

REVIEW OF OUTWORKERS IN THE GARMENT INDUSTRY

Background to the review

1.1 The Economics References Committee conducted an inquiry into outworkers in the garment industry in 1996. The Committee tabled its report titled *Outworkers in the Garment Industry* in December 1996.

1.2 In its report the Committee stated that it would undertake a review of outworking in the garment industry in 12 months' time.¹

1.3 In November 1997 the Committee held a public hearing to talk with a number of key organisations involved in the garment industry to hear, from their perspective, what developments have occurred since the committee tabled its report. The Textile Clothing and Footwear Union of Australia; Australian Business Chamber; Australian Retailers Association and the Council of Textile and Fashion Industries of Australia all gave evidence at the hearing. (Refer Appendix I) A transcript of the hearing is available at the internet address of <http://www.aph.gov.au/hansard>.

1.4 The Committee also reviewed the government response² to its report and as a consequence wrote to the Commonwealth Department of Workplace Relations & Small Business; Department of Industry Science and Tourism and the Australian Taxation Office seeking further information in March 1998. The responses were considered as part of the Committee's deliberations on the report.

1.5 On 11 March 1998 the Textile Clothing and Footwear Union of Australia (TCFUA) forwarded a supplementary submission highlighting recent developments in relation to the Committee's recommendations. The TCFUA together with the Council of Textile Clothing and Fashion Industries of Australia also provided comments on the government response to the Committee's report. In total the Committee received 8 submissions or supplementary information to the review and these are listed at Appendix II.

1.6 On 7 May 1998 the Committee received the report *The Effects of Outsourcing upon Occupational Health and Safety: A Comparative Study of Factory-based and Outworkers in the Australian Clothing Industry* prepared by Dr Claire Mayhew, a research scientist with the National Occupational Health and Safety Commission (NOHSC).

Review Findings

Homeworkers Code of Practice

1.7 The Committee congratulates the industry for the development of the Homeworkers Code of Practice. A copy of the Homeworkers Code of practice is at Appendix III. This is a

1 Outworkers in the Garment Industry Report, p. xvii.

2 The government response was tabled in Parliament on 3 September 1997

major breakthrough for the industry, and it is hoped it will finally lead to the elimination of exploitation of outworkers.

1.8 The agreement is between the Textile Clothing and Footwear Union of Australia; the Council of Textile and Fashion Industries Ltd; the Australian Chamber of Manufacturers and the Australian Business Chamber.

1.9 As at March 1998, 34 retailers and 35 manufacturers and fashion houses had signed the Homeworkers Code of Practice. In 1995 four retailers signed a 'Deed of Co-operation' with the Textile Clothing and Footwear Union of Australia. (refer Appendix IV).

1.10 The Homeworkers Code of Practice is a comprehensive document that provides for:

- accreditation;
- record keeping;
- a lists of contractors;
- accredited companies keeping a check on their contractors;
- a contractual arrangement that signatories cannot give work to outworkers for less than the award; and
- outworkers being defined and treated as employees.

These components form the major part of the clauses contained in the outworkers' award, however, still require additional support to work effectively. According to Mr Nossar, Industrial Officer of the TCFUA:

The code by itself is a piece of paper. The code needs mechanisms to work. It needs the award protections that are already there to remain and it needs the development of a calculation mechanism specifications manual, to turn the estimate of labour required for a particular garment into a mathematical exercise. There is a commitment by the industry parties, the employer parties and the union to developing that calculation mechanism.³

1.11 The implementation and success of the code across the whole of the industry can only be achieved if more companies are encouraged to sign the code. As the code is voluntary, according to the TCFUA, it needs to be underpinned by an award that provides in detail the pay and conditions for outworkers employment. If clauses in the award are weakened to the extent that companies who fail to comply with the terms of the code cannot be prosecuted under the award, the code will lose its authority and companies may start to opt out of the code's process.

