

**ETHICAL CLOTHING TRADES COIUNCIL-
OUTWORKERS LAWFUL ENTITLEMENTS
COMPLIANCE REPORT**

November 2004

EXECUTIVE SUMMARY	3
1 INTRODUCTION.....	5
2 BACKGROUND.....	7
2.1 THE CLOTHING INDUSTRY	7
2.2 THE INCREASE IN RETAIL INFLUENCE ON PRODUCTION	7
2.3 THE CLOTHING SUPPLY CHAIN TODAY.....	8
2.4 OUTWORKERS IN THE CLOTHING INDUSTRY	8
3 IDENTIFYING OUTWORKER ENTITLEMENTS.....	11
3.1 SUMMARY OF OUTWORKERS LAWFUL ENTITLEMENTS.....	11
3.1.1 <i>Outworkers engaged as employees by a non-respondent employer.....</i>	<i>12</i>
3.1.2 <i>Outworkers engaged as employees by respondent employers.....</i>	<i>12</i>
3.1.3 <i>Outworkers given work as independent contractors by a non-respondent person.....</i>	<i>13</i>
3.1.4 <i>Outworkers given work as independent contractors by a respondent person.....</i>	<i>13</i>
3.1.5 <i>The Clothing Trades Award 1999</i>	<i>13</i>
3.1.6 <i>Outworkers (Improved Protection) Act 2003</i>	<i>14</i>
3.1.7 <i>Occupational Health and Safety Act 1985.....</i>	<i>15</i>
3.1.8 <i>Homeworkers Code of Practice</i>	<i>15</i>
3.2 OUTWORKERS AND WORK RELATIONSHIPS	16
4 INVESTIGATIONS AND INSPECTIONS	17
4.1 INTERVIEWS WITH OUTWORKERS.....	17
4.2 INSPECTIONS OF WORKPLACES.	17
4.3 LEVEL OF OBSTRUCTION EXPERIENCED IN EXERCISING PART IX INSPECTION POWERS.....	19
5 LEVEL OF COMPLIANCE WITH THE LEGISLATIVE AND OTHER ENTITLEMENTS LISTED IN SECTION 3.....	21
5.1 RESPONDENT COMPANIES	22
5.1.1 <i>Registrations with the Board Of Reference</i>	<i>22</i>
5.1.2 <i>Wages, overtime, public holidays.....</i>	<i>22</i>
5.1.3 <i>Leave entitlements – annual and long service</i>	<i>23</i>
5.1.4 <i>Superannuation</i>	<i>23</i>
5.1.5 <i>WorkCover.....</i>	<i>23</i>
5.1.6 <i>Written contracts and agreements with outworkers.....</i>	<i>23</i>
5.1.7 <i>Work records</i>	<i>23</i>
5.2 NON-RESPONDENT COMPANIES.....	23
6 CASE STUDIES.....	25

APPENDICES

Appendix I:	Summary of Outworker Entitlements
Appendix II:	Questionnaire for Outworkers Interviews
Appendix III:	Respondent Inspection Sheet
Appendix IV:	Non Respondent Inspection Sheet
Appendix V:	Contracting Chain of Company A

Executive Summary

The information contained in this report illustrates that outworkers are not currently receiving their lawful entitlements. The level of compliance of the clothing industry in relation to outworkers receiving their lawful entitlements remains extremely low and in many instances non-existent. Across the Victorian clothing industry, outworkers are systematically denied their lawful entitlements, very often to a level of extreme exploitation.

During September and October 2004, the Textile, Clothing and Footwear Union of Australia (Victoria Branch) inspected 151 companies and interviewed 18 outworkers and collected a number of relevant cases studies

On the basis of the company inspections and interviews conducted with outworkers, the key findings of this report are that:

In a vast majority of cases

- Outworkers are not receiving award rates of pay;
- Outworkers are not receiving award entitlements such as annual leave, long service leave, overtime, public holidays ;
- Outworkers are being forced into sham contractor and company arrangements as a systematic method of employers avoiding legal obligations to employees;
- Outworkers are not receiving superannuation;
- Outworkers are not being identified as employees for purposes of WorkCover;
- Companies are not keeping transparent and correct work records;
- Companies who give out work are not registered with the Board of Reference.

Only one company was found to be fully compliant with their legal obligations to outworkers. The highest level of non-compliance with the lawful entitlements of outworkers was found in companies that were neither signatories to the Homeworkers Code of Practice nor respondents to the *Clothing Trades Award 1999*.

While no particular section of the industry was completely compliant with obligations to outworkers lawful entitlements, slightly higher levels of compliance was found within companies that were respondents to the *Clothing Trades Award 1999*. Within a context of virtually universal non-compliance, the highest levels of compliance was found within companies that made for companies that had been prosecuted by the TCFUA for breaches to the *Clothing Trades Award 1999* and/or were signatories to the Homeworkers Code of Practice. Being a respondent to the *Clothing Trades Award 1999* has not been found to guarantee compliance with the legal obligations of outworkers.

Based on the extensive level of non-compliance in the industry with obligations to ensure outworkers receive their lawful entitlements it is recommended that:

Recommendation 1

The Minister makes a mandatory Code of Practice for the purpose of ensuring that outworkers receive their lawful entitlements in accordance with Division 2 of the Outworkers Improved Protection Act 2003

Recommendation 2

The *Outworkers (Improved Protection) Act 2003* is amended to remove any ambiguity or varied conditions of employment created by the *Federal Workplace Relations Act Part XVI*

(Contract Outworkers in Victoria in the TCF industry) and the failure to enact the Federal Award Uniform Systems Bill to

- give full effect to the deeming provisions of the Act to ensure that whether classified as an independent contractor or outworker the worker is entitled to identical terms and conditions of employment, has the capacity to recover money and that the same obligations of transparency and record keeping apply to all companies giving work out.
- include within the scope of “relevant industrial legislation” in *Part 2, Section 5 Definitions the Victorian Clothing Trades Victoria Common Rule Award 2005*
- include in *Part 2 Division 1 – Outworkers as Employees Section 4(2) the Clothing Trades Victoria Common Rule Award 2005*
- expand the capacity of Information Services Officers to inspect and enforce compliance.

