Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

Submitter: National Office

Organisation: Textile, Clothing and Footwear Union of Australia

Address: 359 Exhibition Street MELBOURNE VIC 3000
Ground Floor, 28 Anglo Road, CAMPSIE NSW 2194

Phone: (03) 9639 2955

Fax: (03) 9639 2944

Email: kfawcett@tcfvic.org.au

SUBMITTED BY TCFUA NATIONAL OFFICE
SYDNEY
Ground Floor
28 Anglo Road
CAMPSIE NSW 2194
Tel: (02) 9789 4188
Fax: (02) 9789 6510

MELBOURNE
359 Exhibition Street
MELBOURNE VIC 3000
Tel: (03) 9639 2944
Fax: (03) 9639 2955

E-MAIL CONTACT
kfawcett@tcfvic.org.au

SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES COMMITTEE

INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT (WORKCHOICES) BILL 2005

SUBMISSION OF THE TEXTILE CLOTHING AND FOOTWEAR UNION OF AUSTRALIA

9 NOVEMBER 2005

TABLE OF CONTENTS

1. INTRODUCTION AND SUMMARY OF SUBMISSION

1. The Textile Clothing and Footwear Union of Australia (TCFUA) is an organisation of employees registered pursuant to the *Workplace Relations Act 1996*. Our membership consists of workers employed in the textile, clothing and footwear industry in Australia.

2. We feel compelled, in the interests of our members and employees in our industry, to make this submission to the Senate Employment, Workplace Relations and Education References Committee regarding the *Workplace Relations Amendment (WorkChoices) Bill 2005* ("WorkChoices Bill"). We also seek the opportunity to give evidence at the inquiry about the particular position of our members.

3. However, having first seen the 687 page Bill, and its accompanying 565 page explanatory memorandum one week ago, we are significantly hampered in our capacity to comprehensively deal with the provisions of the Bill and the effect of the Bill by the unreasonably tight deadline and short duration of the inquiry. Given the content of the Bill which we *do* comment on in this submission, it appears that avoiding close scrutiny of the Bill must have been the purpose behind the government truncating the inquiry.

4. Further, the government's attempt to restrict the subject matter of the inquiry to exclude elements which have been the subject of previous inquiries is disingenuous.

5. Firstly, the contents of the Bill differ in many respects from previous bills in relation to those elements which are excluded from the terms of reference. Unfair dismissal is a classic example – when before has a senate inquiry considered the abolition of unfair dismissal rights for employees employed by constitutional corporations with less than 100 employees Australia-wide? There has been no Bill which has previously sought to do this, so why should that proposal not be the subject of this inquiry?

6. Secondly, where previous inquiries have lead to recommendations, findings and consequent amendments, these amendments are not included in the

WorkChoices Bill. For example, it is true that there was a senate inquiry relating to the *Workplace Relations Amendment (Right of Entry) Bill 2004* (Right of Entry Bill) which reported earlier this year. As a consequence of evidence the TCFUA gave at that inquiry regarding the exploitation of homebased outworkers, the government accepted that amendments were necessary to the Right of Entry Bill, and drafted those amendments. However, these amendments have been left out of the WorkChoices Bill, as though the whole process never happened.

7. We wish to make it clear that our participation in this inquiry is not in any way intended to convey a view that we believe a legitimate, or genuine, process of review is being conducted. We strongly believe the opposite to be the case.

8. The focus of our submission will be:

   - To demonstrate how the only guaranteed conditions under WorkChoices are the minimum wage, annual leave (with 2 of 4 weeks being able to be paid out), personal leave and parental leave, with all remaining conditions only available to employees who have enough bargaining power to secure them;

   - To examine the myth about bargaining power in relation to employees in our industry, including examining the "labour shortage" which is said in government rhetoric to provide employees with limitless bargaining power, and the many other factors which mean our members never have the capacity to individually bargain on an equal level with their employer;

   - To describe the current industrial arrangements of Award-dependent employees in our industry, and illustrate the many ways in which their conditions will be severely eroded by the WorkChoices Bill;

   - To illustrate how the WorkChoices Bill will comprehensively dismantle the suite of State and Federal laws providing comprehensive protections for Australia's most vulnerable group of workers, outworkers in the clothing industry, including describing how the government have reneged on their commitment to preserve right of entry under the Victorian *Outworker (Improved Protection) Act 2003*; and

- To attach a number of submissions on behalf of employees who work in the TCF industry and who wish to have a voice in this process.

9. Whilst on one hand, the Bill seeks to reduce the protections available to workers to the bare minimum, on the other hand it seeks to reduce and eliminate the capacity of workers to use their best form of bargaining power – their capacity to bargain collectively as a union. There are so many provisions in the Bill which contribute to the project of hampering and frustrating the capacity of employees to be represented by their union that in the available time it is not possible to draw the Committee's attention to all of them. However, the following provision, found in Division 10 of Part XA of the Act, which deals with "*Freedom of Association*", says it all.

> ***s271 Meaning of Objectionable Provision***
> *(1) For the purposes of this Division each of the following provisions (however it is described in the document concerned) is an objectionable provision: ...*
> *(c) A provision that indicates support for persons being members of an industrial association...*

10. Section 272 then goes on to provide that a provision in an Award,[1] industrial instrument, agreement or arrangement (whether written or unwritten)[2] is void to the extent that it requires or permits, or has the effect of requiring or permitting, any conduct which would contravene this Part, including s271. "Permit" includes purporting to permit, having the effect of permitting, or purporting to have the effect of permitting.[3]

11. The effect of these provisions is to render any consensual support for union membership, in any form, void. These provisions encapsulate the intention of the Bill in this regard.

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[1] s272(1), p448
[2] s272(2), p448
[3] s271(3), p447

2. WORKCHOICES ALLOWS THE REMOVAL OF ALL BUT 4 MINIMUM CONDITIONS FROM EMPLOYEES

12. The cumulative effect, and no doubt the intention, of the many and complex provisions of the WorkChoices Bill is to provide that the only guaranteed conditions for workers are the minimum wage, annual leave, personal leave and parental leave, and to facilitate this arrangement in as many workplaces as possible.

2.1 THE AUSTRALIAN FAIR PAY AND CONDITIONS STANDARD

13. The starting point for this attack on workers' conditions is the so called "Australian Fair Pay and Conditions Standard" ("FPCS"), which is dealt with in Part VA of the Bill.[4] It's features have been widely advertised. The provisions relating to minimum wages, annual leave, personal leave and parental leave could all be the subject of lengthy submissions if time permitted, however it doesn't.

14. The inclusion of the so-called "Guarantee of maximum ordinary hours of work" is the most notably Orwellian item because it does not actually constitute a guarantee of anything. Whilst claiming to "lock in maximum ordinary hours of work of 38 per week, an accepted community standard"[5] it in fact allows an unlimited number of hours to be worked in a week, and contains no requirement that hours worked above 38 be subject to anything other than the ordinary rate of pay. It achieves this through provisions allowing the 38 hours to be averaged over "the applicable averaging period", allowing "reasonable" additional hours to be worked,[6] and by failing to guarantee any overtime payments.

15. In the absence of the guaranteed maximum hours standard, that leaves minimum wages (along with the likely collapsing of classification structures)[7], annual leave, personal leave and parental leave. These conditions apply to employees across Australia already. They represent nothing more than the barest of minimums.

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[4] p65
[5] Australian Government, *WorkChoices – A New Workplace Relations System*, p15
[6] s91C, p101

2.2 SOME WAYS IN WHICH EMPLOYERS CAN REDUCE CONDITIONS TO THE 4 MINIMUMS

16. The Bill provides many ways for an employer who is a constitutional corporation to move an employee onto an arrangement which only requires the employer to meet the 4 minimum conditions and nothing more.

2.2.1 BY USING WORKPLACE AGREEMENTS

17. The most effective short-term way in which an employer can reduce employee's conditions is to move employees onto an AWA under WorkChoices. The four minimum conditions are all that a Workplace Agreement under WorkChoices is required to contain,[8] other than a nominal expiry date[9] and the model dispute resolution clause[10], and provided that the agreement specifies that it is excluding any protected award conditions[11].

18. The fact that existing industrial arrangements are in place when the Bill comes into operation is no impediment to immediately implementing an efective WorkChoices AWA. This is true in each of the following cases:
    - where employees are currently covered by a Federal Award[12];
    - where employees are currently covered by a Federal Certified Agreement[13];
    - Where employees are currently covered by a pre-reform AWA[14]; Where employees are currently covered by an existing State Award[15]; and
    - Where employees are currently covered by a State Agreement.[16]

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[7] Part VA Division 2 subdivision G, p86
[8] s89A(2), p65
[9] s101, p176
[10] s101A, p177
[11] s101B(2)(c), p178
[12] s100B, p175
[13] Schedule 14 Part 2 Division 1 s3(1), p584
[14] Schedule 14 Part 3 s18(1), p591
[15] Schedule 15 Part 3 Division 1 s 33(2), p617
[16] Schedule 15 Part 2 Division 1 s5(2)(a), p601

19. A key protection for employers who wish to immediately have their employees sign an agreement providing for no more than the 4 minimum conditions can be found in s104 of the Bill. It relevantly provides:

> *(5) A person must not apply duress to an employer or employee in connection with an AWA.*
>
> *(6) To avoid doubt, an employer does not apply duress to an employee for the purposes of subsection (5) merely because the employer requires the employee to make an AWA with the employer as a condition of employment.*

20. On their face, these provisions allow an employer to require, as a condition of employment, both existing and new employees to sign an AWA. There is no distinction made in subsection (6) between an existing employee or a new employee. This is in direct conflict with the government's advertisements and claims.

2.2.2 BY CREATING A "NEW BUSINESS"

21. Another effective way for an employer to implement the 4 minimum conditions is to create a new business.

22. The definitions of a "new business" under section 95B should make it much easier for an employer to fit any new activities within the definition, especially for public entities such as the Commonwealth. "New business" is broadly defined as:

- A new business, new project or new undertaking that the employer in relation to the agreement is proposing to establish;[17] or
- In the case of a Commonwealth or State Government or public entity, "new activities proposed to be carried on by the employer"[18]

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[17] s95B(1)(a), p161
[18] s95B(1)(b) and s95A(1)(b), p160-1

23. Once the new business is established, the most effective way for an employer to implement the 4 minimum conditions is through an "employer greenfields agreement".[19] An employer greenfields agreement does not need to have any other party involved in working out what conditions to include in it. The employer can choose, on its own, what conditions will apply to the new business.