1.12 In its response to the Committee's initial report, the government stated that it would support a code of practice openly entered into by industry parties, as a way of strengthening industry standards.⁴ The governments offer to fund an education program to assist in the

3 Evidence p. E939.

4 Government response to the report of the Senate Economics References Committee on *Outworking in the Garment Industry*, p. 4.

implementation of the code of practice is **supported by the Committee**, however, more needs to be done by all parties to ensure the code's success.

1.13 Clause 5 of the code provides for the establishment of a Homeworkers Code of Practice Committee, (HCOPC) comprising an equal number of representatives from the TCFUA and a combined group of employers who are party to the agreement. The duties of the Committee include:

- Accreditation of manufacturers;
- Ability to withdraw a manufacturer's accreditation;
- Holding and maintaining the Accreditation Register of accredited manufacturers;
- Confirming a retailer's entitlement to accreditation where it establishes that it is only dealing with accredited manufacturers
- Allocating monies from the Education Publicity and Compliance Fund of the code;
- Settling any disputes that may arise in relation to the operation of this Agreement. This may include the participation of an independent mediator, where agreed;
- Establishing processes and procedures to efficiently deal with issues which come before it, in particular, those which require mediation; and
- Developing standard product specifications through the establishment of an expert working party, which will report to the Code of Practice Committee. Schedule 9 of the code refers to the process for development of this product specifications manual.

1.14 The Homeworkers Code of Practice Committee met in May 1998 for the first time. Its major priority was to prepare a joint submission to the Department of Industry, Science and Tourism seeking funding for the Education, Publicity and Compliance Fund. Some of these funds will be used to develop a Standard Product Specification manual (sewing time manual) as described in Schedule 9 of the code.

1.15 The manual will be used by TCF employers to calculate accurately the payment of wages to outworkers and by HCOPC to audit wages paid to outworkers when a dispute arises. Mr Woolgar, National Secretary of the TCFUA made the following comment in evidence to the Committee:

The home workers code of practice, which we jointly developed, now depends for its future success upon the development of a standard product specification manual, which will jointly facilitate compliance with the code. In addition to developing an industrial engineering database of considerable importance to both industrial productivity and compliance with other existing protective measures for outworkers.⁵

5 Evidence, p. E930.

1.16 **The Committee supports the development of the sewing time manual as an essential requirement for the successful operation of the code, and recommends the government provide the financial assistance for this initiative.**

The TCF Advisory Board

1.17 The Committee welcomes the government's appointment of a new TCF Advisory Board to provide industry-based advice to the Productivity Commission. **However, the Committee believes a working party or committee should be established within the Board to deal specifically with outworkers issues.** A committee that includes expert representatives from government, industry, union and community groups can only assist the government in future policy development. Further, it will demonstrate the government is committed to eliminating exploitation of outworkers and improving the operation of the TCF industry.

Government Procurement Practices

1.18 A large number of government departments and agencies are involved in clothing procurement. Currently Australia Post is the only federal government agency to sign a Deed of Co-operation with the TCFUA.

1.19 The government response to the Committee's report gave no indication that it would insist other government agencies should enter into a code or deed of ethical sourcing, as undertaken by Australia Post.

1.20 The Committee notes that government procurement officers are required to use "best practice" when purchasing, and deal only with suppliers who comply with the law. However, how agencies monitor their suppliers to determine if they are complying with the law remains unclear.

1.21 **The Committee suggest the federal government follow the lead of the NSW government by directing departments and agencies who deal with clothing procurement to enter into a deed of co-operation along the lines of the NSW code.** Departments and agencies should give an undertaking that they will only deal with suppliers who have signed the Homeworkers code of practice. The Textile Clothing and Footwear Union of Australia suggest that the same standard apply to both locally sourced and imported goods.

Government Assistance

1.22 The Committee acknowledges the Department of Industry, Science and Tourism's response that it is prepared to fund a one-off education campaign to help implement the Homeworkers Code of Practice. The timing and nature of the campaign will be determined shortly after the department receives the industry submission for funding support.