Recommendation 3

WorkSafe Victoria target outworkers in the clothing industry in Victoria for priority prevention activity including implementing a comprehensive compliance strategy which focuses on information and education, incentives, enforcement, investigations, prosecutions and penalties.

Recommendation 4

The Victorian State Government implement a comprehensive outworker strategy as a new policy initiative to support and increase the efficacy of the *Outworkers (Improved Protection) Act 2003* and the *Clothing Trades Victorian Common Rule Award 2005*. Such a strategy to include

- a whole of government approach to addressing the needs of Victorian Outworkers
- an outworker vocational education and training program
- a community and consumer education campaign
- an inspection, compliance and enforcement program
- promotion and development of the Homeworkers Code of Practice
- education of outworkers regarding their rights and employers regarding their responsibilities in relation to outworkers entitlements and employer obligations
- the signing and implementation of the Victorian Government TCF Procurement Code to ensure Government purchasing of TCF products is consistent with the objectives of the strategy
- sufficient budgetary resources to implement the above strategy including funds being made available to support the strategy activities of relevant State Government Departments, the TCFUA, Employer Organisations, FairWear and the Homeworkers Code of Practice Committee.

1 Introduction

An outworker, as defined in the *Outworkers (Improved Protection) Act 2003*, is a person engaged, for someone else's business, in or about a private residence or other premises that are not necessarily business or commercial premises, to perform clothing work.

Over the last decade there has been a growing awareness outside of the clothing industry that outworkers are subject to often extreme levels of exploitation. Outwork is not an exception in the forms of employment and production within the clothing industry in Australia; the industry is structured around it. A large proportion of clothing garments that are made in Australia are made by people who are paid extremely low wages in poor and undesirable conditions.

A high proportion of outwork is performed by migrant women between the ages of 25 to 35, who have young children at home*. They are frequently new immigrants with poor English skills and low job opportunities. Elderly members of families and children commonly assist with ancillary tasks†.

Over the past ten years there have been a number of State and Federal Government inquiries and reports concerning the conditions under which outwork is performed. These reports and investigations include first-hand evidence from outworkers as well as submissions from industry groups, unions, and community organisations that advocate on behalf of outworkers. These reports have consistently found that outworkers receive payment and work conditions which are significantly inferior to their statutory and award entitlements.

This report contains information relating to the current state of employer compliance with outworker entitlements in the clothing industry in Victoria. Representatives from the Textile, Clothing and Footwear Union of Australia (Victoria Branch) undertook a process of inspecting 151 companies and interviewing outworkers in order to gather information on the current state of compliance and to evaluate action taken by the clothing industry [whether voluntary or not] to improve compliance with obligations to ensure that outworkers receive their lawful entitlements.

The information contained in this report illustrates that outworkers are not currently receiving their lawful entitlements. The level of compliance of the clothing industry in relation to outworkers receiving their lawful entitlements remains extremely low and in many instances non-existent.

As early as 1987, then Deputy President Riordan of the Australian Industrial Relations Commission in discussing the issue of compliance found that: "The evidence in this case of breaches and blatant evasion of the relevant award provisions, with the consequential unfair exploitation of the persons concerned, demands that the strongest possible protection be given to ensure compliance with the award conditions. The long history outlined herein indicates that unless a specific obligation is placed on respondents not to

* Senate Economics Reference Committee (December 1996), *Outworkers in the Garment Industry*, AGPS, Commonwealth of Australia, p xi)

† Senate Economics Reference Committee (December 1996), *Outworkers in the Garment Industry*, AGPS, Commonwealth of Australia, pi -ii & paragraph 2.69)

engage in practices which encourage the avoidance or evasion of the award provisions the award, is likely to be ignored[‡].”

The information gathered demonstrated that the highest levels of compliance of employers ensuring outworker receive their lawful entitlements was most likely in companies that were signatories to the Homeworkers Code of Practice, followed in general by companies that were respondents to the *Clothing Trades Award 1999*, whilst the lowest levels of compliance was amongst non-respondent companies.

[‡] Riordan (1987) Australian Conciliation and Arbitration Commission, *Clothing Trades Award 1982 in relation to contract work* C No. 4546 of 1985

2 Background

The rise in outworkers, particularly in the clothing industry, has accompanied the restructuring of the manufacturing industry over the past ten to fifteen years. The clothing industry in Australia is structured in a complicated chain of out-sourced production that often ends with grossly underpaid workers who subsidise the profits of others in the production chain. The outworkers, their families and the broader community bear the costs of those exploitative employment conditions.

2.1 *The Clothing Industry*

The Textiles, Clothing and Footwear (TCF) industry is one of Victoria's largest manufacturing sectors, providing around 33,000 jobs (in the formal sector, with large number varying from 20,000 and 140,000 people in the informal sector), and spending AUD\$1,000 million annually on wages and salaries[§].

Over the past two decades the TCF industry in Australia has undergone significant transformation as changes to national industry policy have occurred and Australia has embraced free trade policies. During this period, TCF firms working in Australia have gone out of business, reduced staff, shifted costs and faced constant pressure to improve their productivity, efficiency and practices in the face of ongoing reductions of tariffs and quotas and increased competition from imported products from developing countries.