24. There is a well-known history of sham arrangements, phoenix companies and restructuring in the TCF industry, and these provisions will only encourage this further.

2.2.3 BY ACQUIRING A NEW BUSINESS THROUGH TRANSMISSION

25. Where an employer becomes the successor, transmittee or assignee fo the whole, or part of a business of another person, the provisions relating to transmission of business apply to the employer in relation to the employees it takes on from the old business.[20]

26. The fact that existing industrial arrangements were in place in the old business is no impediment to the employer immediately implementing a WorkChoices AWA upon the transmission taking place. This is true in each of the following cases:
    - where employees were covered by an AWA prior to the transmission[21];
    - where employees were covered by a collective agreement prior to the transmission[22];
    - where employees were covered by a federal Award prior to the transmission[23];
    - where employees were covered by a pre-reform Federal Certified Agreement prior to the transmission[24];
    - Where employees were covered by a pre-reform AWA prior to the transmission[25]; and

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[19] s96D, p163
[20] s123, p318
[21] s100(4)(b), p174
[22] s125B(2), p324
[23] s126(3)(a) and s126B(2), p330-1
[24] Schedule 16 Part 4 Division 1 s12(2), p640
[25] Schedule 16 Part 3 s7(2)(b), p636

- Where employees are covered by a transitional State Agreement or Notional Agreement preserving a State Award prior to the transmission.[26]

2.2.4 BY TERMINATING A WORKPLACE AGREEMENT

27. If an employer is bound by a Workplace Agreement which is approaching its expiry date, and the employer seeks to only be bound by the 4 minimum conditions, the employer can unilaterally terminate the Workplace Agreement by giving 90 days written notice of its intention to do so to the employee/s covered by the Workplace Agreement. Once the Agreement is past it's nominal expiry date, the employer can lodge a declaration with the Employment Advocate which has the effect of terminating the Agreement.[27] Once the Workplace Agreement is terminated, only the 4 minimum conditions apply.[28]

2.3 HOW THE 4 MINIMUM CONDITIONS COMPARE TO CURRENT AWARD PROTECTIONS

28. Below we have set out a table giving an example of the minimum entitlements of a clothing worker covered by the Clothing Trades Award 1999, compared to what that worker would be entitled to under WorkChoices.

29. The example clothing worker in the comparison is a lingerie/underwear machinist, who works for a clothing company with 10 employees. She has held the job for three and a half years. She works in a small factory without any dining or rest room facilities. She is the most experienced machinist, so she works as the Head of Table, in charge of a table of 5 machines. She is graded at Skill Level 2 under the *Clothing Trades Award 1999*. In the week in question she worked from 7.00am until 5pm each weekday. She is also the TCFUA delegate for the workplace.

30. The WorkChoices minimums set out in the table would apply if she was working for the same employer doing the same job, working the same hours at the same times, and signed a Workplace Agreement with the legal minimum requirements after WorkChoices.

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[26] Schedule 16 Part 5 Division 1 s19(3)(a), p645
[27] s103L, p198
[28] s103R, p202

Current Conditions	WorkChoices Conditions
38 ordinary hours @ $13.78 = **$523.64**[29]	45 ordinary hours @ $13.78 = **$620.01**
3 o/time hours @ $20.67 (1.5x) = **$62.01**	*No entitlement*
4 o/time hours @ $27.56 (2x) = **$110.24**	*No entitlement*
Head of Table (ready made) allowance **$10.20**	*No entitlement*
Meal Allowance $8.30 x 5 = **$41.50**[30]	*No entitlement*
Lack of Dining Allowance = **$3.55**[31]	*No entitlement*
Lack of rest room Allowance = **$3.55**[32]	*No entitlement*
17.5% leave loading = $366.55 or **$7.05** p/w[33]	*No entitlement*
Weekly income: $761.74	**Weekly income: $620.01**
1 weeks' notice of change to working hours[34]	*No entitlement*
1 hour unpaid meal break b/w11.30am and 2pm[35]	*No entitlement*[36]
3 x 10 minute paid meal breaks[37]	*No entitlement*
4 weeks annual leave (including allowances)	4 weeks annual leave at minimum rate[38]
8 days sick/carers' leave[39]	10 days personal leave[40]
Unpaid family leave[41]	Up to 2 days unpaid carer's leave at a time[42]
2 days bereavement leave[43]	2 days compassionate leave
12 months unpaid parental leave[44]	12 months unpaid parental leave
5 days Dispute Resolution training leave[45]	*No entitlement*
Accident Make-up Pay for up to 26 weeks[46]	*No entitlement*
Protection through outworker provisions[47]	*No entitlement*
3 weeks' notice of termination or pay in lieu[48]	3 weeks' notice of termination or pay in lieu[49]
7 weeks' severance pay if redundant[50]	*No entitlement*
9% Superannuation paid monthly[51]	9% superannuation[52]
Paid jury service[53]	*No entitlement*
4 hours paid hospital leave[54]	*No entitlement*
Protection against standowns[55]	*No entitlement*
Payment @ 2.5% for work on Public Holidays[56]	*No entitlement*

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[29] CTA clause 25.1 and 26.3
[30] CTA clause 34.4.4 and 27.3
[31] CTA clause 27.4
[32] CTA clause 27.5
[33] CTA clause 37.8.3
[34] CTA clause 32.1.3
[35] CTA clause 33.1
[36] s170AA provides for a 30 minute meal break after 5 hours only where there is no Award, Workplace Agreement or other industrial instrument prescribed by the regulations.
[37] CTA clause 33.2 and 34.4.3(a)
[38] Part VA, Division 4, p103
[39] CTA clause 39.1.6(b), 39.1.14
[40] Part VA, Division 5, p109
[41] CTA clause 39.1.18
[42] s93J, p115
[43] CTA clause 41
[44] CTA clause 40
[45] CTA clause 12.4
[46] CTA clause 44
[47] CTA Part 9
[48] CTA clause 22
[49] WRA s170CM
[50] CTA clause 23.3.2
[51] CTA clause 30
[52] superannuation guarantee
[53] CTA clause 42
[54] CTA clause 43
[55] CTA clause 24

31. It can be seen from the table that the guaranteed minimum conditions prior to Workchoices results in the clothing worker being $141.73 better off per week, along with providing several other extremely important additional protections which are simply not provided under WorkChoices.

2.4 HOW EMPLOYEES CAN AVOID HAVING THEIR CONDITIONS REDUCED

32. Given that the structure of the Bill is so clearly aimed at driving employees into workplace arrangements which only guarantee 4 minimum conditions, it is only those employees with genuine bargaining power who will be in a position to negotiate above these minimums.

33. There are a number of factors which apply in relation to our membership, and employees in our industry generally, which mean that they will rarely have equal bargaining power with their employer without the meaningful capacity to negotiate collectively as a union.

3. FACTORS AFFECTING BARGAINING POWER

3.1 THE MYTH OF "LABOUR SHORTAGE" IN THE TCF INDUSTRY[57]

3.1.1 REDUCTION IN EMPLOYMENT IN THE TCF INDUSTRY

34. In 2003 the Productivity Commission conducted a review of government assistance to the Textile, Clothing and Footwear industry, and in reporting its findings, made the following observations about the nature of the industry and the transitions which have taken place in it:

> *The TCF sector in Australia today is very different from that of the past. Traditionally, local activity was characterized by a series of manufacturing processes, with firms along the supply chain purchasing inputs from (mainly local) upstream suppliers and selling outputs to (mainly local) downstream customers. High tariffs and quota protection ensured the*

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[56] CTA clause 38.6

[57] This section deals with the formal industry only. The large informal sector of the clothing industry, and the effect of the laws on that sector, is dealt with below.

continued viability of firms along the chain, restricted the ability to source from competing offshore suppliers and reduced the incentive to find new (export) markets. Retailers played a largely passive role in selling final products designed and supplied by manufacturers with limited direct contribution to purchasing or production decisions....

In recent years, however, competition from emerging low-wage production centres, slowing growth in domestic consumer demand, large reductions in domestic assistance and increased concentration in retailing have collectively placed new pressures on local TCF manufacturers. Many firms have left the sector, while others have rationalized, merged and pursued new sourcing strategies to survive. As a result, aggregate domestic TCF manufacturing activity has contracted and import penetration has risen sharply....[58]

35. The report notes that the effect of these changes has been a reduction in aggregate output and employment in the sector:

"Industry restructuring and rationalisation, in combination with a sharp rise in import penetation to more than 50% of the total TCF market, have resulted in contractions in overall TCF manufacturing output and employment.... The sector's aggregate value added fell by more than 30% in real terms between 1990-01 and 2001-02, while employment was approximately 35% lower.

At the TCF industry level, clothing and footwear production has contracted the most with employment losses in these two industries accounting for 60% of the decline in total sectoral employment since 1991 (although there may have been some offsetting increase in the number of outworkers...). This experience has coincided with a surge in imports of clothing and footwear, with China the main source. It supplied nearly 70% of all Australia's imports of clothing and footwear in 2001-02."[59]

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[58] Productivity Commission, *Review of TCF Assistance Inquiry Report*, Report no 26, 31 July 2003, p9.
[59] Productivity Commission, p11

36. As far as jobs in the industry are concerned, in 1986 there were 116,000 workers in the Textile, Clothing and Footwear industries in Australia[60]. Fifteen years later, by 2000/2001, employment in the TCF industry had fallen to 57,800[61] or less than half that number. Four years on, tariffs have dropped further, imports have increased and we believe due to constant factory closures and redundancies, employment levels are lower than ever.

3.1.2 JOB LOSSES AND SUBSEQUENT EMPLOYMENT

37. Unsurprisingly, large numbers of the TCF workers who have lost their jobs have been unable to find other work, or comparable work.

