

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

**QUESTIONS ON NOTICE  
Supplementary Budget Estimates 2011-2012**

**Outcome 5 - Workplace Relations and Economic Strategy**

**DEEWR Question No. EW0787\_12**

**Senator Thistlethwaite asked on 19 October 2011, Hansard page 117**

**Question**

**Outworkers**

Is there much inconsistency between the various state regulations and the national law?

Mr Kovacic: I would have to take the precise level of inconsistency on notice. I think it would be fair to say that there is a degree of commonality. Some of the areas of difference in some of the state legislation enable state governments to issue codes. My understanding is that those codes have been issued in New South Wales, possibly South Australia and Queensland, but I would need to double-check on that. We can come back with an answer on notice about any differences between federal and state legislation.

**Answer**

There are a range of measures at both Commonwealth and State level for the protection of outworkers. Existing Commonwealth and State measures are outlined below. The table below shows different approaches taken by the States (which evidences inconsistent treatment on a number of issues).

Differences in approach mean that outworkers do not have the same level of protection in all jurisdictions. This has led the Government to conclude that Federal legislation is necessary to ensure equitable and consistent protection for these workers. The Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011 was introduced in the Senate on 24 November 2011. The Bill will improve consistency of treatment for outworkers. However, to ensure existing protection is not undermined, State laws that are not inconsistent with the proposed changes will continue to operate side by side with the *Fair Work Act 2009*.

**Commonwealth protections for TCF outworkers**

Outworker terms in modern awards

The *Textile, Clothing, Footwear and Associated Industries Award 2010* (TCF Award) contains a schedule that deals with outworker terms and provides for matters such as registration, monitoring and record keeping requirements imposed on parties operating in the TCF industry.

The outworker terms in the TCF Award also extend employment entitlements—such as minimum wages and entitlements equivalent to the National Employment Standards (the NES)—to contract outworkers who would not otherwise have access to them.

The *Fair Work Act 2009* (FW Act) ensures that outworker terms cannot be undercut through bargaining for an enterprise agreement (s.200 of the FW Act).

## Right of entry

Special rules apply to union entry to investigate alleged breaches of TCF outworkers' entitlements (subdivision AA of Division 2 to Part 3-4 of the FW Act).

The TCF right of entry provisions do not require 24 hours notice of entry, and it is not necessary for there to be a union member working at the premises. A union may enter premises other than the workplace if they reasonably suspect documents relating to an alleged contravention of the TCF outworker entitlements are kept at those premises. The Act provides additional capacity to enter without suspicion of a breach in relation to 'designated outworker terms'.

## General protections

Part 3-1 of the FW Act sets out a range of workplace protections called 'general protections'. Most of the general protections apply to TCF contract outworkers (e.g. provisions protecting contractors against a principal terminating their contract or altering their position to their prejudice).

## **State protections for TCF outworkers**

Most States have legislation that provides protections to TCF contract outworkers. The approaches taken to the protection of TCF contract outworkers in State legislation include:

- deeming TCF contract outworkers to be employees for the purposes of State employment law;
- capacity to pursue unpaid remuneration up the supply chain; and
- enforceable mandatory codes of practice.

The table below shows a summary of the types of outworker provisions that are provided in each State:

<b>Type of outworker provisions</b>	<b>NSW</b>	<b>Vic</b>	<b>Qld</b>	<b>SA</b>	<b>WA</b>	<b>Tas</b>
<b>Deemed to be employees</b>	Yes	For LSL, OH&S and public holidays	Yes	Only if covered by an outworker provision in an award or enterprise agreement	No	Yes
<b>Provisions for recovery of unpaid remuneration up the supply chain</b>	Yes	Yes	Yes	Yes	No	No
<b>Government body that enforces compliance</b>	Yes	Yes	Yes	Yes	No	Yes
<b>Right of entry</b>	Yes	Yes	Yes	Yes	No	Yes
<b>Prohibition of victimisation</b>	No	Yes	No	No	No	No
<b>Mandatory code of practice</b>	Yes	No	Yes	Yes	No	No