FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

Inquiry into the Conditions of Clothing Outworkers in Victoria

September 2002

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# Table of Contents

## Chapter One – Introduction

- Background to the Report ................................................. 1
- Structure of the Report .................................................. 2
- The Contemporary Economic Climate in Australia ................. 3
- The decline of the manufacturing industry ........................ 4
- Profile of the Textile, Clothing and Footwear (TCF) Industries in Australia
  - The Industry Plan ...................................................... 5
  - How did the Industry Plan affect the TCF industries within Australia? 6
  - The Victorian Government’s Textile, Clothing, Footwear and Leather (TCFL) Manufacturing Industry Plan 8
- Changing immigration patterns in Australia ....................... 9
  - Family Immigration .................................................. 10
  - Skilled Immigration .................................................. 11
  - Humanitarian Immigration ........................................ 11
  - Female Immigration .................................................. 12
- Migrant participation in the Australian labour market .......... 13
  - Explaining the shift from factory-based employment to home-based work 14
  - The Chain of Production .......................................... 16
- The retail industry in Australia ......................................... 19
  - Concentration in the ownership of the retail market .......... 20
- Definitions of outwork .................................................. 22
  - How many outworkers are there? ................................ 24
  - The availability and reliability of data .......................... 24
  - The Australian Taxation Office (ATO) .......................... 27
    - The Clothing Industry Forum ................................ 29
  - Why is there lack of data? ........................................ 29
- Profile of a typical outworker ......................................... 30
  - Dr Cregan’s study, ‘Home Sweat Home’ .......................... 31
- Conclusion .................................................................... 33

## Chapter Two – Terms and Conditions of Employment

- Victorian industrial relations system ................................ 39
- Nature of the employment contract .................................... 41
  - Employees .................................................................. 41
  - Clothing Trades Award 1999 ...................................... 42
- Certified agreements and Australian workplace agreements .... 43
- Schedule 1A .................................................................. 44
- Industrial law compliance in Victoria .............................. 44
- Differences between Schedule 1A and award or agreement employees
  - Independent contractors ........................................... 45
- Employment status of clothing outworkers ......................... 46
  - Outworkers as employees .......................................... 47
  - Outworkers as independent contractors ....................... 48
Chapter Three – Occupational Health and Safety

- Introduction
- Occupational health and safety responsibilities and entitlements
- Victorian occupational health and safety data
- Occupational health and safety in the textile, clothing and footwear industries
- Occupational Violence and Intimidation
- Conclusions

Chapter Four – Social Integration Issues

- Introduction
- Social Isolation
- Language Barriers
  - Literacy in Australia
  - English Language Courses
  - Bi-lingual inspectors
- Education and Training Programs
- Conclusions

Minority Report
PARLIAMENTARY COMMITTEES ACT 1968

S.4ED. The Family and Community Development Committee is to inquire into, consider and report to the Parliament on—

(aa) any proposal, matter or thing concerned with the family or the welfare of the family;

(a) any proposal, matter or thing concerned with community development or the welfare of the community;

(b) the role of the Government in community development and welfare including the welfare of the family—

if the Committee is required or permitted so to do by or under this Act.
TERMS OF REFERENCE

Referral of Matter to the Family and Community Development Committee

That pursuant to the Parliamentary Committees Act 1968, the following matters are referred to the undermentioned joint investigatory committees

(7) To the Family and Community Development Committee—for inquiry consideration and report by September 2002 on:

(a) The current conditions that clothing outworkers work under. Such examination should include, but is not limited to, consideration of:

   (i) Terms and conditions of engagement;

   (ii) health and safety issues; and

   (iii) social integration issues;

Legislative Assembly
Wednesday, 28 November 2001
CHAIRMAN’S FOREWORD

I have great pleasure in presenting the Family and Community Development Committee’s Final Report on its Inquiry into Clothing Outworkers in Victoria.

In receiving this Inquiry from the Minister for Industrial Relations the Committee was asked to examine the current conditions under which outwork is performed within the Victorian Clothing Industry. In accordance with the Terms of Reference, the Family & Community Development Committee considered the terms and conditions of engagement in outwork, the occupational health & safety issues of consequence to outworkers and a range of social integration issues relevant to migrant outworkers.

In conducting this Inquiry the Committee has been constantly aware of the invisible nature of outwork. A measure of this is reflected in the estimates of outworker numbers in Australia, which range from 50,000 to 329,000. It is difficult to talk with outworkers due to language and cultural barriers in conjunction with timidity in dealing outside their own ethnic communities. Thus, while perspectives into the industry are available it is extremely difficult to gain a comprehensive view.

Manufacturing in the textile, clothing and footwear industries has changed in Australia over the last twenty years. It has been suggested that significant changes in these areas may have contributed to the growth of outwork in Australia. It is clear that outwork provides an invaluable employment source for those who may be precluded from the workforce by language and cultural barriers or wish to remain at home and maintain flexibility in their working hours. It engages a wide cross-section of the Victorian community with a significant number of migrant women from non-English speaking backgrounds.

Apart from the invisibility of the industry another problem associated with discussing outworkers is uncertainty over their employment status. While many operate as independent contractors and see themselves as small business operators a large number are effectively employees. This status is not apparent however under current legislation. In addition there are concerns over the wage levels of outworkers. While there have been conflicting claims as to relative wage levels which can be confusing given that most outworkers are paid by piece rate there can be little doubt that some people are receiving wages significantly below award entitlement. The complexity of the production chain also makes it difficult to identify the responsible employer when remuneration is not paid in full or at all.
The lack of clarity over employment status coupled with the complexity of the production chain also creates difficulties when addressing occupational health and safety (OHS). Studies have shown a high level of soft tissue injury amongst outworkers a product of the lack of OHS training among both employers and employees. Responsibility for workers compensation is similarly unclear.

In closing the Report considers the situation of potentially the most isolated and exploited group of outworkers within Victoria; namely women from non-English speaking backgrounds. A number of social integration issues are identified and discussed and options for further training and education to reduce the vulnerability and exploitation of this group are outlined.

Through the course of the Inquiry, the Committee has conducted Public Hearings and site visits in Melbourne and Sydney in order to consult with a range of organisations and individuals from the community and industry. In closing the Committee would like to thank those who participated in this Inquiry either through appearance at Public Hearings or preparing written submissions.

Hong Lim MLA
Chairman
RECOMMENDATIONS

CHAPTER ONE – INTRODUCTION

Recommendation 1: That the Victorian Government recognise the importance of the Textile, Clothing and Footwear industry to the Victorian economy by continued support and that the Government continue to develop effective initiatives and programs to support the industry.

Recommendation 2: That the Victorian Government consider the recommendations of the New South Wales research into supply chain management within the clothing and textile industry when it is completed.

Recommendation 3: That the Victorian Government implement a program designed to enhance the knowledge and skills of outworkers who see themselves as small business operators to improve their operations and to increase their awareness of their taxation, industrial relations and occupational health and safety obligations.

Recommendation 4: That the Victorian Government recognise the importance of the textile, clothing and footwear industry and outwork in particular as a source of employment for many who find it difficult to obtain employment in other areas of the workforce due to language differences, cultural barriers and family responsibilities.

CHAPTER TWO: TERMS AND CONDITIONS OF EMPLOYMENT

Recommendation 5: That the Victorian Government recommend the Commonwealth Government amend the Workplace Relations Act 1996 to ensure that outworkers who do not to operate as independent contractors or small businesses are deemed as employees.
Recommendation 6: That the Victorian State Government should create legislation to ensure that outworkers who do not operate as independent contractors or small businesses are deemed as employees for the purposes of industrial regulation in Victoria.

Recommendation 7: That the State Government implement an advertising campaign to inform all those working in the textile footwear and clothing industries of their rights and obligations as employers and employees.

Recommendation 8: That the Victorian State Government create a multi-language information hotline for outworkers to inform them of their rights and entitlements under the Clothing Trades Award 1999 and the Accident Compensation Act 1985.

Recommendation 9: That Industrial Relations Victoria appointment bilingual inspectors/advisors to work within the clothing industry to provide information and practical assistance to:

(a) outworkers with regard to their rights and entitlements; and

(b) employers in the industry with regard to their responsibilities and obligations

Recommendation 10: That the Victorian State Government encourage manufacturers and retailers to seek accreditation with the existing national Homeworkers Code of Practice.

Recommendation 11: That the Victorian Government commits to the purchase of textiles clothing and footwear goods from suppliers who have met their full obligations as employers.

Recommendation 13: That the Victorian Government develop clothing specific legislation based upon the New South Wales Behind the Label strategy.

Recommendation 14: That the Victorian Government consider establishing an advisory body with membership from key stakeholders to consider issues of relevance to the Victorian clothing industry and to advise government of industry issues and recent developments.

CHAPTER THREE: OCCUPATIONAL HEALTH AND SAFETY


Recommendation 16: That the Victorian State Government through the Victorian Workcover Authority fund educative programs on occupational health and safety for outworkers.


Recommendation 18: That the Victorian Government define the duty of care responsibilities of sub-contractors and principal contractors within the production chain for the health and safety of outworkers.