38. A study of over 300 displaced TCF workers in August 2003 by the Centre for Work and Change in the Global Era WAGE[62] found that, where the average time since retrenchment was over three years:

- Only 54% of those surveyed had found work and only one in five had found work broadly commensurate with their former TCF job in terms of hours, pay and conditions.

- Mean weekly earnings of all respondents before retrenchment was $409.44. At the time of the survey, post-retrenchment, it was $360.24, with the upper income range truncated.

- Although 96% had worked full-time before retrenchment, only 21% now work full-time, with the mean number of hours worked per week after retrenchment being 27. One-fifth of the sample has found only casual employment after their jobs – approximately the same number as have found full-time employment.

- Eighty-one percent had received no instrumental assistance from their past employer, the Government or any agency since retrenchment.

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[60] ABS. TCFL Employment. ANZIC 4d by Financial Year.
[61] TFIA, *The Australian TCF Industry – A Profile*, http://www.tfia.com.au. n.b. includes leather
[62] Monash University, WAGE, Centre for Work and Society in the Global Era, *The Long Goodbye, TCF workers, unemployment and tariff deregulation*, August 2003.

3.1.3 LABOUR SHORTAGES AND BARGAINING POWER

39. Kevin Andrews and John Howard rely on labour shortages as their justification for why an individual employee is not disadvantaged by the requirement to independently bargain under WorkChoices. The premises is that an employee can bargain equally because there is an across the board shortage of people to fill jobs. According to Andrews:

> *"The reality is today that we've got a labour shortage. You've talked about it on your program, it's been in the media. That labour shortage is going to compound in the future and, in fact, some of the research that we've looked at suggests that in as little as four to five years, we could be facing a shortage of as many as 300,000 Australians. We know, for example, that the net growth in the work force in Australia for the entire decade of 2020 to 2030 will be less than what it is in one year currently. Now, that background means that we are looking for workers today. We will be in the future. As every business owner I meet right around Australia says, "I'm trying to get workers, I'm trying to hang on to the ones I have." That's the reality of the environment in which we're living today and that means that workers have quite a distinct advantage in terms of what sort of rates of pay they're paid, the overtime that they want, the penalty rates, all of those things.*[63]

40. The idea that a non-specific labour shortage is a complete answer to allegations that employees across the board will not have equal bargaining power with their employer is unsustainable in itself. However, it is fundamentally flawed as it relies on the assumption that where there is a labour shortage overall, employment is transferable from one sector to another. In the case of TCF workers, this is simply wrong. In fact it is impossible to redeploy much of the TCF workforce into other sectors of the economy, and many workers remain unemployed for the remainder of what would have been their working life.

41. According to economist David Bassanese: *"We can't teach car makers, for example, to become computer programmers overnight. In reality, such sectoral*

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[63] ABC, Lateline Transcript, Location: http://www.abc.net.au/lateline/content/2005/s1479055.htm Broadcast: 10/10/2005

change is often generational and comes at the cost of leaving a rump of newly redundant workers on welfare for the rest of their working lives."[64]

42. The productivity commission also accepts this to be the case:

> *"The characteristics of the TCF workforce suggest that many employees could find it difficult to secure alternative employment. This is likely to increase the economic and social costs associated with further downsizing and restructuring in the sector. ... [E]ducational levels are often low, skills are frequently basic and sector-specific, and employees are more likely to be older, female, married and less proficient in speaking English than in other parts of the workforce."*[65]

43. There are no hoards of employers lining up to offer the best conditions to secure the labour of TCF workers. In contrast to the glib reliance by the government on non-specific "labour shortages" to justify removing conditions for workers, this is the harsh reality that TCF workers will bring to the table when they "negotiate" with their employer under WorkChoices. In many cases, as far as the employee is concerned, it's this job or no job.

3.2 OTHER IMPEDIMENTS TO EQUAL BARGAINING

44. The majority of our members are engaged in or in connection with manufacturing work in the TCF industry. Formal Australian qualification levels in the TCF workforce generally are deemed low, with 74% of the TCF workforce having no formal qualification.[66]

45. We have a very high proportion of members from a non English speaking background. In the clothing industry, we estimate this to be as high as 80% of our members, and in the textile and footwear industries we estimate that up to approximately 60-70% of our members are from a non English speaking background.

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[64] *FTA: faster isn't better*, Weekend Australian Financial Review, 22-25 April 2005
[65] Productivity Commission Report, p33
[66] ABS 1996 Census Data

46. A large proportion of our membership including, we estimate, more than half of clothing workers but less than half of textile workers, are reliant on either Federal or State Awards to determine their terms and conditions of employment. The relevant full-time basic Award pay rates that apply to these members pursuant to the federal *Textile Award 2000*, the *Clothing Trades Award 1999* and the *Footwear Manufacturing and Components Industries Award 2000* ranges between approximately $26,057 and $32,235 per annum, with the vast majority at skill level 2, the salary for which is $27,272 per annum.

47. Further, those of our members who are clothing outworkers rely on the relevant State or Federal *Clothing Trades Award* in combination with specific outworker protections in State legislation in Victoria, South Australia, New South Wales and Queensland which deem Outworkers to be employees, deem various contracting parties for whom outworkers perform work to be employers, and provide that the minimum Award rates and conditions apply.

48. There is also a huge prevalence of sham arrangements and illegal below-award pay and conditions in our industry afforded to outworkers and in clothing sweatshops, which unscrupulous employers often claim to be by agreement with employees.

49. Workers in regional areas often also suffer from a particular imbalance of bargaining power. They regularly live in areas with high unemployment and very few other job opportunities. The economic power of regional companies, and the constant threats of closure or downsizing, often detrimentally effects their capacity to bargain fairly.

50. A large proportion of our members are women who are often in a weaker bargaining position than their male equivalents due to institutionalised gender discrimination within the industry.

51. It can be seen from the above that there are a number of features of our membership which affect their ability to *individually* genuinely bargain with an employer. These factors include levels of education, including simply the capacity to read and write in English, language difficulties, the effect of the contraction of the industry and fears about job security and fears about discrimination in the

workplace for speaking out. These fears are often worse amongst those with the least secure forms of employment such as casual employees.

52. Many of our members have overcome these factors by collectively bargaining, as a union, for a union agreement. In our experience this has been most common at larger workplaces, which, given the breakdown of our membership, are much more likely to be in the textile industry. It may also not be coincidental that the textile industry has suffered less from tariff reduction and import penetration in recent years. Further, there is a higher proportion of male employees in the textile industry, and a lower proportion of workers with a non-English speaking background.

53. Where our members act collectively as a union they have often able to negotiate above-Award conditions, especially in areas which are important in our industry such as redundancy entitlements and protection of accrued entitlements. Density of union membership at a workplace is also a key factor to obtaining better outcomes from the negotiations. However this has occurred in a context where the union's rights in the workplace have not been under anywhere near the sort of attack that WorkChoices represents. It is also worth noting that our members have been able to negotiate these conditions in a context where the existing no-disadvantage test has provided a far more comprehensive base from which to bargain.

54. There are others of our members, most of whom work at smaller workplaces, who are so fearful of discrimination, or losing their livelihood that they do not even wish to disclose to their employer that they are a union member, let alone have the capacity to bargain collectively or individually their terms and conditions of employment. In our experience, the number of members who do not want to disclose their union membership to their employer has been increasing. These workers are often women, and usually from a Non English Speaking Background. Given the untrammeled power which WorkChoices hands to employers, this is only likely to increase further.

55. Many of these members will never be in a position to bargain equally with an employer and for these employees, the combination of exploitation and fear for these workers mean that collective union agreement making at the workplace

level would be extremely unlikely. These workers need the protection of a comprehensive set of minimum terms and conditions of employment, either by legislation or through industry-wide awards. There is currently a capacity for the Union and employers in the industry to reach agreements which can apply on an industry-wide basis as an Award, (however in the Federal sphere, this is curtailed by the effect of section 89A of the current Act). However, given the ease with which an employee can be required to work under the 4 minimum conditions above under WorkChoices, it is likely that in a relatively short period of time, very few if any Award based employees will remain.

4. WORKCHOICES ATTACKS ON OUTWORKERS

56. The example of clothing outworkers is a case in point about the effect of the characteristics listed above on an employee's bargaining power relative to an employer. Examples of what happens when an employer "individually bargains" terms and conditions of employment with outworkers are set out in case studies annexed to the Victorian Ethical Clothing Council – Outworkers Lawful Entitlements Compliance Report, November 2004. They are contained in **Attachment 1**.

4.1 THE INFORMAL SECTOR OF THE CLOTHING INDUSTRY

57. In order to get a complete picture of the TCF industry and the vulnerability of workers within it, it is necessary to understand that the predominant form of manufacturing work in the clothing industry in Australia takes place in the "informal sector" and is performed by clothing outworkers.

58. There is controversy over the number of outworkers, which given the invisible nature of the work, is hard to determine. Estimates have ranged between 25,000[67], which the TCFUA considers to be a gross underestimate, to 330,000, an estimate made in 1995 by the TCFUA[68] and reflected in a Senate Committee Inquiry in 1996[69].

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[67] Productivity Commission, p182

[68] Textile, Clothing and Footwear Union of Australia, *The Hidden Cost of Fashion*, Report on the National Outwork Information Campaign, March 1995, at 5.