These changes to the TCF industry have resulted in considerable restructuring of operations, most notably:

- high volume, routine manufacturing for the most part has moved offshore;
- the manufacture of women's fashion and other areas such as school uniforms has remained in Australia;
- cost-shifting has ultimately led to the growth in sub-contracting and clothing outwork both nationally and in VIC;
- Over the six year period May 1997 to May 2003 total TCF employment fell from 103,000 to 68,000 with Victoria experiencing half of this decline. Over the same period Victorian TCF employment as a proportion of total manufacturing employment in Victoria declined by more than a third. (ABS, Productivity Commission Inquiry Report, July 2003)
- a significant move from factory-based employment to the use of a home-based workforce performed by a large pool of displaced factory clothing workers**.

2.2 *The Increase in Retail Influence on Production*

A Federal Industry Commission report in 1997 (Vol. 2 B8-9) noted that contracting out of design, assembly and finishing of clothing was more prevalent, rather than complete garment manufacture taking place in one single establishment. In the same report the Industry Commission noted evidence of a further trend during the 1990s which became known as the 'oligopolisation' of the retail market. With the larger retailers dominating through industry mergers and takeovers, in what was seen as a turnaround, the retail

[§] Ethical Clothing Trades Council of Victoria (2004), *Quarterly Report for the Quarter Ending 1 May 2004*, p6

** NSW Ethical Clothing Trades Extended Responsibility Scheme (October 2004) *Regulatory Impact Statement*, p5

sector began to dictate to the fashion houses and manufacturers/makers what would be made and what price it would be made at^{††}.

2.3 *The Clothing Supply Chain Today*

Today the clothing industry and the organisation of a majority of out-sourced local production is characterised by a complex supply chain that often distances principal contractors-retailers and/or fashion houses from remote and isolated outworkers. One or several intermediaries may operate between the principals and the workers, connected via a series of contractual relationships. However it is also not unknown for outworkers to be engaged directly by retail fashion houses. Because the chain of garment production is so long and complex, it has become easy for responsibility to be passed off from one element to another along the chain. Of particular significance is the dominance of highly mobile but less visible 'middlemen' who source production through outworkers for manufacturers, wholesalers and fashion houses. Outworkers appear at all levels of the industry, engaged by retailers, wholesalers, manufacturers or subcontractors^{††}.

2.4 *Outworkers in the Clothing Industry*

Clothing outworkers can be defined as workers who perform work for a maker, subcontractor, fashion house or retailer in a domestic dwelling^{§§}. Most outwork is undertaken by migrant women aged between twenty-five and thirty-five years, who have young children. Many have poor English language skills and find it difficult to obtain other forms of work^{***}. The ethnic origins of outworkers are predominantly Vietnamese and Chinese. Smaller ethnic groups include people of Arabic, Filipino, Greek, Khmer, Korean, Laotian, Portuguese, Spanish and Turkish people.

The move away from factory based clothing manufacture to outwork has led to a dissipation of compliance with awards for pay and conditions of outworkers. Some manufacturers and fashion houses use the sub-contracting structure of the supply chain to:

- reduce wage costs, given they are employed by contractors (intermediaries) and therefore largely invisible to compliance authorities and the Union;
- avoid on-costs such as penalty rates, superannuation, workers compensation insurance and payroll tax;
- circumvent costs of plant and equipment, transferring costs to outworkers;
- artificially reduce labour costs, which are in some cases compensated for by welfare payments;
- obtain quick turn around times which often lead to poor work practices.

Such arrangements give outwork-based entities an unfair advantage over factory-based enterprises that are more likely to provide award rates and conditions. Clothing outworkers face problems underpinned by social and cultural factors, such as:

- social isolation – working from home or in hidden workshops;
- predominantly women from South East Asian countries with poor English literacy and language skills;

^{††} NSW Ethical Clothing Trades Extended Responsibility Scheme (October 2004) *Regulatory Impact Statement*, p7

^{††} NSW Ethical Clothing Trades Extended Responsibility Scheme (October 2004) *Regulatory Impact Statement*, p8

^{§§} NSW Department of Industrial Relations Issues Paper (December 1999) *Behind the Label – The NSW Government Clothing Outwork Strategy*, p.1.

^{***} Victorian Industrial Relations Taskforce (2000) *Independent Report of the Victorian Industrial Relations Taskforce*, p.133.

- little access or knowledge of services available to them;
- little self-confidence; and
- fear and/or cultural resistance to complaining about their circumstances^{†††}.

The conditions under which clothing outwork is performed and the impact that poor wages and unsafe and unsustainable employment conditions have on outworkers and their families has been the subject of numerous investigations and inquiries by both state and federal governments and industrial tribunals^{†††}. Overwhelmingly evidence reported from these investigations as well as numerous interactions with outworkers, their families, and communities have consistently verified the unacceptable employment conditions faced by clothing outworkers.

These reports have found that outworkers within the clothing industry often receive payment and work under conditions which are inferior to their statutory and award entitlements. Conditions are characterised by allegations of:

- 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.

Clothing outworkers constitute one of the most marginalised sections of the Australian workforce. A study was undertaken of Victorian outworkers in 2001 by Dr Christian Cregan^{§§§} that included the following key findings;

- outworkers were paid an average of \$3.60 per hour and as little as 50 cents per hour
- 88% advised that they relied on these wages for essential household expenses
- 95% did not get holiday leave, sick leave or public holiday pay
- 75% were not able to get a steady supply of work
- 74% did not have their wages paid on time
- 52% had experienced non-payment of wages for work performed

The reports have found the following unique circumstances in the clothing industry in dealing with attempts to regulate the above problems:

- 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

^{†††} NSW Ethical Clothing Trades Extended Responsibility Scheme (October 2004) *Regulatory Impact Statement*, p8-9

^{†††} The Senate Economics References Committee Inquiry (December 1996), *Outworkers in the Garment Industry*; Industry Commission (June 1997) *The Textiles, Clothing and Footwear Industries* Volume 1 Report No. 59, AGPS, Canberra; The Senate Economics References Committee (July 1998), *Outworkers in the Garment Industry Review Report*; the NSW Legislative Council Standing Committee on Law and Justice (1998), *Inquiry into Workplace Safety; Pay Equity Inquiry* (1998) New South Wales Industrial Relations Commission; *Allowability of outworker clauses in Clothing Trade Award 1982* (1999) 45 AILR 4-029; Family and Community Development Committee (2002), *Inquiry into the Conditions of Clothing Outworkers in Victoria*

^{§§§} Dr Christina Cregan (2001) *Home Sweat Home*, Melbourne University

- clothing sector with adverse consequences to their income, health and well-being, and their families; and
- an industry focused on surviving through suppressed labour costs.