CHAPTER FOUR: SOCIAL INTEGRATION ISSUES

Recommendation 19: That the Victorian State Government establish funding to provide outreach services for outworkers including those working as contractors and small business operators to reduce isolation and vulnerability.
Recommendation 20: That the Victorian State Government provide funding for educative and training services for outworkers including those working as contractors and small business operators - these could include English language courses, trade certification and alternative vocational training.
1.1 The Inquiry into the conditions of clothing outworkers in Victoria seeks to examine the current conditions under which outwork is performed within the Victorian Clothing Industry. In accordance with the Terms of Reference, the Family & Community Development Committee (the Committee) has considered the terms and conditions of engagement in outwork, the occupational health & safety issues of consequence to outworkers and a range of social integration issues relevant to migrant outworkers. The Committee received the Terms of Reference for the Inquiry from the Legislative Assembly on Wednesday, 28 November 2001. Initial consideration of the range of issues in relation to the terms and conditions of engagement in outwork and occupational health and safety issues were reported in the Committee’s Discussion Paper released in June 2002. Through the course of the Inquiry, the Committee has conducted Public Hearings in Melbourne and Sydney in order to consult with a range of organisations and individuals from the community and industry. Advertisements were placed in both the Herald Sun and The Age newspapers on 1 June 2002 and submissions called for by 28 June 2002. The Committee received a small number of submissions from interested parties.
Structure of the Report

1.2 The Report is structured around the Terms of Reference for the Inquiry. The introductory chapter covers a broad range of issues including the contemporary economic climate and the decline in the manufacturing industry before considering recent changes to immigration patterns and migrant employment in Australia. The Textile, Clothing and Footwear industries (TCF) in Australia and the local retail industry are also examined. This is followed by an outline of the profile and characteristics of outworkers engaged in the TCF industries - an area which has been providing employment in the form of outwork for over 100 years. The general demographic details of this group are also discussed.

1.3 The Report is then divided into a further three chapters:
   - The Terms and Conditions of Engagement
   - Occupational Health & Safety
   - Social Integration issues

1.4 Chapter 2 outlines the current system of industrial relations in Victoria before providing a review of the types of employment contract which predominate among clothing outworkers – independent contractors and employees. The rates of pay for factory-based workers and outworkers in the clothing manufacturing sector are reviewed and compared and security of payment discussed. The chapter concludes with an overview of legislative provisions, both Federal and State, relating to outworkers and the effect of codes of practice and the Behind the Label initiative in New South Wales.

1.5 Chapter 3 reviews occupational health and safety in Victoria with particular reference to outworkers. The responsibilities and entitlements of employers, employees and independent contractors are outlined, as is recent Victorian data on occupational health and safety. This is followed by an overview of studies and investigations into the incidence of injury and disease among textile, clothing and footwear workers.

1.6 In the final chapter, the Committee reviews a range of social integration issues relating to outwork in Victoria with a particular emphasis on language barriers suffered by migrant outworkers and options for education and training for outworkers.
The Contemporary Economic Climate in Australia

1.7 Globalisation has transformed Western economies across the globe in the last two decades. This movement has opened up national boundaries to international forces - political, social and economic. According to research in the area, “Globalisation internationally has been accompanied by, and has caused, the transformation of work and employment in capitalist societies like Australia.”

There is a wealth of academic literature on globalisation, both international and Australian. This section does not claim to be an exhaustive evaluation of globalisation and its impact on the Australian economy. Rather, it aims to highlight a number of general trends and the effect of those on the local manufacturing industry and on employment opportunities for immigrants within Australia.

1.8 A number of international trends have been identified as a result of globalisation, these include:

- A steady decline in factory based manufacturing employment in Western economies
- Growth in producer services (especially business) and social services (mainly health)
- Diversification of the service sector and its increasing dominance of the employment sector in Western economies
- Rapid rise in ‘top end’ jobs (particularly in information technology, telecommunications and managerial positions in professional occupations)
- Rise in ‘lower end’ jobs in the service sector (particularly for providing household services)
- Disappearance of middle layer jobs

1.9 Within this environment of economic change, Australia has become a signatory to a number of global trade agreements underpinned by the philosophy of trade liberalisation. The economic policies of successive governments throughout the 1980s and 1990s worked to redefine the employment opportunities of unskilled and semi-skilled migrants of non-English speaking background (NESB). These policies have included but are not limited to, the following:

- Widespread deregulation of the marketplace and subsequent decentralisation of the industrial relations system
1.10 Issues relating to the Industrial Relations system and award restructuring are discussed in greater detail in Chapter Two which deals with the terms and conditions of engagement in outwork.

The decline of the manufacturing industry

1.11 A general decline in the number of Australians employed in the manufacturing industry has been a characteristic of this period of economic change. These figures have been compiled in the table below.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>% of workforce employed in manufacturing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974</td>
<td>22.8</td>
</tr>
<tr>
<td>1978</td>
<td>20.0</td>
</tr>
<tr>
<td>1984</td>
<td>17.8</td>
</tr>
<tr>
<td>1994</td>
<td>13.0</td>
</tr>
</tbody>
</table>


1.12 The Industry Commission (IC) examined changes to the Textile, Clothing and Footwear Industries in Australia in their 1997 Report. The IC Report found that in 1997, TCF manufacturing employed 103,500 people, representing 9% of total manufacturing employment. These figures comprised just over 1% of employment in the Australian economy as a whole at that point in time. The clothing manufacturing industry was the most significant employer, accounting for 48% of the total TCF employment. According to the IC, that figure would have been higher if outworking was included in the data. Figures presented in the IC Report illustrate that between 1989 and 1997, TCF employment fell by
about 12% (approximately 13,400 employees), with more than 96% of the sector’s decline in manufacturing.  

1.13 Studies in the mid 1990s have shown that between 1989 and 1995, approximately 40,000 people lost their jobs in the manufacturing industry in Australia. Moreover, the majority of those people were NESB women who have subsequently moved to other forms of employment including outwork. According to research carried out by Jock Collins, those lost job opportunities within the ‘formal’ economy have been replaced by jobs in the ‘informal’ economy:

> “Accompanying these changes induced by globalisation is the growth of the ‘informal economy’ defined [...] as those income generating activities occurring outside the state’s regulatory framework that have analogs within that framework. The growth of ‘outwork’, particularly in the clothing industry, and the growth of subcontracting are two forms of marginalised wage labour that have emerged with globalisation.”

1.14 The decline of the Textile, Clothing, Footwear and Leather Industry (TCFL) is evidenced in more recent statistics from the Australian Bureau of Statistics (ABS). Australian manufacturing employment rose by 1% in the period June 1999 to June 2000 from 922,900 persons to 932,800 persons. Yet, the Textile, Clothing Footwear and Leather (TCFL) industry was one of only two industry subdivisions that had a decrease in employment with a decline of 4% (2,400 persons). Furthermore, TCFL manufacturing was the only industry to record a fall in turnover, dropping 5%.

### Profile of the Textile, Clothing and Footwear (TCF) Industries in Australia

1.15 Along with the general restructuring of the manufacturing industry, the TCF industries in Australia have undergone considerable changes in the past 15 to 20 years. Significant changes to the TCF industries have resulted from a range of factors including, globalisation, new technologies, changes in consumer tastes, and the liberalisation of international trade boundaries and resultant international competition.

#### The Industry Plan

1.16 In 1986, the Federal Government announced a comprehensive Industry Plan as a result of the Industries Assistance Commission Inquiry. The Industry Plan (or the Button
Plan) was implemented between the years of 1989 and 1996. The central aim of the Plan was to make the Australian TCF industries more internationally competitive whilst simultaneously reducing reliance on government assistance through a major restructuring of the industry.

1.17 The Committee’s discussion paper highlights the main features of the Plan, however it is worth making note of them at this time. The major components of the Plan included the phased reduction of quotas by 1995, the removal in tariffs by 1996, and the simplification and rationalisation of the concessional entry system. Funding of $120 million was allocated to facilitate industry restructuring through an Industries Development Strategy. The Labour Adjustment Package (LAP) was developed at the time to compensate displaced workers.

1.18 The Industry Plan was to be administered by the Textiles, Clothing and Footwear Development Authority. Within the context of global economic restructuring, the Industry Plan progressed at a more rapid pace than originally anticipated. While it was initially envisaged that the tariff and quota reductions would be implemented gradually over the period of 1989-1996, these occurred at a much faster rate. The maximum tariff of 60% was met in December 1994, over a year earlier than anticipated. Additionally, global quotas were removed nearly 3 years prior to the original period estimated for removal.14

1.19 Several other subsidiary elements and projects were implemented by the government over the next few years to further the progress of the Industry Plan. In 1994, a Future Strategies Committee was developed to review the strategies that the industries should pursue over the next decade. A subsequent review by the consultant group, Werner International concluded that there were good prospects for Australia’s TCF industries.15 The Government’s TCF 2000 Development Package was introduced following the review. The package was effectively a $45 million program to be implemented progressively from 1 July 1995 by the Department of Industry, Science and Tourism.16

How did the Industry Plan affect the TCF industries within Australia?

