

Submission

To

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill
2005
Submission

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Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005 FairWear Submission

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Executive Summary

The Federal Government's proposed new Workplace Relations System will override and undermine the extensive legal protections and initiatives that have been put in place over the last ten years by collaborative efforts of community, governments, Industry and unions to end exploitative practices against outworkers in the clothing industry.

WorkChoices threatens vital State and Federal protections which operate together to constitute a full package of protections necessary to address the exploitation experienced by the estimated 300,000 migrant women outworkers sewing at home for as little as \$3-\$4 an hour.

Outworkers in the clothing industry were promised special protection under the new Workplace Relations system, but in reality the WorkChoices Bill fails to protect them. The attempt to protect outworkers by the retention of the outworker provisions in the Federal Clothing Award is completely undermined by other aspects of the legislation, rendering them useless.

WorkChoices fails to protect outworkers by –

- I. Allowing employers to “opt out” of the outworker award provisions;
- II. Making outworkers status as “employees” unclear, leaving them to be mistaken as independent contractors;
- III. Providing a narrow definition of an outworker;
- IV. Undermining the mechanisms that allow the comprehensive monitoring of the activities of companies through the whole clothing supply chain;
- V. Placing the onus on individual outworkers to make a claim;
- VI. Removing outworkers' ability to claim unpaid wages from the principle contractor when their boss disappears without paying.

Fair Wear is concerned that this legislation will have an adverse effect on many people in the community, not just outworkers. This will negatively affect groups such as young people, women, migrants and indigenous people who are in a very weak bargaining position. The long-term effects could see future generations further disadvantaged and families subject to being part of the working poor and not being able to meet their basic living requirements from the wages they earn.

Fair Wear recommends that a separate section of the Bill for outworkers be introduced to ensure that the current level of protections are maintained and exploitation in the Australian garment industry is prevented from being legally sanctioned.

Introduction

1. FairWear is a national coalition of church, community groups, women's organisations, students and unions, which has been working to eliminate the exploitation of outworkers and end sweatshop conditions in the garment industry since 1996.
2. The Federal Government's proposed new Workplace Relations System will override and undermine the extensive legal protections and initiatives that have been put in place over the last ten years to end exploitative practices against outworkers in the clothing industry. WorkChoices threatens important State and Federal protections which together constitute a full package of protections necessary to seriously address the exploitation experienced by the estimated 300,000 migrant women outworkers sewing at home for as little as \$3-\$4 an hour.
3. Outworkers in the clothing industry were promised special protection under the new Workplace Relations system, but in reality the WorkChoices Bill fails to protect them. The attempt to protect outworkers by the retention of the outworker provisions in the Federal Clothing Award is completely undermined by other aspects of the legislation, rendering them useless.
4. This submission contends that the protections specific to outworkers, contained across Federal and state jurisdictions; the Federal Clothing Trades Award, State Awards and complementary state legislation comprise of a singular system of protections for outworkers. These specific outworker protections are uniform in their content and intention and should be reflected in WorkChoices legislation if outworkers are to be truly protected against exploitation.
5. After 10 years of work on developing this package, Australia was finally on the cusp of being able to turn the clothing industry around and provide fair wages and conditions for outworkers. The WorkChoices Bill in its current form will remove the most significant parts of this package and outworker protections will be swept away. In this submission Fair Wear will explain why the full package of existing laws and provisions are necessary and demonstrate how the new WorkChoices legislation will allow exploitation of outworkers to flourish.

How Current Protections For Outworkers Came About

6. A full package of provisions needed to address the exploitation of outworkers has evolved through the extensive documentation of instances of systemic exploitation rampant in the Clothing Industry.
7. Award variations and legislative reform have primarily set the legal framework for specific requirements to ensure outworkers receive their minimum Award entitlements, that the supply chain is monitored and that intimidated and vulnerable workers can access these legal protections relatively easily. The use of statutory declarations (included in Clothing Awards and State(s) legislation) is a means for outworkers to provide evidence of underpayments or non-payment for work completed. The most important aspect of legal protections for outworkers has been the introduction of deeming provisions that ensure that they are recognised as employees.
8. Outworkers or homeworkers are one of the largest groups of vulnerable workers in Australia. They are predominately migrant and refugee women who speak English as a second language. They complete their work in their own homes. Their working hours can be anytime in the 7 days of the week and anytime during the 24 hour period of a day. These hours are not by choice but are a result of unrealistic deadlines given for completion of work. The exploitative conditions outworkers experience often involve other family members and children, together with high levels of reported work related violence, abuse and workplace injury.