3 Identifying Outworker Entitlements

3.1 Summary of Outworkers Lawful Entitlements

Outworkers' lawful entitlements in the clothing industry are prescribed by a range of legislative instruments including;

- *Clothing Trades Award 1999.*
- *Outworkers (Improved Protection) Act 2003*
- *Long Service Leave Act 1992*
- *Public Holiday Act 1993*
- *Occupational Health and Safety Act 1985*
- *Workplace Relations Act 1996*
- *Commonwealth Superannuation Guarantee legislation*

“Outworker” is defined to mean “a person engaged, for someone else's business, in or about a private residence or other premises that are not necessarily business or commercial premises, to perform clothing work” (*Outworker (Improved Protection) Act section 3*).

The phrase ‘lawful entitlements’ is defined to mean “the entitlements conferred on the outworker by law, including any entitlements conferred by or under relevant industrial legislation or any other legislation” (*Outworker (Improved Protection) Act section 3*).

The evaluation of action taken to improve compliance with obligations to ensure outworkers receive their lawful entitlements requires an identification of what those entitlements are. This section of the report attempts to identify, broadly, the sources of entitlements for outworkers.

First, it is important to note that the sources of the lawful entitlements of an outworker will vary, depending on

- whether the outworkers is considered to be an **employee** or an **independent contractor**;
- whether or not the person engaging the outworker is a **respondent** to the Clothing Trades Award 1999.

These two sets of factors can overlap, creating four distinct categories of outworker:

Outworkers engaged as employees by a non-respondent employer	Outworkers engaged as employees by respondent employers
Outworkers given work as independent contractors by a non-respondent person	Outworkers given work as independent contractors by a respondent person

It is a relevantly simple process to determine whether a person engaging an outworker is a respondent to the federal award. That person will be bound if they are a ‘roped-in’ party, named in the Schedule appended to the award, or if they are a member of one of the employer organisations party to the award, such as the Australian Industry Group.

These overlapping factors will become less complicated, in Victoria, as from January 2005. At that time, the *Clothing Trades Victorian Common Rule Award 2005* (AIRC print reference PR950670) will come into force, effectively binding all Victorian clothing industry employers to the terms of the *Clothing Trades Award 1999*, subject to the specific exemptions and provisions of the Common Rule Declaration.

In the meantime, this analysis will identify the range of sources for the lawful entitlements of outworkers for the period within 12 months of the coming into force of the *Outworkers (Improved Protection) Act 2003* – that is, the pre-Common Rule environment.

3.1.1 Outworkers engaged as employees by a non-respondent employer

Outworkers engaged as employees by a non-respondent employer have entitlements arising under

- contracts of employment (where those contracts do not provide for terms and conditions less favourable than the entitlements arising under legislation or industrial instrument);
- the minimum wage order made under section 501 of the Workplace Relations Act 1996, namely, the Manufacturing Industry Sector Minimum Wage Order 1997 (AW789236);
- Schedule 1A of the Workplace Relations Act 1996 (Cth);
- Other general provisions of the Workplace Relations Act 1996 (including provisions relating to termination of employment, right of entry by union officials, anti-discrimination provisions, etc)
- Commonwealth superannuation guarantee legislation;
- *Public Holidays Act* (Vic)
- *Long Service Leave Act* (Vic)
- *Occupational Health and Safety Act* (Vic)
- *Equal Opportunity Act* (Vic)

This category will, effectively, cease to exist after the commencement of operation of the *Clothing Trades Victorian Common Rule Award 2005* in January 2005. Thereafter, the terms and conditions for this group will be effectively the same as those for outworkers engaged as employees by respondent employers.

3.1.2 Outworkers engaged as employees by respondent employers

Outworkers engaged as employees by a respondent employer have entitlements arising under

- contracts of employment (where those contracts do not provide for terms and conditions less favourable than the entitlements arising under legislation or industrial instrument);
- the *Clothing Trades Award 1999*, and in particular the provisions at clause 47 within Part 9 of that Award
- General provisions of the *Workplace Relations Act 1996* (including provisions relating to termination of employment, right of entry by union officials, anti-discrimination provisions, etc)
- Commonwealth superannuation guarantee legislation;
- *Public Holidays Act* (Vic)
- *Long Service Leave Act* (Vic)
- *Occupational Health and Safety Act* (Vic)

- *Equal Opportunity Act (Vic)*

3.1.3 Outworkers given work as independent contractors by a non-respondent person

Outworkers given work as independent contractors by a non-respondent person are entitled to

- the terms of whatever contractual arrangement is agreed between the parties; and
- the minimum rate of pay provided for by Subdivision B of Part XVI of the *Workplace Relations Act 1996* (see especially the definition of 'statutory amount' provided in section 541); and
- the benefits arising by operation of the *Outworker (Improved Protection) Act 2003*, namely, the extended operation of
 - *Public Holidays Act*
 - *Long Service Leave Act*
 - *Occupational Health and Safety Act*

This category will, effectively, cease to exist after the commencement of operation of the *Clothing Trades Victorian Common Rule Award 2005* in January 2005. Thereafter, the terms and conditions for this group will be effectively the same as those for outworkers engaged as independent contractors by respondent persons.