1.23 The Department of Workplace Relations and Small Business is jointly developing a national compliance and information campaign for outworkers with the Office of the Employment Advocate. The aim of the campaign is to ensure outworkers and employers in the clothing industry understand their rights, responsibilities and opportunities under the *Workplace Relations Act 1996* and the Clothing Trades Award. The Department is

considering using seminars; a national help line staffed by bilingual operators; and a series of publications printed in several languages to disseminate the information.

1.24 The Committee commends the Departments for these two initiatives, which form part of the overall TCF package.

1.25 **The Committee recommends that only retailers and manufacturers who are signatory to the agreement should benefit from industry assistance and support.** This may encourage the remaining organisations to sign on and thus achieve industry wide agreement to the code.

Deeming Outworkers as Employees

1.26 In its initial report the Committee stated that one of its major concerns was that outworkers were not recognised as employees by the majority of their employers. The Committee is very concerned that, until some agreement between the parties is found that identifies all outworkers as employees, they will continue to be exploited by questionable middlemen.

1.27 The TCFUA put forward proposed amendments to the *Workplace Relations Act 1996* that would ensure that outworkers were deemed employees and these are listed in Appendix VI.

1.28 The government argues that it is constrained by the constitutional limitation on the Commonwealth to resolve this matter in a timely manner. The Department of Workplace Relations and Small Business states in its recent correspondence to the Committee:

Any Commonwealth legislation seeking to alter the employment status of persons who might otherwise (at common law) not be employees would need to depend on constitutional powers other than the conciliation and arbitration power, such as the Commonwealth's power to legislate with respect to corporations and would be limited in its scope accordingly.⁶

1.29 In response to the Committee report, and following agreement by the States and Territories, the government has listed the matter for consideration at the next Labour Ministers Council meeting.

1.30 The Committee is very concerned about the lack of action in the past 18 months to officially deem outworkers as employees. The problem seems to be one of political will. In the case of the *Workplace Relations and Other Legislation Amendment Bill (No. 2) 1996*, Victoria had referred several of its industrial relations powers to the Commonwealth. This approach allowed the federal legislation to apply in relation to persons and conduct which would otherwise be outside the scope of the available constitutional powers. For example, freedom of association with respect to employers, employees and independent contractors.

1.31 Outwork is performed predominantly in Victoria, New South Wales, and South Australia; thus the federal/Victoria deeming provisions would clarify the employment status of outworkers significantly. From the perspective of outworkers it is vital their employment

6 Letter from the Department of Workplace Relations and Small Business, dated 12 May 1998, p. 1.

status is resolved and resolved quickly. Accordingly it is important that the federal government take immediate action and show some willingness to protect outworkers from further exploitation.

The Award Review Process

1.32 Schedule 5 of the Workplace Relations and Other Legislation Amendment Act requires awards to be simplified. For this process to occur, the parties involved need to lodge an application during the interim period, which ceases at 30 June 1998. The Act's aim to bring all the industry awards into 20 areas to be known as 'allowable matters'. Outwork is the 20th allowable matter and was included in the legislation for the first time. That deliberate additional inclusion, in the Committee view, is a signal of the importance attached to these workers

1.33 The Department of Workplace Relations and Small Business does not normally lodge a submission to the Australian Industrial Relations Commission in relation to applications for the simplification of particular awards. It does, however, intervene on behalf of the Minister of Workplace Relations and Small Business when required. As part of the process to simplify the *Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1995* (the hospitality award), the government detailed its position in respect to S89A2(t) 'Pay and condition for outworkers' matters. However, the Commission did not consider this matter, as outworkers are not covered in the hospitality award.

1.34 The Committee believes the government's interpretation on certain clauses in TCF Awards (in particular clauses 26, 27 and 27A of the Clothing Trades Award) is very narrow and, if implemented, would remove the TCFUA's ability to prosecute companies. The TCFUA's ability to ensure that award conditions apply to Outworkers has already been weakened by the changes introduced in the *Workplace Relations Act 1996* such as the limitation to right of access to employers' premises. The Committee is aware that the parties to TCF awards need to present their respective cases to the Commission and it will be up to the Commission to make a decision in the context of the current Act. However, if the government maintains its current position and insists the outwork allowable matter be restricted to the bare minimum, and if the commission concurs, advances achieved with the Homeworkers Code of Practice will be seriously undermined.