1.20 The Senate Economics References Committee’s 1996 Inquiry, Outworkers in the Garment Industry, commented that the structural changes that resulted from the Industry Plan had a detrimental impact on factory-based employment.17 The report highlighted two major
changes that have impacted on the Australian manufacturing industry as a result of the Plan. Firstly, the move to offshore production by Australian manufacturing firms seeking reduced costs of production, and secondly, the move from factory-based work to home-based work, namely, the use of outworkers.

1.21 The reduction in industry protection and increased import competition that resulted from the Industry Plan has been a key factor in the trend towards home based work. Other research has suggested that manufacturers in developed countries like Australia may use outworkers in an attempt to compete with low-wage economies in the developing world. Such countries include China, Fiji and a range South East Asian countries.

1.22 It would be simplistic to suggest that the substantial changes to the TCF industries in Australia over the last two decades have resulted solely from the implementation of the Industry Plan. Arguably, the recession of the early 1990s is a factor that would have contributed to changes in the TCF industries as consumer demand and spending patterns across Australian households changed dramatically. Increased unemployment rates, declining household incomes and increasing interest rates had considerable impact on consumer demand for certain TCF products.

1.23 Evidence indicates that the use of outworkers may be a response to a number of changes within the TCF industry over recent years. Firstly, the move to overseas production by a significant proportion of Australian manufacturers has impacted on the manufacturing environment within Australia, increasing competition between manufacturers on Australian shores. Secondly, the need for flexibility and the capacity to respond quickly to seasonal and fashion demands has led some manufacturers to engage outworkers as a production tool.

1.24 The consolidation of particular retail chains like Coles Myer within the TCF sector has been another identifiable trend throughout the 1990s. The 1999 Behind the Label Issues paper produced by the NSW Department of Industrial Relations refers to this as the ‘oligopolisation’ of the retail market. This has led to a greater share and dominance of the retail market by those larger retailers with increased buying power such as Coles Myer, David Jones and Woolworths.
The Victorian Government’s Textile, Clothing, Footwear and Leather (TCFL) Manufacturing Industry Plan

1.25 Released in June 2002, The Victorian Government’s Textile, Clothing, Footwear and Leather Manufacturing Industry Plan outlines the Victorian Government’s future vision for the manufacturing industry in Victoria. Through a series of strategic audits of industry sectors, the Government has developed a sectoral Plan for each of the TCFL industries. Figures from the plan show that Victoria’s TCFL manufacturing businesses account for around 50% of Australia’s TCFL industries, contributing $1 billion in wages and salaries annually, $4.5 billion in annual turnover and employing around 33,000 Victorians.23

1.26 Employment figures for the various subsectors within the TCFL industry have been compiled in the Industry Plan. The Committee has replicated them in the table below.

Table 2: Victoria’s TCFL Sectors by Turnover and Employment, 30 June 2002.

<table>
<thead>
<tr>
<th>Sector</th>
<th>% of TCFL Industry Turnover</th>
<th>% of TCFL Industry Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Textile, fibre, yarn woven manufacturing</td>
<td>19.2%</td>
<td>16.4%</td>
</tr>
<tr>
<td>Textile product manufacturing</td>
<td>25.3%</td>
<td>20.3%</td>
</tr>
<tr>
<td>Knitting mills</td>
<td>15.1%</td>
<td>15.0%</td>
</tr>
<tr>
<td>Clothing manufacturing</td>
<td>26.0%</td>
<td>36.1%</td>
</tr>
<tr>
<td>Footwear manufacturing</td>
<td>6.7%</td>
<td>8.2%</td>
</tr>
<tr>
<td>Leather</td>
<td>7.7%</td>
<td>4.0%</td>
</tr>
</tbody>
</table>


1.27 Over the last ten years, a noticeable decline in turnover has occurred within the TCFL industries. Drawing on data from the ABS, the TCFL Industry Plan indicated that between 1990-1991 and 1999-2000, turnover for the clothing sector of the manufacturing industry declined by 21.4%. The TCFL Industry Plan suggested that the decline in in-house manufacturing (factory based manufacturing) in such industries has resulted in an increase in the number of outworkers employed within the sector.24
1.28 Within a general climate of economic change and uncertainty, the structure and composition of the TCFL industry has altered considerably in the last ten to fifteen years. Increases in international competition, loss of traditional forms of protection and a more competitive market have placed retailers and manufacturers under considerable pressure to remain competitive and produce a healthy turnover.

**Recommendation 1:** That the Victorian Government recognise the importance of the Textile, Clothing and Footwear industry to the Victorian economy by continued support and that the Government continue to develop effective initiatives and programs to support the industry.

**Changing immigration patterns in Australia**

1.29 New patterns of labour migration have emerged in Australia over the last twenty years, accompanying the changes to the economic structure of the country. Immigration levels in Australia were at an all time low during the 1990s at which time Australia had the highest economic growth of all major Western societies.\(^{25}\) ABS data demonstrates the changing composition of Australia’s migrant population over the last 50 years. The ethnicity and background of immigrants has changed markedly with increasing numbers of immigrants to Australia of Asian background.\(^{26}\) The ABS\(^ {27}\) has estimated that in the year 2000, there were around 4.5 million overseas-born residents in Australia, representing close to a quarter (24%) of the national population.\(^ {28}\) Of that 4.5 million, 53% came from Europe or the former USSR. A further 24% (nearly 1 in 4) of migrants to Australia were born in Asian regions.\(^ {29}\) A smaller proportion originated from Oceania (mainly New Zealand), Africa and the Middle East (comprising South Africa, Lebanon, Egypt and Turkey) or the Americas (mostly from the US, Canada and Chile).\(^ {30}\)

1.30 Changes in immigration policy over the last twenty years have contributed to a change in the type and character of migrants entering Australia. Under Australia’s immigration visa classification system and migration program, migrants can enter Australia under various migration streams.\(^ {31}\) These include:

- Family immigration
- Skilled immigration
• Humanitarian immigration
• Special eligibility immigration (a small stream that includes former residents and citizens of Australia and family of New Zealand Citizens or dependents of New Zealand citizens who have settled or intend to settle permanently in Australia)

1.31 The criteria for selection under the various streams of the migration program vary considerably. Individuals wishing to enter Australia as a skilled immigrant must undergo a ‘points test’. In this instance, educational qualifications, vocational experience, English language skills, and age are key determinants of whether a visa application will be approved or rejected. Humanitarian applicants are assessed on the basis of their refugee status and/or experience of discrimination and persecution in their country of origin. Those wishing to enter under the family immigration category must be able to meet criteria specifying who constitutes a family member and how far a family extends. Each of these four immigration categories consists of a number of different subcategories. For instance, an individual may be granted a visa as a skilled immigrant under various categories such as; employer nominations, business skills and distinguished talents or as an independent skilled immigrant. Such is the complexity of the contemporary visa classification system.

Family Immigration

1.32 Figures from the ABS indicate that family migration was the largest category of migration for most of the 1980s. Family immigration rose each year in the period between 1982-3 and 1987-8. Figures in 1982-3 stood at 26,952 and had risen to 69,571 in 1987-88. However, throughout the 1990s the number of migrants entering Australia within the family stream fluctuated but generally declined sitting on 36,490 by the year 1996-7. By the year 2000-2001, family immigrants entering Australia totaled 21,227 persons, constituting 32.9% of all permanent arrivals.

1.33 During the 1990s the majority of immigrants in the family stream intended to settle in NSW and Victoria. However, increasing numbers of immigrants have favoured NSW over Victoria in recent times.
Chapter 1: Introduction

Skilled Immigration

1.34 In the post WWII manufacturing and construction boom, immigrants were a key source of labour for the Australian economy. In the 1940s and 1950s, a large number of both unskilled and semi-skilled migrants found employment in various sections of these industries. In contrast, the current skilled migrant program targets skilled and educated migrants with vocational skills and good English language skills. There has been a steady rise in the number of skilled immigrants and their family members entering Australia since the early 1990s. A total of 12,800 skilled migrants came to Australia in 1993-94. This figure had risen to 32,000 by 1999-2000. In contrast, the number of family immigrants coming to Australia has declined throughout the 1990s with an initial reduction following the recession of the early 1990s and another fall in the years leading up to the turn of the century. Having said that, there were some increases in the family migration stream in the mid 1990s.

1.35 The majority of skilled immigrants over the period of 1982-3 to 1996-7 were in the independent category. These immigrants have also favoured NSW as the state of residence increasing from 33% in 1982-83 to 45% in 1996-7. Victoria, Western Australia and Queensland were favoured equally with around 16% of skilled immigrants intending to take up residency in these States. Data from the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) indicates that in year 2000-2001, a total of 35,607 persons arrived in Australia under the skilled stream. This group represented 55.5% of all permanent arrivals to Australia.

1.36 In both the family and skilled immigration categories, a change occurred in the country of origin of migrants entering Australia. Over the period 1982-3 to 1996-7, the number of immigrants coming from Europe had declined while those born in the Asian region made up an increasing proportion of immigrants to Australia.