3.1.4 Outworkers given work as independent contractors by a respondent person

Outworkers given work as independent contractors by a respondent person are entitled to

- the terms of whatever contractual arrangement is agreed between the parties; and
- the *Clothing Trades Award 1999*, and in particular the provisions at clause 46, which incorporate the minimum conditions set out in clause 47 within Part 9 of that Award; and
- the benefits arising by operation of the *Outworker (Improved Protection) Act 2003*, namely, the extended operation of
 - *Public Holidays Act*
 - *Long Service Leave Act*
 - *Occupational Health and Safety Act*

See **Appendix I** for Summary of Outworker Entitlements

3.1.5 *The Clothing Trades Award 1999*

The *Clothing Trades Award 1999* provides the minimum rates of pay and working conditions for employees in the clothing industry. The award imposes legal rights and obligations on employers and employees which are legally enforceable.

The *Clothing Trades Award 1999 Part 9* provides for Outwork and Related Provisions. Part 9 contains unique clauses specific to outworkers in the industry and provides a minimum set of conditions regarding company obligations as well as outworker obligations and rights. Below is a brief summary of the content of those provisions.

Outwork

Requires a Respondent employer to:

- Make an application for registration before giving any work to outworkers (Clause 47.1).
- Enter into a written agreement with an outworker regarding the outworkers employment status, full time or part time before employing the outworker (Clause 47.3.1).
- Provide to outworkers work to be performed in ordinary working week and not require outworkers to work on Saturday, Sunday or a public holiday (Clause 47.13).
- Provide to the person performing the work each time work is given out, information in regard to their award entitlements in the form of schedule B of the Award (Clause 46.27).
- Maintain written work records and provide a copy of the work record with the work to the outworker performing the work (Clause 47.16).
- Not employ more than 10 outworkers without consent of the union or the board of reference (Clause 47.5).
- Provide to the TCFUA for inspection work records (Clause 47.16.4).

Contract Work

Requires a Respondent employer to:

- Make an application for registration before giving out work and not give work to any other employer if they, in turn, are not registered (Clause 46.1.1 & 46.1.2).
- Maintain written records of all work given to respondents and non respondents and provide work records to respondents and non respondents (Clause 46.2.1).
- Maintain a list of all respondents to whom they give work (Clause 46.3.1a).
- Send a copy of this list to the AIR and the TCFUA on the last working day of May and November each year (Clause 46.3.1b).
- Do not enter into a contract or arrangement with a respondent or non respondent (who gives work to other people outside their premises) without a written agreement (Clause 46.4.2).
- The written agreement must state that any work performed by a person other than the respondent or non-respondent is carried out according to a written agreement (Clause 46.4.2a). The written agreement must specify matters set out in relation to work records in clause 46.2.3(a) to (l) and must provide for wages and conditions no less favourable than those provided for outworkers in Clause 47 (Clause 46.4.2c).
- Provide to the AIR and TCFUA, a list of respondents or non respondents that the employer has entered into contracts as referred to in clause 46.4.3(c) & (d). This list must be forwarded within seven days of the last working day of February, May, August and November each year (Clause 46.4.3).
- Observe the award (Clause 46.6).
- Provide information to persons who perform the work themselves, in regards to their award rights (Clause 46.7).
- Provide to the union for inspection, the employers work records this includes: wage book records, contract records, lists of respondents and non-respondents to whom you give work, lists of respondents and non respondents whom you have entered into written agreements with (Clause 46.2.5).

3.1.6 *Outworkers (Improved Protection) Act 2003*

The *Outworkers (Improved Protection) Act 2003* covers all outworkers in the clothing industry in Victoria. The Act gives outworkers legal status as employees and provides for

the capacity to recover unpaid money up the contracting chain. The *Outworkers (Improved Protection) Act 2003* section 4 defines that;

Outworkers are employees for the purposes of certain laws

- (1) For the purposes of the laws specified in sub-section (2)—
 - (a) an outworker is an employee;
 - (b) a person who engages an outworker is an employer;
 - (c) the contract between an outworker and a person who engages him or her is a contract of employment;
 - (d) the conditions on or under which an outworker performs work are conditions of employment;
 - (e) the relationship between an outworker and a person who engages him or her is an employment relationship.
- (2) The laws referred to in sub-section (1) are—
 - (a) this Act;
 - (b) the **Federal Awards (Uniform System) Act 2003**;
 - (c) the **Long Service Leave Act 1992**;
 - (d) the **Occupational Health and Safety Act 1985**;
 - (e) the **Public Holidays Act 1993**;
 - (f) regulations and other subordinate instruments (including common rule orders) made under an Act specified in paragraph (a), (b), (c), (d) or (e).

3.1.7 Occupational Health and Safety Act 1985

The Victorian WorkCover Authority is responsible for the Victorian workplace safety system including enforcing the *Occupational Health and Safety Act 1985*. WorkSafe Victoria the VWA's occupational health and safety arm takes the lead role in the promotion and enforcement of health and safety in Victorian workplaces. WorkSafe target their activities and identify situation and hazards for priority prevention activity based on reported injuries and hazards. Given the nature of outwork, the absence of a traditional workplace and the relative position of outworkers in the production chain, reported injury and hazard rates in the clothing industry are inaccurate and do not reflect realities faced by workers.