[69] Senate Economic Reference Committee, *Report on Outworkers in the Garment Industry,* (1996), executive summary

59. Even based on the most conservative estimate, outwork accounts for around 40% of employment across the whole TCF sector, and exceeds factory based clothing manufacture by about 25%.[70]

60. The clothing industry is structured around the use of Outworkers through a chain of subcontracting and outsourcing. It most commonly takes place in a standard "supply chain" structure. This chain of contracts has been described as follows:

> *"Typically, at the apex of this integrated system are major retailers that enter into arrangements with principal manufacturers for the latter to supply the retailers with clothing products. The principal manufacturer, with a substantial workforce, will give out orders for the production of clothing goods to a smaller manufacturer or offsite contractor or subcontractor. In some instances a fashion house, with a very small onsite workforce, will give out orders directly to the small manufacturer or offsite contractor. The orders for production from the principal manufacturer or the fashion house will then be successively handed down through a sequence of intervening parties, or 'middlemen' until the goods are finally produced by a small factory sweatshop, which usually passes the order for the actual production of the clothing product to an outworker working at home. The finished goods are then delivered back up the chain of contractual arrangements until they arrive back at the original principal manufacturers or the fashion houses."*[71]

61. The 1996 Senate Committee Inquiry into outworkers in the garment industry found that as many as seven parties may be involved in the chain, and notes that because the chain is so long, it has become easy for responsibility to be passed off from one element to another along the chain.[72] The growing influence of retailers further up the supply chain has concentrated TCF retailing with the effect that the retailer has the capacity to increase pressure on price and response time.[73] What in fact occurs through this process is that a price for the manufacture of the products is set at the top of the chain, which is successively

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[70] Productivity Commission, p182

[71] Nossar I, Johnstone R and Quinlan M, *Regulating Supply Chains to Address the Occupational Health and Safety Problems Associated with Precarious Employment: The Case of Home Based Clothing Workers in Australia,* (2004) 17 AJLL 137 at 145.

[72] Senate Economic Reference Committee executive summary.

eroded, often by non-productive parties, as the work moves further down the chain. What this means for TCF outworkers who actually perform the manufacturing of the products is detailed below.

62. There have been a number of studies into the nature of outwork in Australia in recent years.[74] The results of these studies are disturbingly consistent. They are summarised in the Victorian Ethical Clothing Trades Council Compliance Report as:

- *"low piece rates, which translate to low hourly wage rates which are contrary to industry award standards;*
- *late payment, part payment or non payment of wages;*
- *unreasonable and improper rejection of work by contractors/employers;*
- *lack of basic industrial entitlements such as paid annual leave;*
- *long working hours without appropriate penalty rates;*
- *impossible or unreasonable deadlines for completion of work;*
- *substandard working environments affecting occupational health and safety; and*
- *strain associated with combining work and family responsibilities"*[75]

63. The most recent such study is *"Home Sweat Home"*, the first stage of a two part study of outworkers in the textile industry in Victoria in 2001.[76] In this study, 119 outworkers took part in an administered survey and discussion. Some of the key findings set out in the report are as follows:

- 97% were women;
- 92% were born in Vietnam, only 2 were born in Australia;
- Over 80% had been outworkers for over 5 years;
- The average hourly rate of pay for the outworkers surveyed was $3.60 per hour;
- In 88% of cases wages were only used for essential expenses;

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[73] Productivity Commission, p10.
[74] See for example Victorian Ethical Clothing Trades Council, *Outworkers Lawful Entitlements Compliance Report*, November 2004, footnotes at page 9
[75] Victorian Ethical Clothing Trades Council, p9
[76] Cregan, C, *Home Sweat Home: Preliminary findings of the first stage of a two-part study of outworkers in the textile industry in Melbourne, Victoria*, Department of Management, University of Melbourne, November 2001.

- 75% were not usually offered regular work;
- 83% were not usually paid wages on time and 52% often did not receive wages at all;
- 45% did not know the pay before starting the job, or got paid a different amount from the agreed price;
- barely any of the outworkers received holiday pay (3%) or public holiday pay (2%);
- 62% spent 7 days a week sewing, and an additional 26% spent 6 days; and
- The largest group worked 10 hours per day (21%) and the second largest group worked 14-15 hours per day (18%).

64. In addition to industrial conditions, Outworkers report about three times the number of (both acute and chronic) injuries than their counterparts who work in factories. They are often subjected to occupational violence at the hands of middlemen in the contracting chain. Despite this higher incidence of injury and violence, studies have shown that outworkers simply do not make workers compensation claims.[77]

4.2 LAWS PREVENTING THE EXPLOITATION OF OUTWORKERS

65. The Victorian Ethical Clothing Trades Council report summarises what it refers to as "unique circumstances in the clothing industry" in relation to attempts to regulate the industry as follows:

    - *"lack of compliance with minimum legal employment standards by many employers of home-based clothing workers;*
    - *the hidden nature of outwork;*
    - *the ineffectiveness of existing methods of regulation to address this issue;*
    - *the preponderance of vulnerable workers, particularly south-east Asian women, with poor English language skills and education levels caught in the home-based clothing sector with adverse consequences to their income, health and wellbeing."*[78]

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[77] Nossar et al, p146

[78] Victorian Ethical Clothing Trades Council, p9-10

66. There has been regulation of outwork in Australia for many decades. Over recent years however, a number of regulatory innovations have been developed, in particular at State levels, which are directed towards and should have the effect of addressing the particular regulatory difficulties associated with the factors outlined above.

4.2.1 INDUSTRIAL AWARDS

67. Since 1919, every Award of an industrial tribunal dealing with the clothing industry in Australia has contained some form of regulation of outworkers. Originally (from 1919 to 1987) Awards were primarily concerned with prohibiting outwork, and the prescription of terms and conditions for the very few categories of legally permissible outwork."[79]

68. A useful summary of the history of federal Award making in respect of outworkers from 1919 to 1987 is contained in the decision of Riordan DP in *Re Clothing Trades Award 1982*.[80] Riordan DP observes in relation to this history that:

> *"The history of this award shows that industrial tribunals since the earliest days of conciliation and arbitration have been prepared to provide appropriate conditions to prevent the unfair exploitation of outdoor workers."*[81]

69. In 1987 the TCFUA made application to the Australian Industrial Relations Commission to vary the *Clothing Trades Award 1982* to insert provisions which would regulate the giving out of work by Respondents to the Award by limiting numbers of outworkers, ensuring minimum terms and conditions were afforded to outworkers, and create a registration and record keeping regime to allow scrutiny of the giving out of work. Riordan DP granted the "broad thrust" of the TCFUA's claim and himself proposed the inclusion of additional obligations on Award respondents.

70. Further variations to the Federal Award were sought by the TCFUA and employers by consent in 1995 in order to strengthen the existing award provisions in relation to the keeping of appropriate records by outworkers and employers and the inspection of those records by the TCFUA and relevant authorities. In the decision in that matter, DP Williams notes that "not much appears to have

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[79] Nossar et al, p143.
[80] *Re Clothing Trades Award 1982* (1987) 19IR 416 at 421 - 435

changed" in respect of outworkers conditions since the decision of Riordan DP. He notes the Commission's statutory duty to apply the principles of equity and fairness in the performance of its functions, and considers that it has an important role to play in the protection of the weak and vulnerable sections of the community. He states "*[i]t would be unconscionable for the Commission to fail to provide such protection as it can to one of the most exploited sections of society.*"[82]

71. Notably, the reforms to industrial relations introduced by the *Workplace Relations Act 1996*, whilst exempting a number of previously allowable matters to be contained in Awards, expressly contained as an allowable matter:

> " s89A(2)(t) - *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 establishment."*

72. In 1999 a full bench of the Australian Industrial Relations Commission considered the parts of the *Clothing Trades Award 1982* relating to outwork regulation in the context of an award simplification exercise. The Full Bench considered that, subject to a rewrite in plain English, the existing award provisions dealing with outworkers were allowable in their entirety as they were necessary in their entirety to ensure that outworkers overall pay and conditions of employment were fair and reasonable compared with the relevant award for those who perform such work at a commercial establishment.[83]

73. Similar provisions to protect outworkers and regulate and monitor the giving out of work by Award Respondents are also contained in various state Awards, detailed below, and since 1 January 2005 the Federal *Clothing Trades Award 1999* has had effect as a common rule award in Victoria by virtue of the *Clothing Trades Victorian Common Rule Award 2005.*

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[81] *Re Clothing Trades Award 1982*, p420.
[82] C0037 CRA Dec 1610/95 M Print M3574, *Clothing Trades Award 1982*, Williams DP, 12 June 1995
[83] C0037CRA Dec 232/99 S Print R2749, *Clothing Trades Award 1982*, McIntyre VP, Duncan DP, Blair C, 12 March 1999.

4.2.2 RECENT REGULATORY DEVELOPMENTS FOR OUTWORKERS

74. Set out below are details of the regulatory regimes in four states, which have a number of common features in some or all of the states, directed at addressing the particular issues associated with the regulation of outwork in the clothing industry.

75. The common features found in the various instruments can be summarised as follows:

- **Award coverage**: that sets the substantive minimum pay and conditions for employees.

- **Deeming Provisions**: which deem outworkers to be employees, thereby providing that they are automatically entitled to the same terms and conditions as they would be as factory based employees without needing to engage in any jurisdictional argument. In some states this extends to other laws such as OHS laws.

- **Minimum Contract Provisions:** which are similar to deeming provisions but which provide that outworkers are entitled to the same minimum conditions as an employee irrespective of their status of employee or contractor.
- **Transparency/ Registration/ Record Keeping Provisions**: which have the effect of requiring those more transparent parts of the contracting chain to have records relating to the giving out of work, which allows those less transparent parties including outworkers to be ultimately identified and their conditions to be monitored.
- **Capacity to recover payment up the contractual chain**: by providing for simplified recovery methods for underpayments, along with the capacity to claim against an "apparent" employer or other contracting parties along the contractual chain.
- **Right of Entry and Inspection Provisions:** which allow the TCFUA and Inspectors to monitor compliance with other parts of the regulatory scheme
- **Mandatory Code Provisions:** which allow State governments to implement mandatory codes to further implement the types of measures outlined above.

Victoria

76. In Victoria, the interrelationship between the existing Federal *Clothing Trades Award 1999*, the introduction of the *Clothing Trades Victorian Common Rule Award 2005* as of 1 January 2005, the introduction (and amendments operable from 1 August 2005) of the *Outworker (Improved Protection) Act 2003* and the *Workplace Relations Act 1996* Part XI means that all outworkers in Victoria are covered by Award minimum conditions, irrespective of whether they are considered an employee or a contractor.