Humanitarian Immigration

1.37 The humanitarian stream is Australia’s smallest immigration category. The humanitarian program has two main aims. The first is to assist the United Nations High Commissioner for Refugees in the resettlement of refugees in accordance with world-wide
resettlement needs. The second aim of the program is to assist those who are suffering persecution in their country of origin.42

1.38 There are three categories within the Humanitarian Stream of the Migration Program, they are:

(1) The Refugee Program which provides resettlement to Australia for people outside their home country subject to persecution within their home country;

(2) Special Humanitarian Programs (SHP) which comprise the In-country Special Humanitarian Program for people suffering persecution within their own country. Additionally, under the SHP the Global Special Humanitarian Program operates for people who have left their country because of substantial discrimination amounting to a gross violation of human rights, and

(3) The Special Assistance Category (SAC) which embraces groups determined by the Minister for Immigration and Multicultural Affairs to be of special concern to Australia, such as people for the former Yugoslavia. However this program was closed during the 2000-01 program year.43

1.39 Over the period 1982-83 and 1996-97, the number of humanitarian immigrants entering Australia varied considerably. At the peak in 1982-83, humanitarian immigrants represented 18% (or 17,054 persons) while in 1991-92 humanitarian immigrants made up only 7% of arrivals (or 7,157 persons).44 The number of humanitarian arrivals is dependent on the nature of international events that trigger refugee emigration, such as political unrest and war. A special edition of Immigration Update released by DIMIA in April 2002 provides the latest figures on migration patterns. This data shows that in the period 1999-2000, a total of 7,313 persons entered Australia under the Humanitarian Program, representing 11.9% of permanent arrivals. In the year 2000-2001 this figure had increased slightly to 7,625 persons but decreased as a proportion of permanent arrivals to 11.8%.45

**Female Immigration**

1.40 The Figures produced in Immigration Update (2002) provide some of the most up-to-date statistics on gender differences among permanent arrivals to Australia. Just over half (51.8%) of permanent arrivals to Australia in the year 2000-2001 were women (33,456
persons). The largest number of female immigrants were granted visas under the Family stream (12,817 persons) representing 60.4% of all Family immigrants. Interestingly, the second largest number of female immigrants entered Australia under the Independent category of the Skill Program (9,721 persons). The third most likely category for women to enter Australia under was the Humanitarian program (which includes Refugee, SHP and SAC) with 3,693 persons. Females represented the largest proportion of immigrants in the Family and Special Eligibility categories but men made up the majority of immigrants in all other categories. While females entering Australia under the Skill Program would possess vocational skills appropriate for employment in the Australian labour market, those entering under the family and humanitarian programs may not possess the same level of employable skills and English language proficiency.

**Migrant participation in the Australian labour market**

1.41 While globalisation has impacted on patterns of migration to Australia, it has simultaneously impacted on labour market opportunities within Australia. As already evidenced, migrants are not a homogenous group. People enter Australia as migrants under various categories and as such, their experiences in the Australian labour market vary quite dramatically. Traditionally, the manufacturing industry has been the major employment site for unskilled and semi-skilled migrants, yet recent industry changes have dramatically decreased job opportunities in the sector. As one researcher states, “The western capitalist societies’ need for mass migration to fill the dirty and dangerous ‘factory fodder’ jobs has disappeared as factory jobs have largely disappeared.”

1.42 Of the 9.1 million people in the Australian labour force in November 1996, 24% were born overseas. Migrants who had arrived as adults between 1986 and 1996 represented about 6% of the labour force at that time. According to data from the ABS’ 1998 report, *Australian Social Trends*, success for migrants in finding employment was related to issues such as the category of their visa, their English language proficiency and their level of vocational skills.

1.43 Generally speaking, recent migrants (defined as those who arrived between 1986-96) were more likely to work in blue-collar occupations and manufacturing. A study undertaken by DIMIA showed that new migrants (defined as those arriving between August 1993 and
September 1995) had an unemployment rate of 38%. Five months after entering Australia, the group had an overall labour participation rate of 57%. The success with which migrants find employment does vary with the migration category. Such outcomes are to be expected given that the skilled migration category selects migrants on skills whereas humanitarian migrants are not selected on a skill basis. 1998 data from the ABS illustrated that humanitarian migrants who had been a resident in Australia for about 5 months had the highest unemployment rate (58%). Yet, 18 months after arrival this figure had reduced to 50%. 51

1.44 The experiences of immigrants in Australia in the last few decades have varied widely. Highly skilled migrants may have benefited from recent economic changes, coming into the labour market in professional capacities in various fields, whereas those unskilled migrants from NESB entering Australia under the Family and Humanitarian Streams may face a limited range of employment opportunities and inequality. It may be that some of the female migrants entering Australia under the family and humanitarian streams of the Migration and Humanitarian Program may find themselves employed in areas such as outwork. Changes to employment opportunities in the TCF industries and the growth of outwork are examined below.

**Explaining the shift from factory-based employment to home-based work**

1.45 With the extensive changes occurring in the TCF industries throughout the 1990s, many manufacturers have diversified their manufacturing strategies. These include outsourcing manufacturing to overseas countries, employing specialised contractors and engaging outworkers in an attempt to remain cost competitive and meet demand deadlines. Within this context, employers have moved away from traditional factory based manufacturing to what has been termed ‘atypical’ or ‘non-standard’ forms of labour, like outwork. 52 *Working Women’s Health*, an organisation that works with NESB migrant women, estimate that “the number of outworkers today is ten-times more than in the mid-80s.” 53

1.46 In relation to the shift from factory based work to home based work, Ms Annie Delaney, Outwork Coordinator with the Textile, Clothing & Footwear Union, told the Committee in her evidence:
“in the period since the late 1980s, early 1990s, the outworker population in this industry has really exploded, and particularly in the early 1990s, where with the Button plan [the Industry Plan…] and a recession at that time, the industry really restructured. It restructured to be totally dependent and structured around outwork.”

1.47 There are a variety of reasons why employers might choose to engage outworkers as a production mechanism rather than employ a factory-based workforce. The ‘flexible firm’ thesis asserts that internal restructuring within a business works to separate employees within a firm into a core and peripheral labour force. While the core of the group is made up of full-time permanent employees (with the corresponding job security and benefits), the peripheral group of workers comprises part-time, casual, temporary, fixed-term and home-based and outworking employees. Some writers have also included a non-employee group made up of sub-contractors, agency or self-employed individuals in their analyses.

1.48 The main reason for splitting the labour market within a firm in such a manner is to increase flexibility. The ‘peripheral’ labour force may be used to provide short-term solutions to temporary demands. In relation to the TCF industries, employing outworkers allows employers to meet seasonal fluctuations in demand. As Dr Cregan from the University of Melbourne asserted in her evidence to the Committee, “outworking exists because it is a cost-effective method of responding to short-term shifts in demand.”

1.49 A research study has identified that an advantage for employers who engage outworkers is the improved cost savings. The study carried out by academics from Griffith University’s School of Industrial Relations, P. Brosnan & L. Thornthwaite, highlighted four main sources of cost savings for employers who engage outworkers.

1. *Normal production costs* The traditional costs of heating, lighting, electricity, cleaning, and general maintenance in addition to insurance costs and the like are passed on to outworkers themselves

2. *Responsibility for supervision and quality control is passed on to homeworkers* Outworkers are not paid if the quality is deemed to be sub-standard by employers. Additionally, the speed of production does not affect the payment as outworkers are paid via the piece-rate system (therefore, cost per unit remains the same regardless of time taken to complete the task)
3. **Employers do not have to observe occupational health and safety requirements**

Occupational health and safety risks are generally carried by the outworker.

4. **Direct labour costs are reduced**  The piece-rate system simplifies the costs of holiday, sick pay, superannuation, overtime and penalty rates, long service leave and severance pay.  

1.50 According to Brosnan & Thornthwaite’s analysis of homework, the piece-rate system provides a distinct advantage to the employer in comparison to factory based employment. The employer does not have wage costs if there is no work available and does not have to pay if work is incomplete. Furthermore, piece-rates do not necessarily rise with prices in periods of inflation. In view of that, they assert:

   “Homeworkers provide an element of cost stability in an inflationary period since generally they lack the bargaining power of in-workers [factory workers] to negotiate cost-of-living adjustments. As it is difficult for unions to locate and organise homeworkers and for them to meet each other, they are unlikely to belong to unions or organise collectively. As a result, homeworkers generally earn less than in-workers despite performing comparable work.”

**The Chain of Production**

1.51 The TCF industry is characterised by a complex contractual chain with multiple outsourcing layers stretching from the retailer at the top of the chain to the outworkers at the bottom. As demonstrated in Diagram 1 an intricate mix of interrelationships between manufacturers, subcontractors, outworkers and their intermediaries typifies the contracting chain.
Diagram 1: The chain of production

There may be numerous subcontracting layers between the manufacturer and the maker.