3.1.8 Homeworkers Code of Practice

The Homeworkers Code of Practice (the Code) is a voluntary agreement entered into by retailers, manufacturers and unions. The Code was established in 1997 following negotiations between the industry groups and the TCFUA. The Code is designed to complement the relevant awards and the make the contracting chain transparent and enable outworkers to receive their lawful entitlements. It involves an accreditation process for manufacturers, and agreement by retailers to use suppliers that comply with employment laws and minimum award conditions and a process to identify and resolve unethical employment practices. It also includes a label system for consumers to identify ethically produced clothing – the No Sweat Shop Label. The code has three main parts: retailers sign Part One, manufacturers become accredited to Part Two, allowing them to

sew the No Sweat Shop Label into their clothes and Sports and Corporate Wear Companies sign Part Three.

3.2 *Outworkers and work relationships*

The question as to whether an outworker is an employee or an independent contractor has significant impact on companies legal obligations and the lawful entitlements of outworkers and independent contractors. Under federal law, if an outworker is an employee, they are covered by the terms of a federal award or agreement if the employer is a respondent to or covered by, the award or agreement. Under most awards, if the person is an independent contractor they cannot be covered by an industrial instrument, and may only apply to the Federal Court for a review of an unfair contract. In some instances, however, federal award coverage has been extended to cover outworkers and individual contractors. For instance, the federal *Clothing Trades Award 1999* stipulates that no outworker can be engaged for less than what is set out in the award.

At common law, there have been a range of tests developed for determining, on a case-by-case basis, whether a particular 'work relationship' is an *employment* relationship or an *independent contractor* relationship. These tests have been formulated in a range of different ways in different cases.

For the purposes of the *Outworkers (Improved Protection) Act 2003*, this distinction was intended to be overridden by a 'deeming' provision – section 4. This provision establishes outworkers as employees. However this does not mean that the employee/contractor distinction is irrelevant, because the *Outworkers (Improved Protection) Act 2003* in its current form provides for only a very limited range of entitlements, such as long service leave, public holidays and OH&S. The issue has been further muddled by the 2003 amendments to the *Federal Workplace Relations Act Part XVI (Contract Outworkers in Victoria in the TCF industry)* and the failure to enact the Federal Award Uniform Systems Bill. Consequently the policy objective of deeming outworkers as employees in Victoria has been significantly undermined.

4 Investigations and Inspections

4.1 Interviews with outworkers

The TCFUA conducted interviews with outworkers during October 18th – 26th 2004. Each interview lasted between 30mins and 1 hour. The interviews were conducted in Vietnamese or English, as appropriate and involved Vietnamese, Chinese, Greek and Australian-born outworkers. 18 outworkers were interviewed and of those interviewed the majority were women. Outworkers who participated in the interviews were selected randomly from the pool of outworkers who have participated in English language classes in the last two years. Interviews were conducted anonymously to protect the outworkers' identities and the data from the interviews was compiled by the Department of Innovation, Industry and Regional Development. The purpose of the interviews was to ascertain whether outworkers are receiving their lawful entitlements in the clothing industry. See **Appendix II** for the questionnaire sheet used during the interviews.

The TCFUA also collected an additional seven statements and case studies from outworkers and in-house factory workers relating to outworker entitlements and compliance in the clothing industry. These were self-generated by workers who became aware of the compliance project as a result of the union's inspections and interview process. They included outworkers independently contacting the union with reports of exploitative work practices and also in-house factory workers contacting the union with information relating to outwork after inspections had been conducted at their workplaces.

4.2 Inspections of workplaces.

The TCFUA was contracted to complete 150 inspections of workplaces between September 2004 and October 2004. During the period of September 8th and October 6th 2004, the TCFUA conducted 151 workplace inspections in the clothing manufacturing industry. The focus of the inspections was to determine whether outworkers are receiving their lawful entitlements in the clothing industry.

Permit holders as outlined in the Workplace Relations Act section 285 exercised their powers under section 285(2) to investigate suspected breaches of the *Clothing Trades Award 1999* and the *Workplace Relations Act 1996*. The inspections were all conducted with the same methodology and focus.

The selection of workplaces included in the inspections was determined by a number of factors. These included a combination of respondent and non-respondent companies to the *Clothing Trades Award 1999*, company size and geographic location. Companies listed on the Board of Registration quarterly lists were randomly selected. Companies involved in contracting chains of companies who had been previously prosecuted by the TCFUA and or who were accredited with the Homeworkers Code of Practice were also included in the inspections. Companies were also selected from information referred by the Department of Innovation, Industry and Regional Development.

Respondent and non respondent companies to the *Clothing Trades Award 1999* have different obligations and legal requirements in relation to outworkers' lawful entitlements. The variation in companies' obligations in relation to outworker entitlements was addressed in the inspection process by the use of different inspection sheets for the two

different categories of companies. See **Appendix III** respondent inspection sheet and **Appendix IV** non-respondent inspection sheet.

The companies were telephoned prior to inspection to confirm company name, address and contact details. As outlined in the *Workplace Relations Act 1996 section 285D (2)* all companies were sent a letter of notification with the required 24 hours notice with the inspection date, name of permit holders and time that inspection would take place. Letters were faxed and where no fax was available letters were sent via express post.

In the case of respondent companies an additional letter was faxed prior to the notice of inspection, outlining obligations under the award. Notification letters included the union office telephone number for companies to contact the union, should they require further information about the inspection. All queries were responded to either by telephone or in written communication. Considerable effort was made to explain the inspection process and relevant legislative requirements, and to reschedule where appropriate the inspection times. Information collected during the inspections was gathered in a proper and transparent manner as prescribed in the *Workplace Relations Act 1996*.

The table below is a summary of information from the company inspections.

Table 1: Summary of information from company inspections

Category	No.	%
Companies included in the project	151	
Inspections conducted of workplaces	125	83%*
No access to premises / records granted	26	17%*
Respondent companies included in the project	84	56%*
Non-respondent companies included in the project	67	44%*
Respondent companies inspected	76	90%**
Non-respondent companies inspected	49	73%***
Companies that give work out to be performed by someone else	92	73%

* % of total companies included in the project

** % of respondent companies included in the project

*** % of non-respondent companies included in the project

4.3 Level of Obstruction experienced in exercising Part IX inspection powers

In the process of conducting inspections of workplaces, union representatives experienced a significant level of obstruction in exercising inspection powers by company representatives attempting to conceal non-compliance or even to conceal the existence of the employment of outworkers.