77. As described above, the Federal ***Clothing Trades Award 1999*** sets out terms and conditions of employment for outworkers and regulates the contracting out of work in the clothing industry in Victoria and puts in place a registration, record keeping, inspection and contracting regime throughout the contracting chain. From 1 January 2005 its terms have operated as a common rule Award in Victoria, the *Clothing Trades Victorian Common Rule Award 2005* and accordingly it applies to outworkers and the contracting out of work in the clothing industry and to named Respondents as well as all other employers in the clothing industry.

78. The ***Outworker (Improved Protection) Act 2003***, with the inclusion of amendments which will be operable from 1 August 2005, deems all outworkers including "contractors" to be employees for the purpose of that Act and other specified laws including state laws regulating public holidays, long service leave and occupational health and safety laws. It makes principal contractors liable for the payment of outworkers down the contracting chain and provides that where an outworker is *engaged* by a person, the outworker is entitled to the same benefits, terms and conditions as those in the federal Award (except where the same kind of entitlement or obligation is given or imposed by a Federal Award or Commonwealth Act).

79. The ***Workplace Relations Act 1996*** **Part XI** provides that any contract outworker in Victoria receives no less than the minimum rate of pay provided by the relevant federal TCF award to the work being performed.

New South Wales

80. In New South Wales, conditions for outworkers and the contracting out of work in the clothing industry in New South Wales are again protected by a range of industrial and legislative instruments, the combination of which ensures that all outworkers, regardless of their status as employees or contractors, are entitled to the same minimum conditions and enforcement mechanisms.

81. The Federal ***Clothing Trades Award 1999*** sets out terms and conditions of employment for outworkers and the contracting out of work in the clothing industry in NSW and contains a record keeping regime throughout the contracting chain. It operates in respect of named employer respondents to the Award.

82. The NSW ***Industrial Relations Act 1996*** includes provisions which deem all outworkers to be employees, make principal contractors liable for unpaid remuneration of employees of a subcontractor and which set up a regime for outworkers to make unpaid remuneration claims against an actual and apparent employer.

83. The NSW ***Clothing Trades (State) Award*** applies as a common rule award by virtue of section 16 of the *Industrial Relations Act 1996* and accordingly applies to outworkers and the contracting out of work in the clothing industry in NSW and employers in the industries and callings set out in the Award, other than those covered by the federal award.

84. The NSW ***Industrial Relations (Ethical Clothing Trades) Act 2001*** provides for the implementation of a mandatory code of practice for the purpose of ensuring that outworkers and contractor outworkers in the clothing industry in NSW in the clothing trades receive their lawful entitlements. The code comes into effect from 1 July 2005. The Act makes failure to comply with the mandatory code an offence, and incorporates and applies various provisions from the *Industrial Relations Act 1996* in order to provide for enforcement of the code.

Queensland

85. In Queensland, conditions for Outworkers and the contracting out of work in the clothing industry in Queensland are protected by one or more of the following:

86. The Federal ***Clothing Trades Award 1999*** sets out terms and conditions of employment for outworkers and the contracting out of work in the clothing industry in Queensland and contains a record keeping regime throughout the contracting chain. It operates in respect of named employer respondents to the Award.

87. The Qld ***Industrial Relations Act 1999*** deems all outworkers as employees, provides for recovery of wages and superannuation by outworkers from their apparent employer, make wages owed by a subcontractor a first charge on the amount payable by the prime contractor and provides for the development and enforcement of a mandatory code of practice.

88. The Qld ***Clothing Trades Award – Southern and Central Divisions 2003*** and ***Clothing Trades Award- State (Excluding South East Queensland) 2003*** set out terms and conditions of employment for outworkers and the contracting out of work in the clothing industry and regulate the giving out of work for employers. They are common rule awards and they apply to all outworkers and employers in the callings set out within the area they cover, other than those covered by the federal award.

South Australia

89. In South Australia, conditions for Outworkers and the contracting out of work in the clothing industry in South Australia are protected by one or more of the following:

90. The SA ***Fair Work Act 1994***, amended by the *Industrial Law Reform (Fair Work) Act 1994* which came into effect on May 16 2005, contains provisions which facilitate the extension of the operation of the Act to all outworkers, and which provides for recovery of remuneration by outworkers from their employer and the responsible contractor and provides for the development and enforcement of a mandatory code of practice.

91. The Federal ***Clothing Trades Award 1999*** sets out terms and conditions of employment for outworkers and the contracting out of work in the clothing industry in South Australia and sets out a record keeping regime throughout the contracting chain. It operates in respect of named employer respondents to the Award.

92. The SA ***Clothing Trades Award*** sets out terms and conditions of employment for outworkers and regulates the contracting out of work in the clothing industry in South Australia and the giving out of work by employers. It is a common rule award and applies to all employers and employees in the industry it covers.

93. It can be seen from the preceding paragraphs that there are vast similarities between the various systems. It is also apparent that these regimes have not arisen by accident. In fact they are the product of years of development directed at the particular regulatory issues associated with eliminating the exploitation of outwork. Many of the developments are very new and have only just come into operation. We understand that other jurisdictions are committed to implementing similar provisions. The TCFUA considers that these new developments present the best opportunity yet to attack the exploitation of outworkers.

94. However, it is now clear that these protections will be at best decimated and at worst eliminated by the effect of WorkChoices and that these vulnerable workers will be left without protection.

4.3 WORKCHOICES AND OUTWORKER PROTECTIONS

4.3.1 FEDERAL AWARD PROTECTIONS FOR OUTWORKERS

95. Under WorkChoices, outworker wages, annual leave entitlements, classifications personal leave and parental leave would be determined by the Australian Fair Pay Commission (AFPC). All *employee* Outworkers will be entitled to the minimums as determined by the AFPC.[84]

96. The Bill provides that employee outworker "*conditions*" will continue to be an allowable matter in Federal Awards – described in the same way as existing section 89(A)(2)(t).[85] However, this is immediately qualified by a proviso that "*restrictions on the engagement of independent contractors and requirements relating to the conditions of their engagement*" is ***not*** an allowable matter within the meaning of subsection 116(1).[86] The whole structure of these provisions is

[84] Part VA – p65
[85] s116(1)(m) – p286
[86] s116B – p288

designed to give the *appearance* of providing a protection for outworker conditions, whilst failing to do so in substance.

97. Outworker "conditions" as defined above, and subject to the same limitations, will be a so called "*protected award condition*". This means that where a person's employment is subject to a workplace agreement, and the "*protected award condition*" would have had effect in relation to the employment the person if it wasn't for the agreement, the "*protected award condition*" is taken to be included in the workplace agreement and have effect in relation to the employment of the person. However, this can expressly overridden by an agreement as it is "*subject to any terms of the workplace agreement that expressly exclude or modify all or part of them*".[87]

98. Further, all Federal Awards will be "*rationalised*" by the Australian Industrial Relations Commission in accordance with a written request from the Minister which must specify the "*process*", the "*principles to be applied*" and the time by which the exercise must be completed. The principles to be applied include, subject to the Act, which awards, the extent of coverage of awards and the matters which may and may not be included in awards. The Commission can make, vary or revoke awards in this context.[88]

99. In summary, the effect of the above provisions appears to be as follows:

- Employee outworkers' pay, classification, hours of work, annual leave, personal leave and parental leave will be determined by the AFPC. There will be no limits on hours worked.

- Whilst outworkers' conditions ostensibly remains an "allowable matter" for Federal Awards, given that the vast majority of the current provisions regulate independent contracting (ie all provisions relating to the giving out of work) they are made unallowable by section 116B and likely to be removed through further award simplification.

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[87] s101B – p177
[88] s118, s118E, 118F, 118J and 118K - p299-302

- Whichever parts of the outworker protections remain in the Award are subject to alteration at the discretion of the Minister as part of the Award rationalisation process.

- Insofar as they are "*protected award conditions*", the parts of the Award which regulate the giving out of work to non-employees will arguably not be "read into" workplace agreements because they will not "*have had effect in relation to the employment*" of the person making the workplace agreement. They instead have the effect of regulating the conduct of the employer in relation to giving out of work to others who are not necessarily employees.

- In any event, an employer can avoid the obligations entirely by expressly excluding award conditions in its workplace agreements with employees.

- The combination of these aspects of the Bill amounts to effectively abolishing the current Federal Award protections in relation to outworkers and the giving out of work in the clothing industry, and to the extent they remain, rendering them ineffective and inoperative.

4.3.2 STATE AWARD PROTECTIONS FOR OUTWORKERS

100. Under WorkChoices, where a term or condition of employment of an employee was regulated under a State Award immediately before the commencement of WorkChoices, and no State Agreement applied, a "*notional agreement preserving state awards*" ("Notional Agreement") will be created. The Notional Agreement would bind the employer, employees and unions previously bound by the State Award.[89]

101. A Notional Agreement will contain terms of the State Award or of a State industrial law which applied to a person prior to WorkChoices[90] however such a term which contains "*prohibited content*" will be void.[91] Prohibited content is not spelled out in the legislation, instead it will be set out in the regulations.[92] However, the government's *WorkChoices* booklet provides that prohibited content

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[89] Schedule 15 Part 3 Division 1 s31 and 32, p614-615
[90] Schedule 15 Part 3 Division 1 s35 – p618
[91] Schedule 15 Part 3 Division 1 s38 – p619
[92] s101D – p180

includes, amongst other things, "*restricting the use of independent contractors or on-hire arrangements*". Further, terms in Notional Agreements which deal with the same subject matter as a Fair Pay and Condition Standard ("FPCS") will not be enforceable.[93]

102. Once a Notional Agreement comes into operation, any function that a state IRC would have performed in relation to the State Award can no longer be performed by the state IRC. The function can only be performed by the AIRC "*by agreement*" between "*the employer and the persons bound by the notional agreement*", except where that function involves resolving a dispute over the application of the agreement, in which case the model dispute resolution procedure, which is read into the Notional Agreement, will apply.[94]

103. Notional Agreements cease being in operation after three years, or if replaced by a workplace agreement or if the employee/employer becomes bound by a Federal Award.[95] It is unclear what will happen where a notional Agreement ceases to operate and is not replaced by a workplace agreement or federal award. The government's WorkChoices booklet says that "if the parties have not made a new federal agreement during this period, they will move to the appropriate federal award for their industry"[96]. However there does not appear to be any specific facility for this to occur in the Bill, other than general provisions about "*rationalised*" Awards being able to be binding on a particular industry or apply to particular kinds of work[97] and provisions allowing additional employers to be bound to Awards in particular, limited circumstances.[98]

104. Outworkers Conditions which originated in State Awards, and are included in Notional Agreements, also constitute a "*protected condition*" in the same way as, and subject to the same limitations set out in, Federal Award Outworker Protections. Like "*protected conditions*" from Federal Awards, these are taken to be included in workplace agreements however only when they "*have effect in*

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[93] Schedule 15 Part 3 Division 1 s38 – p619
[94] Schedule 15 Part 3 Division 1 s36-7 – p619
[95] Schedule 15 Part 3 Division 1 s33 – p 617
[96] WorkChoices Booklet p58
[97] s118I – p302
[98] Part VI Division 6 – p310

relation to the employment of the person" and only "*subject to any terms of the workplace agreement that expressly exclude or modify all or part of them*".[99]

105. In summary, the effect of WorkChoices on State Award Outworker Protections will be as follows:

- Employee outworkers' pay, classification, annual leave, personal leave and parental leave will be determined by the AFPC. There will be unlimited hours of work.

