T&C Bill.

In addition, the TCFUA makes the following submissions regarding matters which have particular importance for workers in the TCF Industry and the TCFUA.

**1. Exclusion of outworker terms of awards**

1. The T&C Bill seeks to regulate the status and effect of a range of instruments relating to three major pieces of legislation:
  - *Workplace Relations Act 1996* pre-Workchoices: pre-reform instruments (including old IR instruments)
  - *Workchoices*: workplace agreements
  - *Fair Work Act* instruments
2. Pursuant to all of the above pieces of legislation, outworker terms in awards continue to apply even where another instrument regulates the employment relationship.
3. The T&C Bill has failed to continue this scheme in relation to workplace agreements made under *WorkChoices* for the reasons outlined below.
4. Section 28 of Schedule 3 of the T&C Bill provides that while a workplace agreement, workplace determination, preserved State agreement, AWA or pre-reform AWA applies than a modern award will not apply.
5. This means that in respect of the above agreements, the outworker terms of the *Textile, Clothing, Footwear & Associated Industries Award 2010* ('TCF Award') will not apply.
6. Section 29(3) provides that if a modern award containing outworker terms comes into operation than any previous award containing such terms will cease to apply to an outworker entity. For practical purposes this means that upon the commencement of the TCF Award on 1 January 2010, awards containing

outworker terms including (but not limited to) the *Clothing Trades Award 1999* will no longer apply to corporations.

7. This means that where, for example, a collective agreement or AWA made under *WorkChoices* is in operation, outworker terms of either existing awards or of the TCF Award will not apply from 1 January 2010.
8. This will significantly undermine existing protections for outworkers and is contrary to the *Workplace Relations Act 1996* (Cth). Section 349 of the *Workplace Relations Act 1996* (Cth) provides that it is not possible to exclude outworker conditions of an award while a workplace agreement is in operation. Thus, workplace agreements currently in operation are read in conjunction with the outworker conditions of awards.
9. Given the operation of section 349 of the *Workplace Relations Act 1996* (Cth) workplace agreements do not contain outworker terms. Therefore not only will outworker conditions of awards not apply to workplace agreements in the new system, these agreements will not contain any outworker protections according to their own terms. The result is that come 1 January 2010 any enterprise operating according to a workplace agreement made under *WorkChoices* will no longer be bound by the outworker terms of an award nor will it be bound by any terms in respect of outworkers in an agreement.
10. This is also contrary to the policy enunciated in the *Fair Work Bill* whereby certain terms relating to outworkers (designated outworker terms) may also not be excluded by virtue of the operation of an enterprise agreement.
11. In relation to pre-reform certified agreements, the T&C Bill provides that where a pre-reform agreement and a modern award both apply then the pre-reform agreement will prevail over the modern award to the extent of any inconsistency. Given that section 354 of the *Workplace Relations Act 1996* (prior to amendments made by the *Transition to Forward to Fairness Bill 2008*) provided that outworker conditions of an award could not be excluded by a pre-reform agreement, a pre-reform agreement will not contain outworker terms that would be inconsistent with a modern award. The outworker terms of the TCF Award would thus apply to a pre-reform certified agreement.
12. Thus in the new industrial relations system the following will apply with respect to outworker protections:
  - pre-reform agreements still in operation: modern award outworker terms will apply
  - workplace agreements still in operation: outworker protections in awards (modern or otherwise) no longer apply.

- Enterprise agreements made under *Fair Work Act*: designated outworker terms of modern award apply.
13. Award terms relating to outworkers, both in current awards and in the modern TCF Award are crucial to the protection of a workforce, widely recognized for its vulnerability. As outlined in the submissions of the TCFUA with respect to the *Fair Work Bill 2008*, current awards contain protections both in relation to the minimum terms and conditions of employment for outworkers and also in relation to ensuring the transparency of the supply chain. The transparency of the supply chain, assured by award terms relating to registration, filing of lists and keeping of records, apply to employers regardless of whether or not they engage outworkers.
  14. As the principle of ensuring outworker conditions in awards are not ousted by other instruments has been an accepted part of industrial law for over a decade, and has been continued in the new system (with respect to instruments concluded under the *Fair Work Act*), the TCFUA assumes that the failure to continue the operation of the principle in relation to workplace agreements by virtue of the operation of clause 28 of Schedule 3, is inadvertent.
  15. Accordingly, we seek the amendment of clause 28 of Schedule 3 to ensure that all outworker terms of the modern TCF Award apply to workplace agreements concluded pursuant to *WorkChoices*.

## **2. Access to low paid bargaining stream**

16. Section 263(3) of the *Fair Work Bill 2008* provides that Fair Work Australia must make a special low-paid workplace determination (i.e. one that is not by consent) where it is satisfied that no employer that will be covered by the relevant determination is or has previously been covered by (relevantly) an enterprise agreement.
17. Clause 22 of Schedule 7 of the T&C Bill provides that the reference in section 263(3) of the Bill to ‘enterprise agreement’ is to be read so as to include a reference to collective agreement based transitional instrument. Clause 2(3) of Schedule 3 defines collective agreement based transitional instrument as:
  - (i) collective agreements;
  - (ii) workplace determinations;
  - (iii) preserved collective State agreements;
  - (iv) pre-reform certified agreements;
  - (v) old IR agreements;
  - (vi) section 170MX awards.

18. It is thus clear that the term 'enterprise agreements' in section 263(3) of the Bill is not limited to agreements made under the Bill but extends many decades back. In this way access to the low paid stream will be severely restricted. It cannot be contended that in circumstances where an enterprise in the low paid sector has not had an enterprise agreement in place for some time that workers have sufficient bargaining strength such that they do not require the assistance of the low paid stream.

19. For example, the following companies in our sector have not had an enterprise agreement in many years and their workers should not be disentitled from accessing the low paid stream where they are otherwise eligible:

Rivers Australia Pty. Ltd:	enterprise agreement expired 28 May 1998
Staffords Manufacturing Pty Ltd:	enterprise agreement expired 30 June 2000
Fast Line International Pty Ltd:	enterprise agreement expired 30 June 2001
TD Noone	enterprise agreement expired 31 December 2002
Flicker's Australia Pty Ltd:	enterprise agreement expired 31 August 2005
Domestic Textiles	enterprise agreement expired 31 December 2005

20. Moreover, under *WorkChoices*, as the Government has acknowledged, many workers were forced to accept sub-standard agreements that stripped many of their rights away. The introduction of the Better-off-overall-Test in the *Fair Work Bill* to be applied to agreements recognises that the Fairness Test was not sufficient to guarantee workers were not disadvantaged under agreements. This is to say nothing of workers who were forced to accept agreements prior to the introduction of the Fairness Test. A lack of unfair dismissal protection, a lack of effective dispute resolution and the ability of an employer to refuse to negotiate with workers and/or their unions means that many workers are currently stuck on sub-standard agreements and will continue to be so in the new system.

21. The definition of 'enterprise agreement' for the purposes of section 263(3) of the Bill must be confined to enterprise agreements concluded pursuant to the *Fair Work Act* and Clause 22 of Schedule 7 of the T&C Bill must be amended accordingly.