As part of the inspections process, union representatives conducted interviews with company representatives. Statements made by company representatives during these interviews were subject to verification through comparison of such statements to documents and records that were created and supplied by company representatives. The absence of other processes of independent verification of the statements made by company representatives significantly reduced the ability of the inspections process to reveal instances of employers making false statements intended to conceal non-compliance with their legal obligations to outworkers. This absence combined with the short timeframe of the project also reduced the ability of the inspections process to reveal instances of employers distorting or falsifying records provided to union representatives.

In the case of some companies inspected the apparent level of obstruction of the inspection process was actually incidental to a substantial level of claimed ignorance on the part of employers concerning both their obligations to provide legal entitlements to outworkers and to keep and maintain accurate records of their employment and contracting practices. However it was apparent that in many cases there was a clear intent to obstruct the inspection process to prevent union representatives from obtaining information or to distort or falsify the information provided.

Many employers attempted to conceal their failure to provide outworkers with their lawful entitlements by simply claiming that they did not employ any: outworkers were falsely classified as contractors, reflecting an understanding on the part of employers that if successful such a classification would allow them to avoid or reduce their legal obligations to outworkers. By falsely classifying outworkers as contractors, employers attempted to justify their failure to provide outworkers with their lawful entitlements and to maintain employment records with the claim that they were under no legal obligation to do so. These attempts to falsely classify outworkers as contractors reflected an intent to obstruct the inspection process in order to obscure and conceal the systematic methods used by employers seeking to avoid their legal obligations to outworkers.

Union representatives were unable to gain access to 17% of the workplaces included in the inspections. There were a number of reasons why union representatives were unable to obtain such access. In a small number of cases there were legitimate reasons, such as health problems and prior appointments that made it impossible for company representatives to comply with the notice of inspection. However, during the course of the inspection process it became clear that in an overwhelming majority of cases the denial of access was a deliberate strategy by employers to obstruct union representatives conducting the inspections. This strategy included employers locking up workplaces in response to the expected arrival of union representatives, as well as company representatives being said to be 'unavailable' to meet with union representatives, resulting in the inability of union representatives to conduct inspections.

The notice of inspection letter that companies received prior to the inspections occurring outlined which records and documents companies were required to produce. These included wage and time records and records relating to outwork. In a majority of instances

company representatives failed to produce all or some of the required documents, stating that they existed but were not on the premises. In a high proportion of such instances company representatives stated that such documents were 'at the accountants'. Even though the documents in question were often of a nature that would not have been required by accountants for example documents such as specification sheets detailing garment construction. It was clear that in many cases the records did not exist at all and where they did that companies did not want them to be inspected. Such documents if produced would have enabled union representatives to verify statements made by company representatives and to determine levels of compliance. In instances where company representatives stated that records existed but were not on the premises, they were given 48 hours to provide them to the TCFUA. Of those that were given an extension of time to produce the required documents only a small number of companies actually did.

In a number of instances the documents and records produced by company representatives had clearly been altered and/or falsely created for the inspection. Examples of this included records that had been clearly printed recently on clean white paper that were supposedly from four years ago and invoice books with page ripped out. A large number of employers followed the practice of keeping entirely separate invoice books for each outworker. This made it easy for employers to choose which records they wished to provide and hence which outworkers they wished to acknowledge they employed. This became apparent in several instances when comparisons were made between work records provided and records of payments recorded in cheque books.

5 Level of compliance with the legislative and other entitlements listed in Section 3

The vast majority of outworkers in the clothing industry do not receive their lawful entitlements. Of the 151 companies included in the inspection process 73% give out work to be performed by someone else. Of these companies the overwhelming majority do not ensure or see it as their responsibility to ensure that outworkers receive their lawful entitlements. Information collected from both interviews with outworkers and from company inspections illustrates industry-wide non-compliance.

Only one company was found to be fully compliant with their legal obligations to outworkers, and there were significant differences in the level and form of non-compliance found in all of the other companies inspected. To determine the level of compliance of companies with legal obligations to outworkers it is useful to differentiate between different forms of non-compliance. Whereas some forms of non-compliance reflect an intent to impose higher levels of exploitation of outworkers than would be possible if companies were compliant with their legal obligations, other forms of non-compliance simply reflect inadequate understanding of these legal obligations.

Information collated by the TCFUA from both the interviews with outworkers and inspections of companies was consistent with the findings previous investigations and reports.

Key findings include;

In a vast majority of cases

- Outworkers are not receiving award rates of pay;
- Outworkers are not receiving award entitlements such as annual leave, long service leave, overtime, public holidays ;
- Outworkers are being forced into sham contractor and company arrangements as a systematic method of employers avoiding legal obligations to employees;
- Outworkers are not receiving superannuation;
- Outworkers are not being identified as employees for purposes of WorkCover;
- Companies are not keeping transparent and correct work records;
- Companies who give out work are not registered with the Board of Reference.

Of the outworkers interviewed 67% stated that they are not happy with their working arrangements. 72% do not work regular hours, with their weekly hours of work ranging from 15 hours to 85 hours per week. 44% are not given enough time to complete the order. 72% are not paid on time and 73% are not paid regularly. 89% of outworkers are paid less than the award rate of pay.