1.52 The contracting chain may be more elaborate than the above diagram illustrates. There may be numerous layers of subcontractors between the manufacturer and the maker. It has been said that the retailer at the top of the chain has the power to dictate the price of garment production to those below them on the production chain. The fashion house will then outsource to the manufacturer (or principal contractor) who can offer the desired quality and price. In many instances, the manufacturer will subcontract the work and so the chain continues sometimes through several layers before reaching the maker who sits at the level above the outworker. As described by the NSW Department of Industrial Relations makers, or middlemen, as they are often known may be the only contacts that outworkers have within the chain of production. The maker is effectively an intermediary, often of the same ethnicity as the outworker, who may act as a ‘go between’ delivering work from the
manufacturer to the outworker’s home and picking up completed orders. In some circumstances, the maker may complete ‘add on’ tasks such as labels but does not perform the sewing tasks of the outworker.

1.53 It has been suggested to the Committee that there has been some confusion with regard to the difference between a maker and an outworker. Ms Carstens, Coordinator of Asian Women at Work, suggested this difference in her evidence to the Committee:

“by middle people we mean someone giving out work to other people. Some of these middle people call themselves outworkers because they are working from home, but this makes things confusing. They may be doing a small amount of sewing, finishing off garments, replacing swing tags on garments at their home, but in reality they are employing other people to do the majority of the sewing work and profiting from this. Many in this group are quite wealthy, which has led some people to say that outworkers make a lot of money.”

1.54 In his analysis of the subcontracting chain within the Australian clothing industry, Alastair Whyte-Greig put forward the idea that the contracting chain has remained relatively unchanged over time. The argument is put forward that despite recent technological advances within the industry, the clothing chain of production has remained relatively untouched since the turn of the 19th century. He asserts that the structure of the supply chain is the result of a need for flexibility within certain sub-sectors of the industry (presumably areas like women’s fashion which is highly dependent on seasonal fluctuations). Within this framework it is arguable that the further success of the clothing industry is dependent on the continuing involvement of outworkers within the chain of production to ensure the continuing viability of the clothing industry in Victoria.

1.55 In her work on outworkers, Caroline Alcorso has noted that with several layers of outsourcing stretching between the fashion house and the outworker,

“In this system, fashion houses trade off their ability to innovate, share information and guarantee quality along the chain. In return, they are able to minimise investment in plant and equipment, externalise their risks onto smaller firms and, crucially from an industrial relations viewpoint, ‘turn a blind eye’ to poor labour practices, for example, in the use of outworkers.”
1.56 According to this view, as contractors at all levels of the chain take a share of the money, the outworkers at the bottom may not receive the minimum entitlement that a factory based worker would receive. This process is known as the ‘squeezing’ of prices. The nature of the supply chain makes it extremely difficult for those attempting to enforce and monitor compliance within the industry. Identifying an outworker’s employer within the chain becomes difficult when work has been subcontracted several times and the outworker may not be aware of the name of the retailer or fashion house they are producing the garments for. Likewise, the retailer may not be aware of the outworker at the bottom of the chain. In her writing on the clothing industry in Australia, Alcorso proposes,

“Formally, the clothing home based sector is regulated by comprehensive industrial awards and labour laws; practically, these have almost no impact on employment relationships or working conditions at the production end of the chain…the question becomes, how to build enforcement capacity – how to produce greater employer compliance with minimum standards and conditions in an industry operating largely outside traditional industrial relations institutions.”

1.57 The NSW government, as part of the Behind the Label Strategy is undertaking a supply chain management project. The research project is being carried out by the Department of Industrial Relations (DIR) and Workcover in an effort to identify and develop a best practice model of supply chain management. It is envisaged that the end result will be a supply chain with increased efficiency and savings in the flow of production that meets minimum standards of labour including occupational health and safety and workers compensation for outworkers. The Australian Expert Group in Industry Studies (AEGIS) is currently looking for the various parties constituting a supply chain to consent to participation in the project.

**Recommendation 2:** That the Victorian Government consider the recommendations of the New South Wales research into supply chain management within the clothing and textile industry when it is completed.

The retail industry in Australia

1.58 Figures reported in the Australian Retailers Association’s (ARA), *Retail Industry Profile 2001*, showed that the retail industry in Australia employs around 92,000 Australians,
approximately 12% of the Australian workforce. Around 60% of that number are women with a large proportion (70%) of those women working on a part time or casual basis.\textsuperscript{68} Clothing and softgoods employ 79,000 people (8.6% of the retail work force).\textsuperscript{69}

1.59 As noted in the Committee’s discussion paper, the clothing sector of the retail industry has declined significantly in comparison to the total retail sector over the period of 1985-6 to 1991-2. In their submission to the Committee, the Australian Retailers Association (ARA) indicated that the decline has continued throughout the 1990s and up to the present. Using data from the ABS, the ARA submission showed that sales in the retail clothing sector have increased by only 15.5% compared to 53.5% for all retail sales.\textsuperscript{70}

1.60 Table 3 illustrates the total clothing sales over the period 1991-2 to 2001 according to various retail categories.

\textbf{Table 3: Share of retail sales between 1991-2 and 2001}

<table>
<thead>
<tr>
<th>CATEGORY OF RETAILER</th>
<th>SHARE OF RETAIL SALES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1991-2</td>
</tr>
<tr>
<td>Clothing retailers</td>
<td>6.5%</td>
</tr>
<tr>
<td>Department Stores</td>
<td>12.7%</td>
</tr>
<tr>
<td>Clothing sales by Department stores</td>
<td>4.7%</td>
</tr>
<tr>
<td>All Clothing sales</td>
<td>11.7%</td>
</tr>
</tbody>
</table>

Source: ARA (2002) Submission no.2, p. 4. The ARA produced the figures from ABS Cat Nos 8624.0 (1991/2) & 8501.0 (2001) ** Clothing sales by department stores in 2000/01 are assumed to be the same % of total department store sales as in 1991/92 viz, 35.7%.

1.61 As Table Three illustrates, clothing retailers’ share of retail sales has decreased by 2% in the period 1991-2 to 2001. In fact, the above figures illustrate a decline in all the retailer categories with clothing sales over the period decreasing from 11.7% to 7.5%. In their submission to the Committee, the ARA also made reference to changes in clothing prices. From 1991/2 to September 2001, clothing prices had moved upwards only 4.5% (with 7.4% of this movement attributable to the GST).

\textit{Concentration in the ownership of the retail market}

1.62 Numerous studies throughout the 1990s have discussed the issue of the monopolisation of the Australian retail sector by a small number of larger firms. According
to evidence given to the Senate Economics Reference Committee in 1996, the unstable economic environment has meant that a large section of the retail industry now has a very high failure rate.\textsuperscript{71}

1.63 In 1997 the Industry Commission (IC) Report made note of the increasing number of mergers and takeovers occurring within the retail sector throughout much of the 1990s. With a reduction in retail entities, particular retailers have increased their share of power and control over the retail market. It has been argued that these large, powerful retail chains have the ability to dictate prices to the manufacturers and exercise a great deal of control over the manufacturing process. This belief was put forward by an expert consulted for the Australian Industrial Relations Commission’s (AIRC) award simplification case:

“retailers dictate what many fashion houses and makers up will make and for what price it will be made. It is then incumbent on fashion houses to ensure their own profits whilst still meeting the orders provided by the retailers...While retailers publicly disassociate themselves with outwork because of the harm it can do them commercially, it is in fact retailers that force the fashion houses into the use of outworkers…”\textsuperscript{72}

1.64 However, the ARA, in their submission to the Committee, refutes the view that retailers have the power to determine what price a garment will be made and sold for, instead arguing that in the competitive consumer driven market retailers are in fact the price takers.\textsuperscript{73} Furthermore, Mr Phil Naylor, Chief Executive Officer of the ARA informed the Committee at the Public Hearings in Sydney that it is simplistic to suggest that retailers control the chain of production. When questioned by Members as to the nature of mark-ups in the retail sector, Mr Naylor commented,

“The average gross profit percentage that clothing retailers make is around 38 to 40 per cent; the gross profit they make as a percentage of their total sales – I will make it 40 per cent; for rounding purposes; out of that, around 15 or 16 per cent is rent and around another 12, 13, or 14 per cent – depending on the type of operation – is wages; the rest goes into administration costs like advertising, transport, distribution, power and so forth; and at the end about 3 or 4 per cent is net profit. A gross profit percentage of 40 per cent translates to a mark up of a higher figure.”\textsuperscript{74}
This section of the Report has outlined a number of changes to the Australian economy over the last two decades and the subsequent changes to patterns of immigration and employment opportunities for migrants in Australia. Furthermore, recent changes to the TCF industries have been highlighted and the move from factory based employment to home based employment has been addressed. The following section provides an overview of the profile and characteristics of outwork in Australia.

**Definitions of outwork**

Outwork is not a new phenomenon. Historical research indicates that prior to the Industrial Revolution in the 18th Century, outwork (or the ‘putting out’ of work) was a common form of work organisation. This form of work has been a part of the textile industry since its beginnings and has traditionally been carried out by women with family responsibilities.

Today, the term ‘outworker’ or ‘homeworker’ is generally used to describe someone who carries out work for another from outside of the usual business premises, often from the individual’s own home. In the clothing industry, ‘outworker’ refers to an individual who completes sewing and related tasks for another person from the home rather than in a factory setting.

