

**A Submission to the
Senate Employment, Workplace Relations and Education
References Committee**

**Inquiry into WorkChoices – A New Workplace Relations
System**

By

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I write to express the concern of our Commission that the Federal Government's WorkChoices package will fail to protect the most vulnerable workers in the community, especially outworkers in the clothing industry.

Thousands of outworkers are already working for very low pay rates and for very long hours.

Certainly in Queensland, many of the outworkers in the clothing industry are Vietnamese women with limited English and financial resources. They are very vulnerable to exploitation by unscrupulous employers. Through our contact with the Textile, Clothing and Footwear Union of Australia, we have learned how common this exploitation is. Because they are so vulnerable, they need the Full Range of Protections.

As the community advocacy organisation, Fairwear, rightly points out, there are a range of laws and award provisions, which have been built up over the last 15 years, to protect outworkers from being exploited by unscrupulous employers. They were introduced after rigorous research, inquiry and consultation. The Senate Inquiry into Outwork, the NSW Pay Equity Inquiry, the Victorian Government Outwork Inquiry and many other formal inquiries have found that a range of protections are necessary to support supply chain transparency and the protection of fair wages for outworkers. These 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 mandatory codes for retailers.

Along with Fairwear, our Commission believes that, for outworkers to be adequately protected under the new workplace relations laws, ALL the existing laws and provisions need to be maintained and, indeed, further strengthened.

We also believe that outworker access to Federal award provisions is not protected under the new system. The outworker award provisions of the Federal Clothing Trades Award retained in WorkChoices only apply when there is an "employee" performing work. As WorkChoices overrides most, if not all, of the state legislation which deems outworkers to be employees, many outworkers will not be able to access these award protections.

We are concerned that the award provisions will not apply to outworkers, if their status as employees is not protected under current state legislation.

WorkChoices legislation means that every outworker will have to individually prove they are an employee not an independent contractor, before the protections will apply to them. Migrant women outworkers with limited English skills and limited financial resources cannot be realistically expected to take such action.

Even where an outworker is considered an employee in law employers can still easily “opt out” of these provisions by making a workplace agreement which excludes them.

A further concern we have is the position of outworkers in relation to written agreements. Outworkers are rarely given the opportunity to negotiate the terms of an agreement. In the unlikely event that outworkers were required to sign an individual workplace agreement, these workers would be highly disadvantaged in the bargaining process due to poor English language skills and their desire to maintain employment.

Transparency down the clothing supply chain is vital in ensuring that outworkers at the bottom of the chain are receiving their correct entitlements. The new system may make it more difficult to ensure that this is possible.

The Commission is concerned that there will be extremely limited obligations for a company to keep work records available for inspection, for example in a workplace where all the employees have signed an individual Australian Workplace Agreement. We seek an assurance that all clothing work places will be bound to the Outwork clauses in the Clothing Trades Award, which includes access to work records.

The Commission is gravely concerned that the loss of protections such as the State deeming laws will foster the exploitation of outworkers because they will be treated as “independent contractors”, without employee rights and entitlements, who will be “free” to enter into contracts for \$3 to \$4 an hour.

Action must be taken to ensure that state protections and deeming of outworkers will not be overridden by the new employment relations legislation.

Our Commission joins with Fairwear in urging the Government to:

1. Guarantee that all Outwork provisions of the Federal Clothing Award will apply to all clothing workplaces.
2. Retain in full the existing outworker provisions in the State clothing awards;
3. Maintain all existing deeming provisions regarding outworkers in State legislation;
4. Deem outworkers as employees in the Federal Workplace Relations legislation;
5. Maintain the union’s right of entry across Australia in order to monitor the entire clothing contracting chain.

Yours sincerely,



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Executive Officer