Case Study 1

"I work at night and during the day. I work about 14-19 hours a day. Each day I wake up at 5am, do exercise and shower till 6am. Then I sew till 12pm and then I have lunch. After that I continue sewing until about 5pm. Then I cook and eat dinner until 6.30 pm and then sew until 11pm". "My daughter helps me to sew when there is a rush job. Sometimes she has school work to do but she doesn't do it because we have to get the work completed".

A child who helped with the work commented: 'There was one time when I sewed my fingers together. It really scared me from coming back to work.'

Cregan C 2001

Full Package Of Protections Needed For Outworkers

9. The need for the full package of protections, which have been introduced in state legislation in New South Wales, Victoria, Queensland and South Australia, has been recognised by a wide range of judicial hearings, State and Federal Government Inquiries into outwork, academic research and reports that have consulted directly with outworkers.
10. The package of protections include the Federal and State Clothing Awards, State legislation deeming outworkers employees, the capacity for outworkers to recover unpaid wages up the supply chain, and finally a Retailers Mandatory Code to ensure the supply chain is providing outworkers minimum conditions and monitoring the supply chain. See Appendix One: Current Outworker Protections
11. The full package of protections for outworkers has been introduced across four Australian states, with New South Wales and Victoria accounting for the majority of outworkers in the industry. The consistent approach taken in each state reflects the level of consensus achieved by government, the TCFUA, industry and supporters that these initiatives are necessary to deal with the extent of the industry's widespread problem.
12. A voluntary Homeworkers Code of Practice, to which companies can become signatory or accredited, is also in place. Accreditation requires extensive monitoring of the supply chain. The current legislative framework underpins the voluntary code and the ability to monitor the code is based on the award provisions.
13. These laws and initiatives are supported by retail and manufacturing groups as essential elements to bring an end to the exploitation.

Evidence Which Supports The Need For This Full Package

15. A wide range of inquiries, reports, and research which have occurred over the last ten years have concluded the need for comprehensive protections to end the levels of exploitation outworkers. These include:
16. Inquiries
 - Senate Inquiry into Outwork in the Garment Industry 1996
 - Review of Senate Inquiry into Outwork in the Garment Industry 1998
 - NSW Pay Equity Inquiry 1998
 - Full Bench AIRC Decision on Outworker Clauses in Clothing Award 1999
 - Victorian Government Inquiry into Clothing Outwork 2002

17. Research

Mayhew and Quinlan 1998, Outsourcing and Occupational Health and Safety: A Comparative Study of Factory Based and Outworkers in the Australian TCF Industry, Sydney Industrial Relations Research Centre, University of NSW.
Cregan Christina, 2001 'Home Sweat Home', Melbourne University
Cregan Christina, 2002 'Outworker narratives: stories of despair' Melbourne University
Vietnamese Outworkers in Queensland, Exploring the Issues 2004, Sue Scull, UQ
Boilerhouse, University of Queensland

18. Reports

Hidden Cost of Fashion - Outworkers tell the real fashion story TCFUA 1995
Homeworkers Code of Practice - an Industry wide voluntary scheme of monitoring the supply chain from the retailer to the homeworker 1996
Behind the Label Issues Paper (NSW Government) 1999
The story of the No Sweatshop label - Homeworkers Code Committee 2000
12 month Report of the NSW Ethical Clothing Trades Council 2003
12 month Report of the Victoria Ethical Clothing Trades Council 2004

19. The overwhelming body of evidence supports the case for outworker specific legislation and initiatives to ensure that the industry improves its practices and provide to outworkers, who are the majority of workers in the garment industry, their minimum pay and other work entitlements. The industry is a long way from treating outworkers in an equitable way to other workers in the industry.

20. A separate outworker section of the WorkChoices Bill would be the most appropriate course of action if the Government is serious about addressing exploitative practices in the clothing industry and providing real protection for outworkers.