1.35 The Committee recommends that the existing clauses regarding outwork in the TCF awards should remain when the awards are simplified. The government should intervene and support this outcome in order to ensure that mechanisms continue to exist in the award to ensure that award pay and conditions are honoured for outworkers.

ILO Convention on Homework and Child Labour

Child Labour

1.36 The Committee notes the government's concerns with the International Labour Organisation Convention 138 that deals with child labour. The government states:

C138's overly prescriptive requirements and its inflexibility have proved it to be an inappropriate means of dealing with the problem of exploitative child labour.⁷

1.37 The Minister for Workplace Relations and Small Business has sought the agreement of States and Territories not to give further consideration to C138 as a new Convention on child labour is likely to be passed at the ILO annual convention in 1999. All but Tasmania has agreed. The federal government added:

Australia has the view that the proposed new ILO Convention on exploitative child labour, which is expected to be adopted in 1999, should be the core standard on child labour.⁸

1.38 The Committee supports this position, however, does not support the government's view that there are "no child labour problems" in Australia.⁹ Recent statements received from two young people who have been outworkers for some time indicate that this may be a serious issue in Australia. (Refer Appendix VI) **The Committee recommends the government takes a more active role to eradicate this problem.**

Homework

1.39 In its response to the Committee's report the government advised the following in respect to the ILO Convention on Homework:

The Government has certain obligations, in accordance with Article 19 of the ILO Constitution, concerning ILO Convention 177 and Recommendation 184 on Homework which were adopted by the International Labour conference in June 1996. These obligations include the tabling of the texts of the two instruments in the Australian parliament, together with a report on action proposed to be taken in relation to the two instruments. Australia is then required to report to the ILO that it has brought the instruments to the attention of the competent authority. As a federal State, Australia has until December 1997 to fulfil these obligations.¹⁰

1.40 The government has now advised that it was not able to meet this deadline because it did not complete its consultation with the States and Territories in time. The government also informed the Committee that it would be premature to provide the government's position on C177 at this stage.

1.41 The Committee feels the long delay in dealing with ILO Convention 177 and Recommendation 184 is unsatisfactory and the government should undertake to resolve the matter quickly.

Occupational Health and Safety Issues

1.42 The Committee reiterates its position that the occupational health and safety of outworkers is still a neglected problem. This important matter will require considerable effort

7 Letter from the Department of Workplace Relations and Small Business, dated 12 May 1998, p. 3.

8 Letter from the Department of Workplace Relations and Small Business, dated 12 May 1998, p. 3

9 Letter from the Department of Workplace Relations and Small Business, dated 12 May 1998, p. 2

10 Government response to the Committee's report, p.11.

by the key parties to introduce appropriate and workable intervention strategies that will improve the working environment for outworkers.

1.43 Dr Claire Mayhew, National Occupational Health and Safety Commission in association with Professor Michael Quinlan, University of NSW recently completed a study on OHS experiences of TCF factory-based workers and outworkers. Their findings revealed a higher instance of overuse injury among outworkers compared to factory workers.

1.44 The study found outworkers worked significantly longer hours and were paid much less than factory-based workers. There was overwhelming evidence that piecework, supported by low wage and a bonus payment system, resulted in short-term as well as chronic injury to outworkers. Outworkers also suffered more instances of occupational violence such as verbal abuse, threats and physical assaults. None of the 100 outworkers interviewed were given any OHS information and preventative advice.

1.45 Asian Women at Work Inc informed the Committee that outworkers not only suffer overuse injuries but also experience secondary health problems such as depression, anger and stress caused by isolation and lack of intellectual stimulus. They see a need for federal and state OHS legislation to be consistent, and to include outworkers in these Acts.