- Insofar as they do not constitute prohibited content, outworkers' conditions will become a term of a Notional Agreement binding an employer who was bound by a State Award. However, given that a significant portion of the current provisions regulate independent contracting (ie all provisions relating to the giving out of work) it appears they are likely to constitute prohibited content and therefore be void.

- The Federal AIRC will only be able to assume the Board of Reference functions in State Awards if the parties to the Notional Agreement agree that it can.

- After 3 years the Notional Agreement will cease operating. It is stated by the government, but not apparent from the Bill, that the most relevant Federal Award will then apply.

- Outworker conditions from State Awards will also be so called "*protected award conditions*" however only insofar as they do not regulate independent contracting, and subject to the same restricted application as in relation to "protected conditions" from Federal Awards.

- The combination of these aspects of the Bill amounts to effectively abolishing the current State Award protections in relation to outworkers and the giving out of work in the clothing industry, and to the extent they remain, rendering them ineffective and inoperative.

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[99] Schedule 15 Part 3 Division 1 s52 – p629

106. Therefore the effect on State Award Outworker Protections will ultimately be the same as that for Federal Award Outworker Protections.

4.3.3 CURRENT LEGISLATIVE PROTECTIONS FOR OUTWORKERS

State deeming laws and other protections

107. State legislation which deems outworkers to be employees is expressly overridden by WorkChoices in the case of In New South Wales, Queensland and South Australia.

108. Section 7C of the Bill provides:

"This Act is intended to apply to the exclusion of all the following laws of a Sate or Territory so far as they would otherwise apply in relation to an employee or employer:

(a) A state or territory industrial law…"

109. Section 4 of the Bill defines "*state or territory industrial law"* to include:

1. Any of the following State Acts:

(i) the Industrial Relations Act 1996 *of New South Wales*

(ii) the Industrial Relations Act 1999 of *Queensland*

…

(iv) the Fair Work Act 1994 *of South Australia…*

110. Accordingly, outworkers in those states are no longer entitled to have their employment status automatically recognised under WorkChoices.

111. Along with deeming laws, other laws which allow outworkers to recover unpaid monies from parties further along the contractual chain, and provisions allowing for the development of a mandatory industry code, are contained in a number of the State Acts listed in section 4 of the Bill, and would all be abolished.

State and Federal Right of Entry laws

112. The current and previous rights of entry in State and Federal laws have been instrumental to the union's work in investigating clothing companies for breaches of the outworker provisions in the relevant Federal and State Awards. The union has a recognised role in promoting compliance in the industry through this work of investigation and subsequently prosecution.

113. Commonly, the union does not have a union member working at a company which is being investigated, and commonly the breach which the union investigates does not relate to a union member.

114. Section 7C of the Bill provides that WorkChoices is intended to apply to the exclusion of specified laws of a State or Territory which includes:

"a law that entitled a representative of a trade union to enter premises for a purpose other than a purpose connected with occupational health and safety"[100]

The effect of this provision is to exclude all State and Territory laws granting union right of entry other than in relation to Occupational Health and Safety. In relation to Occupational Health and Safety right of entry, state laws will be qualified by the provisions of WorkChoices.

115. Union rights of entry are significantly curtailed by WorkChoices. In particular, the following limits are placed on right of entry:

- In order for the Union to exercise right of entry to investigate a suspected breach of the Act or a collective agreement to which it is a party, there must be one or more member/s of the union carrying out work on the premises and the suspected breach must relate to the work of the member/s.[101]

[100] s7C(e) – p24
[101] S208(1) – p403-4

- In addition to the above, in order for the Union to exercise right of entry to investigate a suspected breach of an AWA there must be a written request from an employee who is a party to the AWA.[102]

- The union must give notice to the employer of the particulars of the suspected breach in advance of the entry[103]

- The capacity to interview employees in relation to a suspected breach is limited to employees who are members or eligible to be members of the union.[104]

- The capacity to inspect records is limited to records relating to union members only without an order from the AIRC to the contrary.[105]

- The union must conduct interviews in a room of the employer's request and must take the route specified by the employer to get there.[106]

- The capacity to enter a workplace to hold discussions with employees is eliminated altogether unless the employees are covered by an award or collective agreement which binds the union.[107]

116. Leaving aside the question of whether any of the Award protections regulating the giving out of work will survive WorkChoices, it is clear that the combination of these limitations will render the union's work in relation to prosecuting companies for breaches of the outworker provisions almost impossible to do, as we will rarely have a right to enter premises to inspect records under the Act.

Union's Capacity to conduct Prosecutions for Award Breaches

117. Again, leaving aside the doubts over the future of the Award provisions themselves, along with the almost impossible task of conducting inspections under the proposed right of entry laws, the union's capacity to prosecute for a

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[102] s208(2) – p404
[103] s210(2)(c) – p407
[104] s208(2) – p404
[105] s208(4),(5) and (9) – p404-5
[106] s212(3) – p408

breach of the Outworker provisions in the Award is directly removed in the vast majority of cases.

118. WorkChoices provides that for the union to have standing to apply for penalties or remedies for contravention of an Award, the union must have a member who it is entitled under its rules to represent employed by the employer it wishes to prosecute.[108]

119. Generally, companies who employ union members are much better at complying with their Award obligations. It is well known that the union's prosecution activity has gone well beyond workplaces where members of the union work. It is for this reason the union has developed its unique and legitimate role in promoting compliance across the breadth of an industry renowned for its unscrupulous and often transient employers.

120. Restricting the union's capacity to prosecute in this way will allow these unethical employers to breach their obligations free from any impediments and will allow them to obtain an unfairly advantage over those ethical companies who abide by their legal obligations by exploiting outworkers.

Part XVI – Contract Outworkers in Victoria in the textile, clothing and footwear industry

121. Currently, the WRA contains a minimalist requirement that "contract" outworkers in the clothing industry in Victoria are entitled to be paid as if they had completed the work as an employee. No other entitlements or benefits are protected other than the rate of pay.

122. Whilst these provisions have not been removed by WorkChoices, in substance they do nothing more than protect the minimum wage rate of an outworker. They negate the protections of outworkers' comprehensive rights as employees and instead formalise the capacity to avoid providing these comprehensive protections to outworkers. The long hours, shift work, weekend work and work on public holidays, the unsafe nature of the work, the irregularity of

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[107] s221 – p412
[108] s177AA(1)(item 3) – p387

the work, the difficulties getting paid, and the generally poor conditions notorious amongst outworkers are squarely ignored by this provision.

4.4 GOVERNMENT BACKFLIP ON RIGHT OF ENTRY COMMITMENT

123. The TCFUA made a submission to the Senate Employment, Workplace Relations and Education Legislation Committee Inquiry into the *Workplace Relations (Right of Entry) Bill* 2004.[109] In that submission we opposed the Bill in its entirety. However, the TCFUA went on to submit that if the Bill is to be passed, it ought to be amended to reflect the special situation of outworkers in respect of union right of entry.

124. The submission, along with the evidence of Michele O'Neil to the Inquiry[110], details how the special situation of outworkers in respect of union right of entry arises from:

- the structure and nature of the clothing industry, which results in widespread exploitation and vulnerability amongst outworkers;

- the unique role that the TCFUA plays in investigating and prosecuting employers who fail to meet their obligations in respect of outworkers and the lack of any other body, government or otherwise, resourcing the enforcement of outworker laws and conditions and protecting the integrity of the regulatory system; and

- the absolute indispensability of union right of entry laws to allow the TCFUA to enter premises to inspect records and obtain information in this process.

115. Accordingly, the TCFUA submitted that in order to address outworkers' special situation, the protections for outworkers and existing union right of entry provisions in:

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[109] TCFUA Submission to Senate Employment, Workplace Relations and Education Legislation Committee Inquiry into the provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004

[110] Official Committee Hansard, Senate Employment, Workplace Relations and Education Committee, Reference Workplace Relations Amendment (Right of Entry) Bill 2004, Friday 18 February 2005, Canberra, page 58

- the Federal *Clothing Trades Award* or any similar subsequent award;
- the Victorian *Outworkers (Improved Protection) Act 2003* or any similar legislation in other states or territories; and
- the *Workplace Relations Act 1996*

should be unaffected by the proposed legislation and have continuing operation.

125. James Smythe, Chief Counsel of the Department of Employment and Workplace Relations gave evidence at the Inquiry which included an acknowledgment of this special situation for outworkers:

"Following a number of concerns raised by submissions to this inquiry, the minister has decided to consider some possible amendments to aspects of the bill. These aspects are ... the maintenance of the existing rights of union officials to enter premises, pursuant to the Victorian Outworkers (Improved Protection) Act 2003..."[111]

126. This acknowledgment was noted and supported by Government Senators in the Majority Report of the Inquiry[112] and the Government then released proposed amendments to the Right of Entry Bill which relevantly had the effect of preserving the rights of entry contained in the Victorian *Outworkers (Improved Protection) Act 2003* (**Attachment 2**).