21. *FairWear recommends that the Federal Government acknowledge the weight of evidence that has led to these current protections being put in place and incorporate into the WorkChoices Bill a separate outworker specific section. The outworker section should incorporate the specific needs of outworkers as in the existing Award provisions and State outworker legislation and remove any conflicting provisions in the Bill as outlined in this submission.*

How WorkChoices Fails To Protect Outworkers

22. The Federal Government's attempt to provide some protection for outworkers through WorkChoices fails on several fronts. WorkChoices fails to protect outworkers because it does not include ALL the elements of the comprehensive current package of protections developed over the last 10 years. The proposed legislation undermines the implementation of the current specific outworker protections and renders the outworker clauses of the Clothing Award almost irrelevant to most clothing workplaces.
23. WorkChoices fails to protect outworkers by:
- I. Allowing employers to "opt out" of the outworker award provisions;
 - II. Making outworkers status as "employees" unclear, leaving them to be mistaken as independent contractors;
 - III. Providing a narrow definition of an outworker;
 - IV. Undermining the mechanisms that allow the comprehensive monitoring of the activities of companies through the whole clothing supply chain;
 - V. Placing the onus on individual outworkers to make a claim;
 - VI. Removing outworkers' ability to claim unpaid wages from the principle contractor when their boss disappears without paying.

I. Allowing employers to "opt out" of the outworker award provisions

24. WorkChoices allows employers to make workplace agreements, individually or collectively, which exclude the operation of the outworker provisions from the Award in that workplace.
25. Exploitation of outworkers is extensive, with many employers in the clothing industry not meeting their minimum legal requirements at present. Clearly any ability to "opt out" of a legal requirement will be eagerly taken up by employers in this industry.
26. Outworkers tell us "our experience of bosses in the clothing industry is that they will take away whatever they can from workers, so we are sure our bosses and contractors will be opting out [of the award provisions]".

Case Study 2

Excerpt from an outworker's letter to Minister Kevin Andrews.

Right now, the owner of the factories doesn't have to pay anything. They don't have to pay our superannuation, or Work Cover. But they ask us to work very hard and the pay is cheap: for example: I was asked to sew pants...One pants they only pay \$1.50, in this amount, we have to pay for the petrol of delivery and the electricity. Also, this particular factory owner demanded that I have to finish 600 pants in 10 days. That is approximately SIXTY pants in one day. To finish this, we have to work very long hours, even more than the factory workers YET WE DON'T GET PAID FOR OVERTIME. This is a big problem that needs to be resolved. The Government should stand in our shoes, feel our injustice, and help us to reach a promising future.

Ung

Ung's employer would be amongst the many employers that would "opt out" of the Outworker Award Provisions as he has already demonstrated that he will give workers as little as possible.

27. In the process of opting out employers not only stop outworkers they employ from accessing specific rights at work, they also prevent the union from monitoring their supply chain and checking out the wages and conditions for workers further down the supply chain.
28. It is common practice in the clothing industry for an employer to have a few in-house sample machinists and then contract out the bulk of their production to sub-contractors who then give the work on to outworkers.
29. Current Award provisions apply to all persons who directly or indirectly engage persons to perform clothing work. WorkChoices will permit employers to opt out of award outworker provisions on the basis that they don't directly employ outworkers themselves.
30. Fair Wear would go so far as to say that any company who seeks to opt out of the outworker provisions should immediately come under suspicion as a company with something to hide. There is extensive evidence that employers do not give the monitoring bodies a correct account of who they contract work out to, even under the existing provisions. It has only been possible for the union and industrial relations inspectors to challenge some employers and sub-contractors about their employment practices since the union (and inspectors) have had access to commercial information from retailers and fashion houses which give a more full picture of actual work volumes companies have received and to whom they are sub-contracting the work.
31. WorkChoices also allows for employers to "opt out" of the "protected awards conditions" sections which regulate the giving out of work. Because they are not directly related to the employment of the person making the workplace agreement. In practice this would mean that a principal contractor can not only exclude their workplace from protected Award conditions, but they can remove any obligation to implement conditions such a minimum award conditions applying to employees (outworkers) of the persons they subcontract the work to.
32. ***Fair Wear recommends that a new section of the bill 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 section 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.***

II. Making outworkers status as “employees” unclear, leaving them to be mistaken as independent contractors

33. For outworkers to access the award provisions or rates of pay set by the Fair Pay Commission they must be recognised as “employees”. Working from home leaves outworkers vulnerable to being identified as independent contractors, when in reality they have no control over volumes of work or when it is to be completed or the wages they are paid. The case for being employees has been established several times over that outworkers are really employees. Deeming provisions were introduced into State laws to address this issue.
34. If outworkers are left to be independent contractors then their exploitation essentially will be legalised. They will be regarded as being capable of negotiating wages and conditions, and “free” to enter into contracts for \$3-\$4 an hour. They will not have recourse to the award, the minimum wage or the Fair Pay Commission to protect them.