Evidence from both the companies inspected and outworkers interviewed indicates that outworkers are being forced into sham contractor and company arrangements as a systematic method by which employers sought to avoid their legal obligations to employees. Reports from outworkers include being forced to obtain an ABN or ACN number and to supply invoices for work performed, so as to continue receiving work, or even as requirement for the receipt of pay for work already performed. 39% stated that they have been told to set up as self-employed contactors in order to receive work. 83% of outworkers interviewed were expected by employing companies to have an ABN, and 50% were expected to have a company name or licence. 22% had been made to sign

agreements stating they were contractors, despite clearly falling into the category of outworkers. 83% were expected to pay their own income tax. Company representatives consistently told union representatives during inspections that they did not give work out to any outworkers, instead classifying them as contractors or sub-contractors.

5.1 Respondent companies

Of the 151 companies included in the inspection process 84 were respondent to *the Clothing Trades Award 1999*. Of the 84 respondent companies included in the inspection process 61 gave work out to be performed by someone else. In general respondent companies were more aware of the existence of legal obligations to outworkers as compared to non-respondent companies. Despite a higher level of knowledge of the lawful entitlements of outworkers, respondent companies still consistently failed to comply with such obligations.

It was clear from the inspection of respondent companies that are signatories to the Homeworkers Code of Practice and/or have been prosecuted by the TCFUA for breaches of the *Clothing Trades Award 1999* that there is a higher level of compliance with the legal obligations to outworkers in these companies and the companies who make for them, than is the case with companies which have neither signed on to the Code nor have been prosecuted. Investigation of companies involved in the contracting chains of companies which have signed on to the code or have been prosecuted demonstrated that such companies were far more likely to have knowledge of outworkers lawful entitlements and of their legal obligations. In the majority of cases they received such information from the principle companies, strongly suggesting that prosecution and/or signing on to the Code has a positive impact on compliance beyond the principle company involved, even if the actual compliance levels of both the principle companies and those in its contracting chains remain low.

5.1.1 Registrations with the Board Of Reference

Companies who give work out are required to be registered with the Board Of Reference, which was established by the Australian Industrial Relations Commission in accordance with the *Clothing Trades Award 1999*. Of the 61 companies who gave work out, only 28 were registered with the Board of Reference. As a result 54% were not registered to give work out despite doing so on a regular basis.

5.1.2 Wages, overtime, public holidays

89% of companies inspected did not appear to be paying correct wages or to be calculating wages on an hourly rate as per the *Clothing Trades Award 1999*. Only 4 of the companies inspected included on work records the sewing time allowed for each garment, which is crucial to determine hourly rates as opposed to piece rates of pay. An overwhelming majority of companies pay outworkers by piece rate. This was confirmed by information supplied by outworkers in the interview process. 78% stated that they are paid by the piece. The average amount that outworkers reported that they receive per hour is \$5.70. From both the company inspections and information from interviews with outworkers it is clear that outworkers are not receiving award rates of pay. 89% of outworkers interviews stated that they are not paid a set hourly rate and 72% do not receive written pay records. 78% are working more than 38 hours per week and none receive overtime entitlements for this work. 83% work on weekends and do not receive weekend penalty rates. 78% work on public holidays without additional penalty rates.

5.1.3 Leave entitlements – annual and long service

Of the companies inspected 5 stated that they paid outworkers annual leave and long service leave to outworkers. 83% of outworkers interviewed stated that they do not receive paid annual leave or holiday time.

5.1.4 Superannuation

Only 6 companies stated that they paid superannuation for outworkers. 78% of outworkers reported that employers do not pay superannuation.

5.1.5 WorkCover

Of the outworkers interviewed 67% stated that they were not covered by employers WorkCover.

5.1.6 Written contracts and agreements with outworkers

Only 2 companies responded that they had written contracts and agreements with outworkers as per obligations outlined in the Clothing Trades Award 1999. As discussed in previous sections of this report this is as a result of companies incorrectly treating outworkers as contractors rather than as employees. Of the outworkers interviewed 89% responded that they did not have any kind of written agreement or contract with employers.

5.1.7 Work records

79% of companies keep work records for the work that they give out to be performed by someone else. 21% of companies do not keep any records at all of the work that they give out.

The overwhelming majority of the records kept by companies do not contain the correct information. Only 4 companies included the sewing time allowed for each garment on the work records for outworkers.

5.2 *Non-respondent companies*

Of the 151 companies included in the inspection process 67 were non-respondent companies. Of the 67 non-respondent companies included in the inspection process 31 gave work out to be performed by someone else.

In the process of inspecting non-respondent companies, union representatives encountered ignorance of the basic obligations of employers to outworkers, and even of the definition of outwork, with extreme frequency. Company representatives would often claim not to employ any outworkers while at the same time acknowledging that they paid people to perform work in clothing production from their homes. A number of non-respondent companies provided lists of contractors including people who after further investigation were in fact outworkers.

During the inspection process, non-respondent companies were able to provide union representatives with significantly fewer records than was the case with respondent

companies. Pay slips and other records that employers of outworkers are required to keep were unavailable and in many cases clearly did not exist, in part because of employers insisting that outworkers were contractors and hence that they were not required to keep such records. Employers who were falsely claiming that the outworkers they employed were contractors were unable to provide documentation of those employees long-service leave, for example, as the employers were not granting these employees any long-service leave, on the basis that, as contractors, they were not entitled to any. This failure to provide documents required by union representatives impacted upon the ability of union representatives to determine levels of compliance.

This category of companies will cease to exist come January 1 2005. However as has been shown in the finding of respondent companies the effect of companies being respondent to the Clothing Trades Award 1999 does not result in automatic, full compliance with legal obligations to outworkers.

While companies that had signed on to the Code were also very far from full compliance, union representatives found that companies that had signed on to the Code had a significantly greater level of compliance than those that had not, and on average significantly greater than the average level of compliance for companies that were respondents to the Award but not signatories to the Code.

6 Case Studies

* indicates where names have been changed to retain anonymity

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 STUDY 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?