According to the International Labour Organisation (ILO), outwork is defined as:

“Work carried out by a person, to be referred to as a homeworker, in his or her own home or in premises he or she has chosen; for remuneration; which results in a product or service as specified by the employer, whether the equipment, materials or other inputs used are provided by this person, the employer, or the intermediary, as long as this person does not have the degree of autonomy and does not fulfill other conditions necessary to be considered an independent worker under national laws, regulations or court decisions.”

As noted in the Committee’s Discussion Paper, one of the most consistent definition’s of outwork is that used by the NSW government:

“A person, also referred to as a ‘homeworker’, to whom goods are given to be made up, altered, ornamented, finished, repaired or adapted for an employer and who performs the work in private residential premises or at other premises that are not the employer’s factory, workshop, business or other commercial premises.”
1.70 Through the course of this Inquiry, it has become clear to the Committee that the term ‘outworker’ refers to a broad range of individuals. The main commonality among these people is that their work is carried out from within the home. At one end of the spectrum are those individuals who operate as a small business with an Australian Business Number (ABN), pay tax and make tax deductions for costs of equipment and related overheads. In some instances, these individuals may employ other people to carry out part of their work. Evidence given to the Committee by Mr John Brown, proprietor of Motto, indicated that the 12 outworkers that sew for Motto operate as small businesses. Mr Brown indicated that these individuals have become highly skilled over time and tend to specialise in particular tasks. For instance, one outworker may concentrate on sewing jackets while another concentrates on making trousers. In some instances, these people refer to themselves as ‘makers’ rather than outworkers. This has created some confusion within the industry as the term maker is also applied to the intermediaries between outworkers and contractors further up the chain. There are another group of outworkers who work as contractors rather than employees or small business operators. These people may work for several different manufacturers depending on the availability of work. The ability to work flexible hours may be a reason why some outworkers are employed as contractors.

1.71 In contrast, there are those outworkers who consider themselves employees. Within this employee group are a range of individuals with varying experiences. Some within this group may work in a full-time capacity for an employer who makes Pay as You Go (PAYG) tax deductions, superannuation contributions and the like. There are, however, a significant number that are at the most disadvantaged end of the spectrum and are not afforded the most basic of employee entitlements such as superannuation, holiday pay, sick or maternity leave. It is this group who have come to the attention of groups such as the TCFUA (among others) and have been the subject of a range of inquiries and public and media campaigns to address issues of exploitation. These people sit at the very bottom of the contracting chain and in the main do not employ others to carry out any of their sewing work. In some instances these individuals may be illegal immigrants who receive cash payments or individuals who receive social security benefits and are working without declaring their income to Centrelink.
Recommendation 3: That the Victorian Government implement a program designed to enhance the knowledge and skills of outworkers who see themselves as small business operators to improve their operations and to increase their awareness of their taxation, industrial relations and occupational health and safety obligations.

How many outworkers are there?

Outworkers are a labour force within the Australian labour market largely existing outside of the mainstream economy. As such, outwork is a largely invisible trade that has often escaped accurate representation in traditional data gathering sources. Estimates on the number of outworkers vary considerably. Given the ‘hidden’ and intermittent nature of outwork, it is difficult to obtain reliable data and ascertain the actual extent of outwork in Victoria or Australia. The Textile, Clothing and Footwear Union of Australia (TCFUA) has claimed that clothing industry outworkers outnumber factory based workers by about 14:1. As figures have shown that around 75% of companies in the clothing sector have the majority of their work carried out in private homes. As noted in the Committee’s Discussion Paper, figures usually vary between 50,000 and 329,000 across Australia. A number of individuals and organisations who spoke to the Committee at Public hearings in Melbourne and Sydney have suggested that the number of outworkers is most likely to be in the range of 50,000 to 100,000.

The availability and reliability of data

The inability of successive Inquiries to pinpoint the exact number of outworkers is an issue of great concern to the Committee. In an attempt to demonstrate the difficulties in estimating the numbers of outworkers in Australia, the following table compiles the number of outworkers as estimated in the major reports produced in Australia in the last decade.
### Table 4: Differing estimations on the number of outworkers in Australia

<table>
<thead>
<tr>
<th>REPORT TITLE</th>
<th>ESTIMATED NUMBER OF OUTWORKERS (Australia wide)</th>
<th>SOURCE OF FIGURES</th>
</tr>
</thead>
<tbody>
<tr>
<td>ATO (1996) Submission to Senate Economics Reference Committee</td>
<td>50,000</td>
<td>The ATO’s data is based on participation in the tax system. The ATO’s data (in both 1996 &amp; 2002) was based on information collected from ATO research together with an analysis of total reported sales. The ATO acknowledged that the number of outworkers could not be confirmed.</td>
</tr>
<tr>
<td>ATO (2002) Submission to the Family and Community Development, <em>Inquiry into the Conditions of Clothing Outworkers</em></td>
<td>50,000 (although the ATO’s submission states that approximately 21,000 clothing manufacturers – including outworkers, are registered with an ABN)</td>
<td></td>
</tr>
<tr>
<td>Industry Commission Inquiry, <em>The Textiles, Clothing &amp; Footwear Industries, 1997</em> (p.xxxv)</td>
<td>23,000 fulltime jobs</td>
<td>Based on ABS data, the Commission estimates that these are the numbers in full-time outworking, however acknowledges that the actual number is much greater if considering the sporadic and seasonal nature of much outwork.</td>
</tr>
</tbody>
</table>
| TCFUA Report on the National Outwork Information Campaign, *Hidden Cost of Fashion, 1995* (p.5.) | 329,000 (fulltime, part-time and casual outworkers) | Data gathered from:  
- Companies who are listed as suppliers to some of the largest retailers  
- Those appearing on contractor lists provided by principal clothing companies  
- Companies registered as clothing manufacturers  
- Companies respondent to the Federal Clothing Trades Award  
- Companies outworkers have reported doing work for |
| Senate Economics Reference Committee, *Outworkers in the Garment Industry* (pp.27-8) | 50,000 – 350,000                                 | The Senate Economics References Committee emphasised the ‘hidden’ and intermittent nature of much outwork and the difficulty in locating outworkers. The figures quoted in the report are taken from a range of other reports. |
| Evatt Foundation, (1998) *Reforming Homework, A statistical profile and the NSW code of practice* | 150,000                                         | This figure was produced in the Senate Economics References Committee 1996 Inquiry, pp.27-8                                                                                                                      |
| NSW DIR, *Behind the Label – The NSW Government Clothing, Outwork Strategy, Issues Paper, 1999, p.8.* | Highlights the inconsistent figures ranging from 23,600 – 329,000 | Again, stated range of figures to emphasise the span of estimates |

1.74 It should be noted that variations in figures could, to a large extent, be attributed to the source of the figures. Union figures such as TCFUA include part-time and full-time clothing outworkers and may overstate the exact number of outworkers. The TCFUA figures may also include those outworkers employed by more than one manufacturer and so a number of individuals may be counted two or three times. In her evidence to the Committee, Ms Annie Delaney, Outwork Coordinator with TCFUA, highlighted that Union estimates are based on day-to-day contact with the manufacturers in the industry but that they are not 100 per cent validated figures. Conversely, official figures collected by the ATO and ABS may understate the extent of the outwork as such figures rely on officially recorded data which excludes those avoiding registration in the official taxation system.

1.75 One of the few available state comparisons can be found in the TCFUA’s 1995 Report, *The Hidden Cost of Fashion*. According to the TCFUA’s figures, the breakdown of outworkers across Australian States is as follows:

- Victoria 144,000
- New South Wales 120,000
- Queensland 25,000
- South Australia 25,000
- West Australia 15,000

**TOTAL 329,000**


1.76 These figures have been highly disputed over time by several bodies within the industry. The TCFUA has emphasised that their estimates included those working casually as outworkers together with fulltime and part-time workers. However, bodies such as the Retailers Council of Australia (RCA), the predecessor of the Australian Retailers Association (ARA), are unconvinced that these numbers are accurate.

“given that the whole industry – that is every retailer in Australia – only employs about one million people and the clothing sector of the retail industry probably only employs about 100,000. It does seem to us that 300,000 people involved in a manufacturing process which is a relatively small part of the manufacturing industry, is a very large number, and it would not have that many people involved.”

84
1.77 More recently, in their evidence to the Committee at Hearings held in Sydney, Mr Phil Naylor of the Australian Retailers Association noted:

   “…I do not know whether it is 50,000 or 100,000. I accept that a lot of those people are not probably full-time people and they are probably not getting paid full-time wages. But 300,000 seems to me to be a lot given that there are only 55,000 in the total clothing sector in the retail industry.”

The Australian Taxation Office (ATO)

1.78 It should be acknowledged that there are numerous limitations to official statistics. Given that official figures from the ATO are based on registered businesses and employees, that is, those engaged in the formal sector of the economy, they may be an underestimation of the true extent of outwork in the community. The ATO’s data is based on participation in the tax system and therefore excludes those individuals and organisations evading taxation through the cash economy of the clothing industry. This serves to highlight the imprecise nature of estimating outworker numbers.

