



Brotherhood  
of St Laurence  
Working for an Australia free of poverty

*Inquiry into the provisions of  
the Independent Contractors  
Bill 2006 and Workplace  
Relations Legislation  
Amendment (Independent  
Contractors) Bill*

Submission to Senate Employment, Workplace  
Relations and Education Legislation Committee

Brotherhood of St Laurence  
July 2006

## The Brotherhood of St Laurence

The Brotherhood of St Laurence (BSL) is a Melbourne-based community organisation that has been working to reduce poverty in Australia since the 1930s. Our vision is “an Australia free of poverty”. Our work includes direct service provision to people in need, the development of social enterprises to address inequality, research to better understand the causes and effects of poverty in Australia, and the development of policy solutions at both national and local levels. We aim to work with others to create:

- an inclusive society in which everyone is treated with dignity and respect
- a compassionate and just society which challenges inequity
- connected communities in which we share responsibility for each other
- a sustainable society for our generation and future generations.

Our services, generally targeted to people on low incomes, include employment services, family and children’s programs, community building initiatives, research and advocacy, and aged and community care services.

The Brotherhood of St Laurence (BSL) has an interest in the drafting of the Independent Contractors Bill and the Workplace Relations Amendment (Independent Contractors) Bill for two key reasons. Firstly, a concern that the legislation could impact adversely on outworkers in the textile and clothing industry who are amongst the most marginalised, low paid and vulnerable workers in Australia. Secondly, through our involvement in the textile industry as owners of a social enterprise, Hunter Gatherer, that manufactures and retails fashion garments. Hunter Gatherer was the first fashion retailer in Australia to become a signatory to the Homeworkers Code of Practice and become accredited as a No SweatShop retailer.

The BSL is keen to ensure that the proposed legislation does not undermine the established industry-wide mechanisms that address exploitation in the clothing industry — mechanisms that allow the BSL to fulfil its accreditation obligations and that do not contradict our organisation’s vision of an Australia free of poverty.

## Government commits to protecting outworkers

The Brotherhood of St Laurence would like to commend the Minister for Workplace Relations, Kevin Andrews, for his commitment to maintaining the status of textile clothing and footwear outworkers as employees under state legislation, and for retaining all existing protections for outworkers (media release 3<sup>rd</sup> May 2006). However, despite the Government’s public announcement and written assurances, we are concerned that, due to various loopholes for employers in the legislation, it may be difficult to uphold these commitments without simple amendments to the Bill, which are outlined in this submission. The BSL will be making comments relating to four key areas of the Bill:

- The maintenance of state laws protecting outworkers
- The exemption of outworkers from the operation of the Bill
- The need to ensure categories of records are consistent with existing monitoring mechanisms
- The provision of penalties where an employer tries to avoid outworker protections

## Maintain state laws that protect outworkers

In our view the Bill goes some way to maintaining state laws that protect outworkers; however, we have some key concerns as outlined below:

- The failure to maintain state laws that make a contract with an outworker void or unenforceable on the basis that the contract seeks to avoid industrial laws.
- The Bill only protects state laws that regulate a contract to which an outworker is a party. Due to the complexity of contract chains in the industry, many crucial parties such as fashion labels or contractors may not be covered by the regulations as they do not deal directly with outworkers.
- The state laws affecting outworkers are broader than those that just relate to a service contract. The Bill limits the preservation of laws that apply to a service contract or make provision in relation to such a contract.

Through its amendments to the *Work Choices* legislation, the Government has preserved state laws relating to outworkers by ensuring that the legislation did not exclude state and territory laws dealing with “matters relating to outworkers (including entry of a representative of a trade union to premises for a purpose connected with outworkers)”.

### Recommendation

The BSL recommends that an exclusion for outworkers in identical terms to those included in the *Work Choices* legislation is the most appropriate method for preserving state laws.

## Exempt outworkers from the operation of the Bill

The Brotherhood of St Laurence believes that, to ensure that outworkers in the clothing industry receive their lawful entitlements, such as protections for annual leave, hours of work, and overtime, they must be defined as employees.

The introduction of the category of “contract outworker” has jeopardised such principles as the recognition of outworkers as employees, which is embodied in Victoria’s Outworkers (Improved Protection) Act. Only pay is protected for so called “contract outworkers” in the legislation. There is no provision for “contract outworkers” to access superannuation, workers compensation, overtime pay, or reasonable hours of work.

The introduction of the “contract outworker” category creates a loophole for companies to contract out of federal protections maintained through *Work Choices* and exploit outworkers. This creates a situation where an outworker would have to prove they are an employee in order to argue for entitlements. For many outworkers in the garment industry this would be impossible, given the number of migrant women in the industry with limited language skills and resources required to enter into negotiations.

### Recommendation

The BSL recommends that Part 4 should be removed in its entirety.

## Monitoring mechanisms

As an accredited No SweatShop manufacturer, the BSL is concerned that reporting requirements underpinned in the Contract Outworker section of the Bill may undermine the operation of the Homeworkers Code of Practice (HWCP). In this section the categories of records that companies may be required to keep and make available for inspection, are different from that of the HWCP. This could potentially result in companies signed onto the HWCP being required to keep two sets of records. This creates duplication and potential confusion and undermines a company's capacity to adhere to the HWCP—an important instrument for protecting outworkers in this country.

### Recommendation

As above, the removal of Part 4 in its entirety

## Provide penalties for sham contracting arrangements

In relation to sham contracting, the BSL commends the Government for including provisions for sham contracts and penalties. However these provisions are weakened through;

- failure to provide specific provisions to ensure outworkers cannot be called independent contractors to avoid penalties,
- provision for employers to avoid penalty by proving that they reasonably believed the contract was not a sham,
- the creation of the “contract outworker” category.

### Recommendation

The BSL calls on the Government to insert an outworker-specific amendment in the *Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006*.

### For further information regarding this submission, please contact

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