Case Study 3

Anna has worked from home for one boss for 5 years. She has never received any written documentation about her work conditions or pay. She is paid by the piece and can earn about \$4 an hour if she sews fast. She recently received a form from the factory which instructed her to sign it or else she would not get any more work. The form stated that she agreed to be known as an independent contractor and that she has negotiated and agreed the terms of her work with xxxxxx Fashions.

Under the current state laws of NSW, VIC, SA & QLD Anna is deemed an employee and cannot lose her Award entitlements. Under WorkChoices this protection would be lost. Under the proposed WorkChoices changes she will agree to be an independent contractor, legalising low pay rates.

35. WorkChoices overrides the deeming provisions in the State legislation, which deem outworkers to be employees. The Minister told Fair Wear at a meeting in August that a definitional mechanism would be introduced to replace the deeming provision.
36. No definitional mechanism appears in WorkChoices. Even if it did, a definitional mechanism still leaves each outworker to individually prove they are an employee not an independent contractor. Migrant women outworkers with limited English skills and limited financial resources are not in the position to take such action.
37. The Government claims the independent contractor legislation will support the right of people to make a choice about their working arrangements. But outworkers don't have a choice. They have no ability to bargain with their employer.

38. ***Fair Wear recommends that the new section of the Bill should deem all outworkers to be employees for the purpose of the Bill and other Federal and State laws.***

III. Providing a narrow definition of an outworker

39. While a traditional outworker is someone working in their own home sewing for a boss who is elsewhere, there are also other “outworkers” who work outside the formal system of employment in regulated factories. Some outworkers work in the boss’s garage at the boss’s home. Some outworkers work in a house that has been gutted and secretly turned into a factory without local Council permission.
40. If the definition of outworker is not expanded then we can expect an increase in the above sweatshop arrangements as employers try to put themselves beyond the reach of the law.

Case Study 4

Jenny worked in the garage behind her employer’s house. They doors were locked once everyone arrived in the morning. She sat under the air-conditioner and often became cold during her 10 hour work day. She worked 6 or 7 days a week and was paid piece rates that translated to about \$4.50 an hour. There was no loading for weekend or overtime work. Sometimes at busy times the boss would ask them to work 6am to midnight. Jenny felt powerless to talk to the boss about the unfair situation so she contacted the union and asked them to investigate.

Jenny would not be recognised as an “outworker” and therefore not entitled to additional protections under the WorkChoices definition.

41. ***FairWear recommends that the new section of the Bill 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.***

IV. Undermining the mechanisms that allow the comprehensive monitoring of the activities of companies through the whole clothing supply chain

42. Transparency down the clothing supply chain is vital in ensuring that Outworkers are receiving their correct entitlements. Effective monitoring is achieved by enabling the union to inspect workplaces for potential breaches of Award conditions.
43. It has been recognised by state and federal Government’s that access to work records is essential in checking that employers are providing the right entitlements to their employees and bringing unscrupulous employers to account.
44. While WorkChoices retains the ability in theory for the union to examine supply chain records through the retention of the relevant outworker award clauses, the actual ability to do so is frustrated by other aspects of the WorkChoices legislation.

45. Changes to right of entry laws for unions will mean that the Union will have no right to enter a workplace where employees are all covered by AWAs. The union will only be permitted to look at records relating to union members in other circumstances and will have to specify the details of a suspected breach in circumstances where currently it can investigate complaints from members confidentially. This is in addition to the ability of workplaces to “opt out” of the award provisions, as described above.

Case Study 5

Li works from home. She reports to the union that she is only earning \$3 an hour for sewing for Australian companies. The union notifies her employer to arrange to inspect the work records for a suspected breach of the Award, no individual or specific breach is mentioned. The union uncovers records for a large number of employees who are being paid well below the award, and are not receiving their entitlement to superannuation. The union can prosecute the company for breaches of the Award and in addition lodge under payment claims to recover thousands of dollars in underpaid wages for Li and other workers if they agree.