1.79 The most recent estimation from the ATO on the number of outworkers operating in the TCF industries was given to the Senate Economics References Committee in 1996. At that time, the ATO estimated that there were around 50,000 outworkers in Australia. That figure was based on participation in the tax system through information collected by the ATO and supported by an analysis of total reportable sales, as per ABS data. In the mid to late 1990s, the ATO’s work focused on data from the Reportable Payment System (RPS). In this system both payers and payees had to be registered. The payer was required to report to the ATO all reportable payments while payees had to quote their Tax File Number (TFN) or be subject to deductions from their reportable payments at the highest marginal rate of 48.5%.

1.80 In their evidence at the Public Hearings and subsequent submission to the Committee, the ATO highlighted a number of compliance strategies undertaken in an attempt to limit the number of individuals evading participation in the tax system. In 1996, the ATO commenced a cash economy initiative, part of which was the clothing industry project. This initiative uncovered considerable evidence of deliberate tax evasion through the use of cheque laundering and shell entities.
1.81 With the introduction of the New Tax System (NTS) in 2000, the RPS was replaced by the integrity measures of the NTS. These integrity measures impact on nearly all businesses including those in the cash economy and those in the clothing industry. Such measures include, but are not limited to:

- Introduction of the Australian Business Number (the ABN);
- The requirement to register for an ABN and for GST if carrying out an enterprise with an estimated annual turnover usually $50,000 or more;
- The need under the GST for a supplier to provide a valid tax invoice for a purchaser to be able to claim input tax credits;
- Requirement of a business to withhold from a supplier where the supplier has not quoted an ABN (currently amounts are withheld from payments at the rate of 48.5%);
- Improved risk assessment capability through more real-time reporting (including reporting where no ABN is quoted and through regular Activity Statement lodgment); and
- Significant ATO presence in the field

1.82 While these measures were not specifically designed to increase compliance within the clothing industry, they stretch across all industries including those participating in the TCF industries in Victoria.

1.83 Currently, the ATO is addressing the issue of compliance within the clothing industry through a cash economy initiative and the development of a clothing and textiles project team. Moreover, through examination of taxpayer’s records, the ATO is assessing the extent to which businesses are meeting their taxation obligations. The aims of such reviews are to assist with:

- Developing risk assessment of the industry using intelligence about the levels of non-compliance discovered;
- Identifying the drivers of non-compliance; and
- Identifying the more significant non-compliant sectors within the industry

1.84 The Committee supports and endorses the work of the ATO in addressing the issue of non-compliance within the industry.
The Clothing Industry Forum

1.85 Together with representatives from the NSW Department of Industrial Relations (DIR), Workcover, and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), the ATO have established a Clothing Industry Forum with the intent of examining the record keeping processes within the clothing industry. At this stage, it is envisaged that the membership of the forum will extend to include industry associations, Centrelink and other stakeholders.\(^89\)

1.86 The ATO’s project team is currently undertaking research to develop a profile of the industry and research into the factors impacting on taxpayer noncompliance.\(^90\) The Committee awaits the results of this work.

1.87 According to ATO data, there are approximately 40,000 active ABNs in the clothing industry.\(^91\) 23,000 of these are also registered for GST.\(^92\) The ATO’s submission states “the number of active and registered clothing manufacturers (which includes outworkers) is almost 21,000 with about 9,300 of those GST registered.”\(^93\)

1.88 As illustrated by the figures reported in the *Hidden Cost of Fashion*, Victoria employs the largest number of outworkers in the TCF industries in Australia. Although, as already noted, these figures include those outworkers employed part-time and intermittently in addition to fulltime workers. In Part One of the *Independent Report of the Victorian Industrial Relations Taskforce* released by Industrial Relations Victoria in 2000, it was estimated that outworking in Victoria represents just under 40% of the national clothing industry.\(^94\) By all accounts and estimates, outwork in the Victorian community is a significant operation.

*Why is there a lack of data?*

1.89 There are various reasons that contribute to the difficulty in obtaining information on outworker numbers from traditional data-gathering sources. As noted by Jan Tassie in her address to the *Third National Women’s Health Conference* in November 1995,\(^95\) there are various reasons for the underestimation of the extent of outwork in Australia. Firstly, she points to the fact some outworkers may be illegal immigrants or their work may be illegal. Some outworkers may not be registered with the relevant authorities or declaring their
Inquiry into the Conditions of Clothing Outworkers in Victoria

earnings to relevant authorities such as the ATO or with relevant social security authorities. While these issues were raised by Tassie in 1995, they are still relevant today. She suggested that the cash economy of the TCF industry might contribute to tax evasion and social security fraud. The Industry Commission verified that view in 1997 claiming that payments to outworkers are often in cash and may not be declared as income to avoid reductions to social security payments. The ATO made note of non-compliance in their submission to the Committee and are currently undertaking work to further reduce the use of cash within the sector. However, information was given to the Committee during a number of site visits in Sydney and Melbourne that suggested that cash has decreased within the industry with more payments being made by cheque.

Profile of a typical outworker

1.90 It should be noted from the outset that outworkers are not a uniform group. The characteristics of those individuals engaged in outwork differ markedly as do their experiences of outwork. Having said that, it is widely acknowledged that the majority of people engaged in outwork are women. This appears to be the trend both internationally and locally. Moreover, women engaged in outwork are most likely to be women from NESB. Historically, those engaged in outwork are most likely to be the most recent immigrants. According to the TCFUA, outworkers are most likely to be women from Asian backgrounds – particularly Chinese and Vietnamese. However, the Committee acknowledges that not all outworkers are women, there are some men who work as outworkers in a full-time capacity, and there are also a number of men who assist their wives with various secondary tasks such as picking up and delivering orders from the manufacturer. The literature also suggests that there can be cases where children are involved in the manufacture of garments within the family home.

1.91 There are numerous factors contributing to the prominence of migrants in this form of work, such factors include:

- Recent arrivals to urban centres (where majority of industry is based)
- Language barriers/general cultural barriers to other forms of employment
- Lack of educational qualifications (or lack of recognition of overseas educational qualifications)
• Decline in number of semi-skilled jobs in the traditional manufacturing sector
• Women’s domestic responsibilities
• Racism in workforce

1.92 Research has suggested that outwork may be viewed as a temporary employment option rather than an on-going, permanent form of employment. According to Brosnan & Thornthwaite, “people with disabilities, those from ethnic minorities, and non-native language speakers are also often used as homeworkers.” These findings are paralleled by the experience of the TCFUA in working with outworkers in Victoria. In her evidence to the Committee, Ms Annie Delaney spoke of her experiences with outworkers in Victoria:

“...the majority of workers are migrant women — not exclusively, but the majority are migrant women. Generally in our industry you see that the patterns of immigration reflect the work force, so the most recent large groups are the Vietnamese and Cambodian communities. They are well represented in the industry and make up a large percentage of the outworker population. When we do information for outworkers we usually do it in 10 to 12 languages, so it is a fairly extensive group covering a wide range of communities. It is not only Vietnamese, Cambodian and Chinese, but they would certainly make up a large percentage — probably 60 per cent, roughly — of the industry and the outwork community.”

1.93 Data from the TCFUA’s 1995 National Outwork Information Campaign which ran for 8 weeks, showed that approximately 50% of those who made calls during the campaign were from the Vietnamese community while 20% were from the Chinese community. The other eight ethnic community groups each represented about 4% of calls.

Dr Cregan’s study, ‘Home Sweat Home’

1.94 In January 2002, Melbourne University academic, Dr Christina Cregan released the first part of a two-part study into outworkers in Melbourne. Her research findings are based on an intensive study involving an administered questionnaire and detailed interviews with outworkers. The study highlights a number of interesting characteristics of this particular sample of Melbourne outworkers. While some of the findings coincide with previous research, other findings provide a variation.
1.95 The sample in this study consisted of 119 outworkers of which 114 were female and 5 were male. The majority of the group were born in Vietnam (110 persons) with 4 born in Cambodia, 3 in Thailand and 2 Australian born. Over half of the sample (60%) arrived in Australia between 1988-1995.\(^{108}\)

1.96 The majority of the sample had poor English skills with only 10% speaking English fluently. Most of the other 90% had attended English classes at some stage. Interestingly, the ages of the group studied ranged from 17-64 years (with the average age of 39 years).\(^ {109}\) This sample encompasses a much larger slice of age groups than previous estimates. For instance, in 2000 the Victorian IR Taskforce reported an age span among outworkers of 29 – 35 years.\(^ {110}\) What these differences show is that outwork engages a wide cross-section of the Victorian community.