1.46 Dr Mayhew's study identified four strategies that would help reduce the instance of overuse injury and occupational violence against outworkers. These are:

- a) Development of a brochure on OHS in TCF machining work that is applicable for both factory-based and outworkers;
- b) The OHS duty of care responsibilities of middlemen, retailers/wholesalers and manufacturers using outworkers need to be identified, widely publicised and robustly enforced by the jurisdictions;
- c) Outworkers should be paid solely on the award rate without production bonus payments and with the standard benefits such as workers' compensation coverage; and
- d) Adherence to the *Code of Practice on employment and outwork obligations*, developed by the NSW government, and the TCFUA Homeworkers code of practice, is likely to promote improved OHS outcomes through more standardised working conditions.¹¹

1.47 The Committee strongly recommends that the National Occupational Health and Safety Commission (Worksafe Australia) examine Dr Mayhew's report with the view of implementing its recommendations in the very near future.

11 The effects of outsourcing upon occupational health and safety: *A comparative study of factory-based and outworkers in the Australian TCF Industry*, by Dr Claire Mayhew, Executive Summary. Printed by the National Health and Safety Commission in January 1998.

Collection of Statistical Data

The Committee notes the practical difficulties with its recommendation that the Australian Bureau of Statistics (ABS) conducts a comprehensive survey, in conjunction with the Australian Taxation Office (ATO), of the number of home-based workers across all industries. **However, the Committee still considers the information on the exact numbers of outworkers is essential for policy development, and recommends that the ABS survey scheduled for July 1999 includes specific questions on outworkers.**

1.48 In the interim the ABS should liaise with the TCFUA and community groups in contact with outworkers to collect accurate statistical data. The government should be aware that collection of statistical information is a requirement of the ILO homework convention C177.

English Language Training

1.49 It is very important that English language training is provided to outworkers. Dr Mayhew's study revealed that the majority of outworkers are new immigrants from East Asian countries. 'Middlemen' who speak their own language often dominate outworkers, subjecting them to both physical and mental abuse.

1.50 The Committee acknowledges the government's support of ongoing funding to the Workplace English Language Literacy programs and other language training programs directed at outworkers. It is essential that new migrants be targeted for language training as soon as they arrive in Australia and the classes include information on the industrial relations system and rights of workers in this country.

Taxation Compliance Issues

1.51 The Committee recommended in its initial report that the Australian Taxation Office (ATO) should take full advantage of the Reportable Payments System (RPS) to investigate taxation avoidance in TCF industries. The government responded that it has accepted the Committee's recommendation in an effort to reduce tax avoidance in the industry.

1.52 In November 1996 the Commissioner for Taxation established a Cash Economy Task Force to examine the cash economy to determine the compliance issues and how they can be addressed by the ATO. The ATO in response to the first report from Cash Economy Task Force created a number of national projects to monitor high risk industries and the clothing industry was identified as one of these high risk industries. Consequently, the ATO expanded its field presence, resulting in a significant increase in participation rates and lodgement figures within the TCF industry

1.53 The ATO is also aware that the use of "shell entities" in the industry causes many of the compliance problems, and is the main factor for the low participation rate in the RPS. Shell entities are companies with no established business premises, dummy directors and a very short life span. The ATO has been able to contain the problem but is still searching for a permanent solution:

Inroads into the non-compliance within the clothing industry have been made through the introduction of the RPS and extensive field activities. However, given the nature of the industry much remains to be done and the ATO is conscious of

this fact. To this end new approaches to compliance improvement are being sought.¹²

1.54 The Committee is pleased that the RPS is having an impact on reducing non-compliance with taxation laws in the clothing industry. **However, the Committee encourages the government to continue to develop ways to assist and encourage outworkers to become part of the legal system without reprisals for past non-compliance.**

Senator Jacinta Collins
Chair

12 Letter from the Australian Taxation Office, dated 18 May 1998, p. 2.