Under current Federal & State provisions, and State legislation the union can access all work records in a workplace which is suspected of breaching Award provisions, but this can be blocked under WorkChoices.

46. For unions to adequately monitor an industry that is rife with exploitation then they need access to wage and work records and supply chain information for all employees and contractors. Under the current laws the union is able to identify clearly when companies are not declaring their full workforce or their full contracting chain because of information about volumes of work they have from Fashion Houses and retailers. The union has the ability to trace the supply chain information at each step of the chain through to the outworkers.
47. WorkChoices will limit the unions work to prosecute companies for breaches of the Award – the main activity that makes any real difference to companies blatant disregard for compliance to the Award.
48. It will also render the Homeworkers Code of Practice (the voluntary industry scheme) ineffective without the unions capacity to monitor the supply chain included in Federal legislation.
49. Efforts to end the exploitation of outworkers will be brought to a standstill if access to this supply chain information is blocked. This coupled with the Federal Government department’s failure to monitor Award compliance nor any activity in curbing exploitation in the industry leaves the industry open to widespread sweatshop conditions becoming even more widespread.
50. **FairWear recommends that the new section should include existing TCFUA rights of entry and inspection in relation to outworkers under existing federal and state laws and awards.**

V. Placing the onus on individual outworkers to make a claim

51. The legislative developments of the last 10 years have all recognised the vulnerability of outworkers and the need for industry wide provisions that protect them. When individual remedies for outworkers have been provided only a very small number of them actual access them.
52. There are a wide range of factors that lead to this situation including ignorance of their rights, fear of their bosses, low levels of English, a lack of confidence in Australian society, financial considerations, an overall sense of powerlessness and relationships within their communities. Some cultural groups are reluctant to use a court process to access their rights. Some cultural groups regard it as appropriate to endure rather than share your problems with others.
53. WorkChoices returns to the past of placing the onus on individual outworkers to make claims and use court processes to remedy their situation. Outworkers have to start by making a case that they are in fact employees, and then seek to access their entitlements.
54. ***FairWear recommends that the new section of the Bill 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. This includes maintaining the no-disadvantage test for any workplace agreement with an outworker, along with a transparent process of scrutiny prior to the workplace agreement coming into effect.***

VI. Removing outworkers' ability to claim unpaid wages from the principal contractor when their boss disappears without paying

55. The single most common issue outworkers report is the failure of their bosses to pay them for their work. Many outworkers have come with claims for \$3000, \$5000 and even \$10,000 owing to them and in many cases the boss has "disappeared".
56. To address this issue State Governments (NSW, Vic, SA and Qld) have introduced legislation to allow outworkers to make their claim for unpaid wages to the principal contractor in the supply chain when they can't locate their employer. The principal contractor has 14 days to provide the details of the contractor involved or pay the money claimed themselves.
57. WorkChoices overrides this important mechanism in State legislation to ensure outworkers are paid for the work they have done if they want to make a claim.

Case Study 6

Hahn is a mother of three young children in Springvale. She recently worked for ten days straight sewing at home to complete a large order of shirts from a popular fashion label. She was told that she would receive \$700 for the entire consignment. On completion of the work, the man from the factory came by to collect them. When Hahn asked about payment, she was told that the garments needed to be checked before she could be paid. She was concerned because she had still not been paid for the previous 2 orders, for which she was owed \$2500. After a few days she went to the factory to try to get her money, and discovered it had closed down.

Under State laws to be abolished Hanh could claim her unpaid wages (and her full entitlement to the minimum wage for the hours she worked) from the owner of the fashion label.

58. ***FairWear recommends that the new section 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. Furthermore, the new section should explicitly preserve state laws relating to outworkers and provide that the federal laws are complimentary.***

Impact on Families of Outworker Exploitation

59. Exploitation of outworkers not only impacts on the health and wellbeing of outworkers, but also on their families. There are countless stories to be told of hardship and social dislocation of families that have had outworking parents. The following is just one shocking example of how families suffer as a result of their mothers' work.