127. This was a welcome advance on the Government's previous position as it involved an acceptance by the Government of the special situation of outworkers and the requirement for union right of entry to protect outworkers outlined in the TCFUA submission and evidence, however the TCFUA believed it needed to be replicated to protect outworkers in other states, and outworkers covered by Federal laws and supported an opposition amendment which achieved this (**Attachment 3**).

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[111] Official Committee Hansard, Senate Employment, Workplace Relations and Education Committee, Reference Workplace Relations Amendment (Right of Entry) Bill 2004, Friday 18 February 2005, Canberra, page 78

[112] Senate Employment, Workplace Relations and Education Legislation Committee, Provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004, March 2005, page 6

128. Nothing has changed in relation to the situation of outworkers and the importance of existing right of entry laws in relation to protecting their position. However, the Government, without explanation, has changed its position as the effect of the WorkChoices Bill is to override right of entry under the Victorian *Outworkers (Improved Protection) Act 2003*.

4.5 AMENDMENTS TO THE BILL TO PROTECT OUTWORKERS

129. In order to protect outworkers' conditions, a separate Part should be included in the Bill to deal with the regulation of outwork in the clothing industry. This part should override any conflicting provisions in the remainder of the Bill.

130. The objects of the part should include:

- The elimination of exploitation of outworkers in the clothing industry;
- To provide protection for what has universally been recognized as a class of extremely vulnerable workers;
- To provide for uniform rights for outworkers as employees and obligations upon those who engage outworkers, irrespective of the "label" given to the particular contractual arrangement of an outworker;
- To provide for the continuation of regulation, inspection and enforcement of the provisions through right of entry powers and prosecution rights for the TCFUA; and
- To prevent the avoidance of obligations through sham contractual arrangements by making provision for outworkers to recover unpaid monies from parties further up the contractual chain;

131. The new Part should contain a definition of outworker involving the performance of clothing work in a private residence or other non-commercial premises, and which does not contain a requirement that an outworker be an

employee, and which does not require that a person perform work for someone else's business as part of the definition. For example the definition in Victoria is:

> *"Outworker" means a person engaged, in or about a private residence or other premises that are not necessarily business or commercial premises, to perform clothing work*

Definitions will also be required for "clothing work", "employer" and other terms.

132. The new Part should deem all outworkers to be employees for the purpose of the Bill and other Federal and State laws.

133. The new Part should incorporate the existing Federal Award provisions and ensure that they apply to all persons in the clothing industry who directly or indirectly engage people to perform clothing work. The Part should provide that there is no capacity for a person to contract out of these provisions, and no other industrial instrument, either during its life or upon its expiry or termination, can diminish these provisions.

134. The new Part should enshrine existing TCFUA rights of entry and inspection in relation to outworkers under existing federal and state laws and awards. A similar amendment to that drafted by the opposition in relation to the *Workplace Relations (Right of Entry) Bill* could achieve this (Attached).

135. The new Part should preclude entering into an AWA with an outworker.

136. The new Part should provide that outworkers' terms and conditions of employment are no less favourable than those currently contained in the Federal Clothing Trades Award, including any improvements in wages and conditions granted through the Australian Fair Pay and Condition Standard.

137. This includes maintaining the no-disadvantage test for any collective agreement covering an outworker, along with a transparent process of scrutiny prior to the collective agreement coming into effect.

138. The new part should include provisions like those in Victoria, NSW, Queensland and South Australia providing for recovery of unpaid monies up the contracting chain, and providing for the monitoring of the industry by an Ethical Clothing Council, and providing for the development and implementation of a mandatory industry code of practice.

139. The new part should explicitly preserve state laws relating to outworkers and provide that the federal laws are complimentary.

5. SUBMISSIONS FROM WORKERS IN THE INDUSTRY

138. Attached to this submission (**Attachment 4**) are a number of submissions which have been forwarded to the TCFUA from our members and other workers in the industry who wish to have their voices heard in the Senate inquiry. Many of them wish to remain anonymous. We urge the Committee to read these workers' views.

ATTACHMENT 1

6 Case Studies

* indicates where names have been changed to retain anonymity

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CASE STUDY ONE: Outworker Case study

P had been working at X for 8 years as a sewing machinist, when she decided that she would like to start a family. She made arrangements with X to set up some machines at home so that she could work from home. X agreed to keep her on the pay roll. "I was wrapt," says P, "Tax was still coming out and I'd get super depending on how much I earned, and they'd provide machines for me."

"I was worried about my long service leave, but they assured me that I wouldn't lose my long service leave," she says "but I didn't know that I was entitled to annual leave and public holidays, I didn't think I had any rights." X told her that people who work from home had to provide for their own holidays and other entitlements.

P was paid on a price per garment basis, not on an hourly rate. She discovered that the factory set the price and there was no possibility of negotiation. "If you asked for a little bit more money they'd tell you to bring it back," she says.

P was also expected to pick up and deliver orders herself, no matter how big, or how small. "They'd ring me and say "We've got quite a bit of work for you, come and collect it now." So I'd pack up everything, rush the kids out into the car and go down there, all the way, about a half hours drive to find they only had ten garments – ten basic little garments! I mean what can you do? You've got to take it and then run it back to them straight away. So sometimes I'd do trips twice a week down there."

Other times the factory would dump huge orders on P, and demand that they be finished by tight deadlines. "They'd say, "We need this pushed" and you'd know that you'd have to push it through the night. They didn't care. That meant working late hours, and through the weekends. They knew and they weren't prepared to give you anything extra."

Part of the problem was the piece rate. Sometimes P would go weeks without work, and then only small orders earning her $50 or less. So when big orders were offered, she would just accept them to make up for the weeks and months of no income. "I'd have to work until one or two in the morning, sometimes three o'clock. Starting after tea time, I'd get the children settled and then get back on the machine again. You don't care how many hours you work, so you're just breaking yourself down really. You're getting exhausted by pushing a lot of work through and working late hours can mean you have a lot of accidents too because you can hardly keep you're eyes open, and you go blurry."

Eventually, worn out with sustained pressure and long hours on the machine, P started thinking about accessing her long service leave, so she made a phone call to the union. The union told her that she was entitled to annual leave and public holidays as well. "The union told me to take it up with my boss, well, that scared me. I thought, I'm not strong enough for that and then they'll start telling me I've got no work and I'll be out of a job, so I wasn't ready for any trouble with them."

"Then it was last September that I received a phone call, at about quarter to three on a Friday. They'd left it to the very last minute. And the boss said to me, "Sorry P, but X has been sold. Someone might come around and pick up the machines so be prepared for someone to come around.' And I said 'What do you mean, I'm out of a job?" and she said 'Yes, you are'

P was devastated. Her boss told her that the factory would be gone by the following Wednesday. The boss could give her no answers when she asked about her entitlements.

"I rang the union straight away at nine o'clock on the Monday morning, and I told the organiser and he was straight in there making sure all the girls (in the factory) were getting all of their entitlements and of course he came with me to speak to the boss, but she said "Well I'm no longer going to be with the company so if you have any queries you're going to have to take it up with the secretary."

P rang the secretary and was told that she didn't have any entitlements at all. P kept pushing for her long service leave entitlement, but since the union had got involved the factory had changed tack. They were now saying that she had not actually been dismissed. When P asked for the company to draw up a contract that complied with the award, they refused. They would only agree to include long service leave, and they would not agree to provide her with a regular amount of work. "They wrote up two contracts but they were all rubbish. They wanted me to work piece work, but I said I'm fed up with not being paid when you don't give me work, I want to know that I'll still be paid when there's no work available and he [the owner] laughed as if it was a joke, and said 'Well, you know, I can't help you in that department.'"

P with the assistance of the union had a contract drawn up that conformed to the minimum conditions for outworkers as set out in the *Clothing Trades Award 1999*. The company has now agreed to abide by it. However, they have not signed the agreement.

P says that the company was outraged that she had involved the union. "They got really annoyed. 'How can an outworker be in the union?' they said. "That's not right." I never even left the union, I stayed with them. You see, the outworkers don't even know that they're entitled to be in the union when they're an outworker. They chose the wrong person to dismiss because I had back up. They think I'm a trouble maker now."

CASE STUDY TWO: OUTWORKERS CASE STUDY

My name is Trinh*. I have been an outworker for 20 years. I used to work 12 hours a day, 7 days a week until a year ago.

I did everything that my employer gave me: for example jackets, pants, shirts, skirts and dresses. The labels were: Jacqui E., Syndicate, Maestro, Target, Sportsgirl, Sportsman, Pierre Cuttin, Miss Shop, Country Road, My Size, Brown Sugar, Blazer and others.

I got paid $3 to $4 an hour. Sometimes I had to work at night and on the weekend to finish an order. I didn't get holiday pay, superannuation, sick pay, WorkCover or any other entitlements.

Now I can't do much outwork anymore. I have a sore back and sore shoulders. I can't do much outwork and I don't want to do outwork anymore.

I was happy to have a new law last year but my employers are not following the law and I still get only $3 - $4 an hour and nothing else. Last week the boss gave me a job for $1.60 an hour.

CASE SUDY THREE: OUTWORKER CASE STUDY

I'm Diep*. I worked 5 years as an outworker. Now I don't do a lot of outwork because so much sewing has made my eyes very sore. Before I made T-shirts for children with Target and Kmart labels. They paid me a price per piece and I sewed more than 10 hours a day. Sometimes they needed the order quickly and I had to sew all night and on the weekend to finish the order, but the boss did not pay me more. I have never had superannuation, holiday pay or sick days. I used to work very hard.

Last year I learnt about the new law for outworkers. I asked my friends who still did outwork: "Now, is the new law good for you?" You know they answered me:" It's not good because the employers are not following the law. If you disagree with them and say anything about the new law, you loose your job." That's true. I think in my mind that this new law will not change anything for outworkers because the big companies are not following it and what does the government think?

ATTACHMENT 2

PY291

2004-2005

The Parliament of the
Commonwealth of Australia

THE SENATE

Workplace Relations Amendment (Right of Entry) Bill 2004

(Government)

(1) Schedule 1, item 3, page 4 (line 19), omit "objects", substitute "object".

