GOVERNMENT SENATORS' ADDITIONAL COMMENTS

Government Senators agree with the general thrust of the report and its general recommendations but would like to make some additional and dissenting comments in relation to specific areas mentioned in the report:

Government Assistance

The Minister for Workplace Relations and Small Business launched the outworker campaign on 18 June 1998.The bilingual help line will run for eight weeks, seminars have already been conducted for community groups and manufacturer seminars will be held in Melbourne and Sydney in late July. This will be followed up by targeted compliance activity to ensure that manufacturers understand and are complying with their award obligations.

Government Senators do not agree that industry assistance and support should only be provided to retailers and manufacturers who are signatories to the Homeworkers Code of Practice.

Deeming Outworkers as Employees

It is reasonable for an outworker to make a legitimate choice whether to be an employee or an independent contractor. Deeming provisions would eliminate that ability to choose, therefore deeming provisions in absolute terms are not supported.

It is acknowledged that there are problems regarding coercive or fake independent contract agreements entered into to avoid employment obligations, however, deeming provisions would also affect genuine arrangements. An approach to this problem such as the reverse onus of proof in the *Clothing Trades Award 1982* could be a more acceptable solution.

There are subsidiary problems associated with national deeming because such provisions are of limited worth if not universally applicable, especially for national operators. However, for some issues, benefits through use of the corporations power could be an improvement (eg action taken by the Commonwealth in relation to Australian Workplace Agreements, which are currently available to corporations only (outside Victoria and the Territories and Commonwealth employment) pending complementary State legislation).

In addition, the powers referred to the Commonwealth by Victoria do not extend to legislating with respect to independent contractors generally. The sole power referred in relation to independent contractors is power in respect of freedom of association. Referred powers only deal with specific subjects and are generally limited to 'employees' and 'industrial disputes' (ie employee-related disputes).

Government Senators believe that the issue of deeming provisions requires more than a partial response and it is appropriate that this issue be further considered by the Labour Ministers Council because a coordinated approach is preferred for this issue.

The Award review process

The Committee is aware that the following is an allowable award matter: "pay and conditions for outworkers, but only to the extent necessary to ensure that their overall pay and conditions of employment are fair and reasonable in comparison with the pay and conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises."

Opposition Senators assume that award simplification will result in changes to awards affecting the TCFUA's ability to prosecute companies. This is not an assumption which can be founded on the Government's legislation, nor is it appropriate to pre-empt the Commission's decision on this matter.

Furthermore, the Commission has a statutory obligation to review awards and it is inappropriate that the Committee recommend that it deal with awards in a way which is inconsistent with that obligation.

ILO Convention on Homework and Child Labour

The Australian Government has taken an active role on this issue, and will continue to do so, through its strong support for the development of the new ILO Convention, on the worst forms of child labour.

It is anticipated that the new convention will be adopted in 1999 and should become the ILO's main standard on child labour. It is hoped that, unlike the ILO's current standard on child labour (c.138, the Minimum Age Convention), the new Convention can be widely ratified.

Regarding ILO Convention 177 and Recommendation 184, in accordance with the Government's treaty-making policy, announced by the Minister for Foreign Affairs in May 1996, there are several pre-conditions before ratification of a Convention can be considered. These are:

- Consultation must take place with interested parties. In the case of ILO Conventions, this includes the States and Territories, the ACCI and the ACTU.

- There must be compliance with the provisions of the Convention.

Furthermore, it is usual Australian practice not to ratify ILO Conventions unless the State and Territory Governments have formally agreed to ratification.

It is therefore premature to talk of ratifying ILO Convention 177 without fulfilling these pre-conditions. The Government is undertaking the necessary consultations with a view to determining whether ratification should be pursued.

Occupational Health and Safety Issues

Government Senators recommend that the National Occupational Health and Safety Commission examine Dr Mayhew's report and consider implementing strategies a) and b) in the future.

Additional comments

Government Senators note the claims made by some manufacturers that the uncertainty relating to some of the obligations contained in industry codes and the threat of prosecution by the unions for minor technical breaches of the clothing award are forcing manufacturers to assemble the product offshore.

It should also be noted that clothing production is conducted by ethnic minorities in South Western Sydney and areas of Melbourne and these business activities are crucial to the work opportunities of these communities. Given this, it is appropriate to examine whether the code is having the alleged effect of increasing offshore manufacturing of clothing products.

Senator Alan Ferguson Senator Grant Chapman Senator Bill Heffernan