Case Study 7

Chen worked for 5 years sewing in a sweatshop in a garage at the rear of her employer's home. She was paid by the piece. Using her work record sheets, she calculates that her rate of pay was about \$4 an hour. She would work six or seven days a week.

Chen stopped work in March this year when her 16 year old son was diagnosed with fourth stage lung cancer. He has undergone operations and chemotherapy, but the doctors have given him only 5% chance of living.

Once in early 2002, her son was been very sick with a serious cough and stomach ache. Because of the busy season for the clothing industry she had a lot of stress from work. She was too busy to go with her son to see doctor. She said to her son: " I am sorry my son, mum is too busy to go with you to doctor. You just tell your symptoms to doctor. The doctor will look after you."

In October last year, her son was coughing a lot again. Her work was still very busy, she had to work 10 hours a day and sometimes had to work from 6:30am to 11 pm without a break. Her son again had to see doctor by himself. He took the medicine on his own. He cooked for the family, shopped for food and did the house cleaning.

In March 2005, her son's cough developed again and got worse and worse. He could not stand, and had to lie down in the bed. Chen had to have a day off to take her son to see the doctor and requested the doctor take an X-ray of her son's chest. The results were shocking.

Chen says "if I had worked the normal 38 hours I would have recognised my son's illness earlier and he might have been cured. If I had known my rights I would not have worked for as little as \$ 4 or \$5 an hour, without any entitlements. The employers know the law and they break the law. They know how to use the law to protect themselves and exploit workers.

"The law is standing there for many years, but still a lot of employers break the law. A lot of migrants work in awful and unlawful conditions. If the government change the industrial law, what about us? Who will care about us? I worked in small sweatshop with 7 people. How can we respond to the unfair treatment from our employers?"

General Comments On WorkChoices Bill

60. FairWear is concerned that this legislation will have an adverse effect on many people in the community, not just outworkers. Many workers will lose benefits such as over-time and penalty rates. The legislation is set to force many workers into independent contractor arrangements, which will mean they will not be privileged to the few protections afforded to employees. This will negatively affect groups such as young people, women, migrants and indigenous people who are in a very weak bargaining position.
61. The legislation intent appears to be purposeful in excluding unions from workplaces rather than providing workers with a choice about whether they wish to be represented by a union or not. It also fails to acknowledge union's role in monitoring a whole range of activities with employers that deal with broader non specific issues not directly linked to individual employees.

Case Study 8

Outworkers have told us that they are concerned about the broader problems of WorkChoices, not just their own situation:

"And we are not just concerned about our own work and lives. We are concerned about our husbands and children, and what will happen to them in their factories and other jobs. The bosses are very interested in this new law. We expect our family income will go down when bosses no longer have to pay overtime or penalty rates. The bosses always take the cheapest option.

And when our husbands can be sacked without being given a reason many of them will be scared to speak up about anything in the workplace, even if something is dangerous or unfair. Our families also need a strong safety net to protect them from uncaring bosses."

62. WorkChoices provides to employers the power to exclude specific or all Award clauses from workplaces, remove the no disadvantage test from workplace agreements. FairWear believes that if WorkChoices is passed without substantial amendments it will mean that the majority of workers currently on Awards will experience substantial pay reductions, have less protection and be made more vulnerable.
63. The effect for Australian society will be that a larger group of workers will become more marginal and subject to increased stress and a diminished capacity to provide for their families. The long-term effects could see future generations further disadvantaged and families subject to being part of the working poor and not being able to meet their basic living requirements from the wages they earn.

Conclusion

64. WorkChoices will remove the full package of specific outworker protections that the community, governments, Industry and union have worked towards to put in place and provide basic protection to outworkers.
65. Further, it will undermine the Industry voluntary scheme, the Homeworkers Code of Practice by eliminating the capacity for monitoring of the supply chain by the union.
66. The majority of states have begun to implement uniform legislation, South Australia in just recent months, in recognition of the special case that justifies specific protections for outworkers.
67. Regardless of the general intent of WorkChoices, it fails to offer equivalent or substantial protections and will inhibit the monitoring of the supply chain and the potential to detect and eradicate sweatshop conditions.
68. FairWear recommends that a separate section of the Bill for outworkers be introduced to ensure that the current level of protections are maintained and exploitation in the Australian garment industry is prevented from being legally sanctioned.