[objects of Part]

(2) Schedule 1, item 3, page 12 (after line 30), at the end of section 280J, add:

(6) Without limiting subsection (1), a permit holder abuses rights conferred by this Part if, in exercising rights under Division 5, the permit holder engages in recruitment conduct that is unduly disruptive, either because the permit holder's exercise of powers of entry is excessive in the circumstances or for some other reason.

(7) In this section:

recruitment conduct means encouraging employees to become members of a union.

[entry for recruitment purposes]

(3) Schedule 1, item 3, page 17 (line 14), after "premises", insert "and gave the notice during working hours".

[conditions on rights of entry]

(4) Schedule 1, item 3, page 19 (line 25), before "If", insert "(1)".

[other rights of entry]

(5) Schedule 1, item 3, page 20 (lines 1 and 2), omit "(other than an OHS law)".

[other rights of entry]

(6) Schedule 1, item 3, page 20 (after line 4), at the end of section 280U, add:

(2) Subsection (1) does not apply in relation to a right of entry under:
(a) an OHS law; or

(b) the **Outworkers (Improved Protection) Act 2003** of Victoria.

[other rights of entry]

(7) Schedule 1, item 3, page 22 (line 13), omit "(1)".

[entry for recruitment purposes]

(8) Schedule 1, item 3, page 22 (line 17), after "premises", insert "and gave the notice during working hours".

[conditions on rights of entry]

(9) Schedule 1, item 3, page 22 (lines 22 to 31), omit subsections (2) and (3).

[entry for recruitment purposes]

(10) Schedule 1, item 3, page 24 (line 3), before "If", insert "(1)".

[other rights of entry]

(11) Schedule 1, item 3, page 24 (lines 12 and 13), omit "(other than an OHS law)".

[other rights of entry]

(12) Schedule 1, item 3, page 24 (after line 14), at the end of section 281D, add:

(2) Subsection (1) does not apply in relation to a right of entry under:

(a) an OHS law; or

(b) the **Outworkers (Improved Protection) Act 2003** of Victoria.

[other rights of entry]

(13) Schedule 1, item 3, page 24 (before line 15), before Division 6, insert:

281DA Exclusion of rights of entry under State laws if all work is covered by AWAs

A person has no right, under a State industrial law or State industrial instrument, to enter premises for the purposes of holding discussions if each employee on the premises is a party to an AWA that applies to work on the premises.

[other rights of entry]

ATTACHMENT 3

2004-2005

The Parliament of the
Commonwealth of Australia

THE SENATE

Workplace Relations Amendment (Right of Entry) Bill 2004

(Amendments to be moved by Senator Marshall on behalf of the Opposition in committee of the whole)

(1) Page 2, clause 2, table item 2, omit 'Section 4' substitute, 'Sections 4 and 5'.

[commencement]

(2) Page 3, after clause 4 (after line 3), insert:

5 Application

(1) The amendments made by Schedule 1 do not affect the operation of any outworkers industry provision.

(2) Part IX of the *Workplace Relations Act 1996*, as in force immediately before the commencement of Schedule 1, continues to apply in relation to outworkers industry provisions.

(3) In this section, ***outworkers industry provision*** means any provision or entitlement in relation to the performance of outwork or the contracting out of work in the clothing industry found in:

(a) the *Workplace Relations Act 1996* or any regulations made pursuant to that Act;
(b) any award made pursuant to the *Workplace Relations Act 1996*;
(c) any agreement certified pursuant to the *Workplace Relations Act 1996*;
(d) the *Victorian Outworkers (Improved Protection) Act 2003*;
(e) any other State industrial law (including regulations made pursuant to any such law) or State industrial instrument; or
(f) any other document or instrument.

[application]

(3) Schedule 1, item 3, page 6 (after line 6), at the end of section 280A, add:

(2) Recognising the unique position of outworkers in the textile, clothing and footwear industry, and the fact that the transparency of the contracting chain within the industry is critical to protecting the rights and treatment of such workers, nothing in this Part is intended to affect the continued operation of any outworkers industry provision regarding right of entry, or impose any potential limitation or condition on any such provision.

Note: Part IX of the Workplace Relations Act 1996, as in force immediately before the commencement of section 4 of the Workplace Relations Amendment (Right of Entry) Act 2005 continues to apply in relation to outworkers industry provisions.

[outworkers industry provisions]

(4) Schedule 1, item 3, page 5 (after line 29), after the definition of ***OHS law***, insert:

outworkers industry provision means any provision or entitlement in relation to the performance of outwork or the contracting out of work in the clothing industry found in:

(a) the *Workplace Relations Act 1996* or any regulations made pursuant to that Act;

(b) any award made pursuant to the *Workplace Relations Act 1996*;

(c) any agreement certified pursuant to the *Workplace Relations Act 1996*;

(d) the *Victorian Outworkers (Improved Protection) Act 2003*;

(e) any other State industrial law (including regulations made pursuant to any such law) or State industrial instrument; or

(f) any other document or instrument.

[definitions]

ATTACHMENT 4

SUBMISSIONS FROM INDIVIDUAL WORKERS

Dear Mr Howard. 7th - 11 - 05

I'm very hopeless about your 2 IR changes because.
~~I worry that~~ my job will not be secure.
in the moment I'm a casual worker in a small
T.e.F. industry. in your new law. No protect the
casual loadings. It is unfair for the casual worker.

Wha.

Dear Mr Howard

I was a clothing worker and I lost my job this year. Now I am a casual worker. Mr Howard your ~~ch~~ workchoices will make life very hard for me. I already have no security I will have less security.

07.11.05

TO : Mr. Prime ~~Minister~~ Minister

I have been working in the TCF industry as an out worker for many years. Your new IR changes will give me no protection and my pay will go down more. Most of our work is going overseas, I might be unemployed soon. It would effect my children future too.

Dear Mr Howard. 7th. Nov, 05

I am very suprise your IR change because you cut down all of basic right that will make children live in hard life when their perents can't get the job secure. Also we are work with highter tax policy. So I am realy disagree your plan.

I work in T.C.E Fartory
I fraght very hard for my conditions.
I am angry with your workchoices plan.

7.11.2005

Dear Mr Howard,

I worry that my job will not be secure with these new laws. If I work overtime I may not get extra pay. With this IR changes my life very hard. My life already hard. I have been TCF working long time many many years so I lost everything with you. new laws.

Alison Huang.

A Huang.

On XXXX the XXth, XXXXXX, my employer, approached me at my machine with a pen and a form (see attached). He forcefully advised me that i was to sign and date the form that i had just been given. When i asked if i could take the form home, so that i could read and understand what i would be signing, he began to yell, asking why i needed to take the form home. I then asked if I could at least read it, and then the replied “let me read it for you” at which point he continued to read through a few lines and then state that all the form told me was about what level I was, my hourly rate, and our working conditions. I then insisted that unless I read the form, I would not sign it, because I could not trust him for things for things he had done in the past. Then, the payroll lady, XXXXXX, whom was present at the time, asked him to let me take the form home to read. XXXX then yelled that whoever was not happy with the companies conditions could go home. Then he continued to yell and walk about, when the payroll lady, asked me to sign it and not to worry as she was a witness that i had been forced to sign it. As XXXXXX was yelling and asking me why i wanted to take the form home, he angrily said "give me my pen" and he snatched it from my hand. He left the form with me, and the payroll lady handed me another pen and told me not to worry as it was not engaging me in anything, and that all the other employees had signed it, at which point I then also signed the form as I was frightened if i did not, he would dismiss me. Then the payroll lady told him that there were other employees who were not happy with the way he had made us sign the form, and he then started yelling at me again, saying if I wasn't happy I could “go home”, at which point the payroll lady told him to stop yelling at me, as it was not just me. XXXXX then asked who else was upset, and the payroll lady said that one of the other employees had told her. He then approached that employee, as I stood by, and asked her who was not happy with the situation, and she replied that some of the other employees stated the it was “bullying” the way we were forced to sign the form. XXXXX again said that whoever was not happy could go home.

Anonymous

Mr. THANG TRAN.
FELTEX CARPET
AUSTRALIA LTD.

7. 11. 2005

Dear Mr Prime Minister

I'm not happy about your IR change
I worry that my job will not
be secure with the new laws
because my boss can sack me
for no reason, It'll be harder
for me to negotiate with the
boss to make a fair deal.
I'll lose many working conditions
I'll never get pay enough.
I am a worker in a Textile factory
We fight very hard for our condition
I'm very worry that I might lose
them, after over 20 years working
I might lose my redundancy payment
if my department close down which
is happening to over 200 work mates
last week. It's very hard for me
to trust and vote for you again.

Regards.

Melbourne, 8th November 2005

We are sewing machinists working under the award in Collingwood in Victoria. We don't like the proposed changes to the industrial relations laws. They make us feel unsafe and insecure.

Up to now, the IR laws have ensured good working conditions for the workers, like a living wage, minimum wage increases to cover increased cost of living overtime loadings to reward hard work and many other things.

Employers can easily take advantage of people like us who are from non-English speaking backgrounds.

These new laws will not help us at all, they will help the bosses to do what they like.

Thank you for reading our Submission. Please help us and don't pass these laws.

Rui Fang Ye

Maria

Jenny

S. Cachei

Saraiva

Submission about inquiry into work Choices

Dear: Mr Howard

Your new IR Changes - work Choices give me no choice. I have been a hard worker in a TCF factory for many years. I don't earn much money, now I worry that. I will have to work harder as a worker for less money. I am very worried about my future. I will have no security. and I worry that I will not be able to find other work.

7. NOV 05.

We want Australia to improve and to be competitive on the world market, but not in the way you plan to do it. The government should protect the workers because the government lives on the shoulders of the workers — like a sort of big mafia. The government takes tax while we work very hard but they don't give us much back, especially with these new industrial relations laws.

The government will give the bosses more power to push the workers resulting in more injuries to the workers. Many of us are already working under too much pressure and too much stress. We are immigrants and we are very disappointed with the work culture in Australia.

We came here for a better life but all the factories are closing. We are on the streets without money.

We know some changes are needed but not this way.