Recommendations

PROPOSED AMENDMENTS TO WORKPLACE RELATIONS (*WORKCHOICES*) BILL 2005

1. A separate section should be included in the Bill to deal with the regulation of outwork in the clothing industry. This section should override any conflicting provisions in the remainder of the Bill.

The objects of the section 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;

The new Outwork section of the Bill should contain the following:

2. Provide 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:

“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.

3. Deem all outworkers to be employees for the purpose of the Bill and other Federal and State laws.

4. 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 section 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.
5. Include existing TCFUA rights of entry and inspection in relation to outworkers under existing federal and state laws and awards.
6. Preclude entering into an AWA with an outworker.
7. 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.

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

8. 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.
9. Explicitly preserve state laws relating to outworkers and provide that the federal laws are complimentary.

APPENDIX ONE

The Current legal protections for outworkers in place

Awards

Federal Clothing Trades Award 1999

STATE Clothing Awards New South Wales, Queensland, South Australia, Tasmania and Western Australia.

State laws

New South Wales Industrial Relations (Ethical Clothing Trades) Act 2001

Provides for the implementation of a retailers mandatory code to ensure that outworkers receive their legal entitlements.

The mandatory code, entitled the Ethical Clothing Trades Extended Responsibility Scheme can be found at -

<http://www.industrialrelations.nsw.gov.au/behindthelabel/default.html>

The New South Wales Industrial Relations Act 1996 deems outworkers employees and provides for outworkers to recover unpaid monies by their immediate employer up the contract chain from the principal contractor.

Victorian Outwork (Improved Protection) Act 2003

This Act deems outworkers to be employees and provides for outworkers to recover unpaid monies by their immediate employer up the contract chain and monitoring and inspection by Government and TCFUA officials, and provides for the introduction of a mandatory code for Retailers.

http://www.business.vic.gov.au/BUSVIC.196780/STANDARD//PC_50539.html

South Australian Industrial Relations Act 2005, deems outworkers employees and provides for the recovery of unpaid wages from the employer, and the introduction of a retailers mandatory code;

Queensland Industrial Relations Act 1999 deems outworkers employees, provides for the recovery of unpaid wages from the principal contractor and the introduction of a retailers mandatory code.

APPENDIX TWO INQUIRIES, RESEARCH AND REPORTS

Inquiries

Senate Inquiry into Outwork in the Garment Industry 1996
Review of Senate Inquiry into Outwork in the Garment Industry 1998

NSW Pay Equity Inquiry 1998
Industrial Relations Commission of NSW (Glynn J) 1998, Pay Equity Inquiry, Report to the Minister Volume 1 and Volume 2
Full Report

<http://www.workandfamily.nsw.gov.au/payequity/report/default.html>
Chapter Regarding Outworkers
<http://www.workandfamily.nsw.gov.au/payequity/report/industries/outworkers.html>

Under Conclusions and Findings, at number 18 Justice Glynn makes reference for the need for deeming provisions to clarify the employment status of outworkers.

Full Bench AIRC Decision on Outworker Clauses in Clothing Award 1999
Victorian Government Inquiry into Clothing Outwork 2002

Research

Mayhew and Quinlan 1998, Outsourcing and Occupational Health and Safety: A Comparative Study of Factory Based and Outworkers in the Australian TCF Industry, Sydney Industrial Relations Research Centre, University of NSW.
Cregan Christina, 2001 'Home Sweat Home', Melbourne University
Cregan Christina, 2002 'Outworker narratives: stories of despair' Melbourne University www.ecom.unimelb.edu.au/mgtwww/
Vietnamese Outworkers in Queensland, Exploring the Issues 2004, Sue Scull, UQ Boilerhouse, University of Queensland

Reports

Hidden Cost of Fashion - Outworkers tell the real fashion story TCFUA 1995
Homeworkers Code of Practice - an Industry wide voluntary scheme of monitoring the supply chain from the retailer to the homeworker 1996
The story of the No Sweatshop label - Homeworkers Code Committee 2000
www.nosweatshoplabel.com
Behind the Label Issues Paper (NSW Government) 1999
12 month Report of the NSW Ethical Clothing Trades Council 2003
12 month Report of the Victoria Ethical Clothing Trades Council 2004
http://www.business.vic.gov.au/BUSVIC.196780/STANDARD//PC_50608.html