1.97 Of the sample in the study, 80% had been outworkers for at least 5 years with an average length of 7 ½ years. To an extent, this refutes research such Brosnan & Thornthwaite’s which argues that outwork is a transient occupation for many and is generally not seen as a permanent form of employment.

| Recommendation 4: That the Victorian Government recognise the importance of the textile, clothing and footwear industry and outwork in particular as a source of employment for many who find it difficult to obtain employment in other areas of the workforce due to language differences, cultural barriers and family responsibilities. |

1.98 Dr Cregan found that the level of education varied quite dramatically among the outworkers in her study. Primary education was the highest level of education for 13% (15 persons), indicating there are a significant proportion of outworkers around Melbourne who require further educational training. Around 68% of the sample had secondary education (81 persons). Of the outworkers in Dr Cregan’s study, 14% (17 persons) had Tertiary level education.\(^ {111}\) At the Public Hearings held for this Inquiry, Dr Cregan commented, “We had nearly 15 per cent who were graduates, and this is their job.”\(^ {112}\) This statement is indicative of the need to recognise prior skills and qualifications among some working within the industry.
Conclusion

1.99 This chapter has outlined the various trends within the TCF industries in Australia over recent years. Under mounting pressures to increase international competitiveness, partly as a result of tariff and quota reductions, the Australian clothing manufacturing industry has undergone significant change with a considerable proportion of manufacturing moving overseas. Simultaneously, some of the manufacturing that has stayed in Australia has moved from factory based to home based production.

1.100 Outworkers are not a homogenous group. There are those individuals who operate on a fulltime basis and have built a small business around their sewing work. Yet, there are a large number of outworkers who come from non-English speaking background with little education or vocational training and often juggle their work with domestic responsibilities. The following chapter grapples with the employment status of outworkers and their rights and entitlements under current legislation.
Endnotes


12 Australian Bureau of Statistics (ABS) (2001), Manufacturing Industry Australia – Preliminary, Cat No.8201.0 p.3.

13 Ibid


15 Ibid

16 Ibid, p.21.


Numerous inquiries have also made not of these changes: NSW Department of Industrial Relations (1999) Behind the Label – The NSW Government Clothing Outwork Strategy Issues Paper, December 1999; Senate Economics Reference Committee, (1996) Outworkers in the Garment Industry, AGPS, Commonwealth of


Ibid, p.15.


The Australian Bureau of Statistics (ABS) data in relation to immigration is composed from information gathered from the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA)


The largest number from Asian regions migrated from countries such as Vietnam, China, the Philippines and India.

Ibid.

These categories exclude New Zealand citizens who are not required to obtain a visa and so are not included in those people who are categorised under the Visa system


Ibid


Ibid

Ibid

Independent skilled immigrants are applicants whose education, vocational skills makes them employable and able to contribute to Australian society. This category is designed to contribute to the economic development of Australia


Ibid

Ibid


Ibid


Ibid, pp.6-7.

Ibid


Inquiry into the Conditions of Clothing Outworkers in Victoria


60 Ibid.


69 These figures give an indication of those at the customer service end of the retail industry

70 Australian Retailers Association (ARA), *Submission number two*, pp.3-4.


73 Australian Retailers Association, *Submission number two*, p. 5.


Chapter 1: Introduction


Ibid


The ATO noted in their evidence to the Committee that the analysis is largely based on identifying industry groupings using the Australian and New Zealand Standard Industrial Classification (ANZSIC) system. The ANZSIC system is used to group all producing units in Australia into industries to permit comparability of data.

Clothing industry includes – retail, wholesale and manufacturing sectors

The ATO submission states there were around 44,000 entities in the clothing industry registered with an ABN of which around 4,000 ABNs have been cancelled (resulting from either the business ceasing operation or taxpayer now deceased).


Site visits conducted in Sydney and Melbourne


Ibid, p.98.

107 Interviews lasted around 3 hours each and were conducted in English or Vietnamese.
109 Ibid
CHAPTER TWO
TERMS AND CONDITIONS OF EMPLOYMENT

- Victorian industrial relations system
- Nature of the employment contract
- Rates of pay
- Legislation in other States
- Codes of Practice
- Behind the Label

2.1 This chapter outlines the current system of industrial relations in Victoria before providing a review of the types of employment contract which predominate among clothing outworkers – independent contractors and employees. The rates of pay for clothing factory workers and outworkers are reviewed and compared and security of payment discussed. The chapter will review the effectiveness of industry codes of practice and concludes with an overview of legislative provisions in other States relating to outworkers and in particular the *Behind the Label* initiative in New South Wales.

**Victorian industrial relations system**

2.2 In 1996, the Victorian Government partially referred industrial law matters to the Commonwealth with the passage of the *Commonwealth Powers (Industrial Relations) Act 1996*. This referral took effect from 1 January 1997. Such a referral of law-making powers is possible under Section 51(XXXVII) of the Australian Constitution.

2.3 Specifically, the referral includes the following powers:

- Conciliation and arbitration;
- Agreements between employers and employees;
- Certain minimum terms and conditions of employment;
- Termination of employment;
- Freedom of association; and
- Setting and adjusting of minimum wages for employees in Victoria.

2.4 The referral does not include the following matters:
Inquiry into the Conditions of Clothing Outworkers in Victoria

- Workers’ compensation;
- Superannuation;
- Occupational health and safety;
- Apprenticeship arrangements;
- Long service leave;
- Public holidays; and
- Equal employment opportunity.

2.5 Such a referral of a matter by a State does not prevent the State from making laws on the same matter. In this instance, Victoria is still able to legislate on industrial matters as a concurrent power with the Commonwealth. Should any inconsistency between federal and State laws arise, federal law will prevail.

2.6 In August 2001, the Victorian Government introduced the Commonwealth Powers (Industrial Relations) (Amendment) Bill. The purpose of the Bill is to refer to the Commonwealth the making of common rule awards for Victorian employees and certain matters in respect of outworkers. With regard to outworkers, the Commonwealth would have the power to treat outworkers in the same manner and to the same extent as if they were employees. This reflects the practice in other States where outworkers are deemed to be employees. This Bill is still currently before the Victorian Parliament.

2.7 With the reference of industrial law matters, the Commonwealth Workplace Relations Act (1996) became the principal industrial legislation in Victoria. Industrial relations in Victoria are governed by the provisions of the Workplace Relations Act (1996) and Victoria has ceased to provide Wageline advice and information services, and compliance and inspectorate activities. These activities are carried out by the relevant sections of the Commonwealth Department of Employment, Workplace Relations and Small Business.

2.8 Broadly speaking, there are two ‘groups’ of employees for whom the Workplace Relations Act (1996) operates. The first group of employees is that covered by a federal award, certified agreement or an Australian workplace agreement. Schedule 1A employees are all other employees not covered by any award or agreement. Schedule 1A describes the minimum terms and conditions of employment and may be regarded as a default setting –
they apply automatically if no other agreement has been negotiated between employers and employees.

2.9 Clothing workers in Victoria may be covered by the federal Clothing Trades Award 1982, by a certified agreement or by an Australian workplace agreement. All other clothing outwork employees are covered by Schedule 1A, though there are no separate provisions for outworkers.

2.10 Under federal industrial relations law, an independent contractor is not covered by an industrial agreement and can only apply to the Federal Court for review of an unfair contract (Section 127A of the Workplace Relations Act (1996)). Independent contractors do not have available any other relevant regulatory mechanisms under the Workplace Relations Act (1996). The Clothing Trades Award 1999 stipulates that independent contractors cannot work for a respondent to the award for less than is stated in the award. This establishes parity between factory-based workers and outworkers, whether employees or independent contractors.

Nature of the employment contract

2.11 As was found by the Senate Economics References Committee, the employment status of outworkers is a confusing area where in practice they may be considered independent contractors but in legal fact are employees.

2.12 This section will outline the differences between employees and independent contractors and indicate the employment status of Victorian clothing outworkers as currently understood.

Employees

2.13 Industrial Relations Victoria has offered a basic definition of an employee as one who sells their labour rather than the product of their labour. In common law, this type of employment relationship is referred to as contract of services. The employer/employee relationship is marked by a pattern of rights and responsibilities that is outlined in industrial relations law.
2.14 As was noted earlier, federal industrial law recognises different types of employees whose terms and conditions of employment are set by different types of agreement: award, certified agreement, or Australian workplace agreement. Those not covered by any of these arrangements have their terms and conditions set by Schedule 1A of the *Workplace Relations Act (1996)*.

**Clothing Trades Award 1999**

2.15 Under the *Workplace Relations Act (1996)*, awards are intended to operate as a safety net of minimum wages and conditions in the context of agreement making at the workplace and enterprise level. Awards deal with twenty “allowable matters” including employee classification and skill-based career paths; rates of pay; piece rates, tallies and bonuses; leave (annual, long, maternity etc); redundancy pay and notice of termination; pay and conditions for outworkers (when comparable to factory based work).

2.16 The Clothing Trades Award 1982 details:

- Types of employment (full-time, part-time etc);
- wages and other related matters such as superannuation;
- Hours of work, breaks, overtime, shift work, weekend work;
- Leave (annual, long, jury, sick and maternity etc) and public holidays;
- Accident pay; and
- Provisions for outworkers (definitions and registration).

2.17 In the process of simplifying existing awards to comply with the *Workplace Relations Act (1996)*, the Australian Industrial Relations Commission ruled that certain clauses contained in the *Clothing Trades Award 1982* were allowable matters. These three clauses concerned the relationship between the parties in the contracting or production chain (Clause 26); the terms and conditions of employment for outworkers and the various mechanisms for ensuring parity with the terms and conditions of factory-based workers (Clause 27) and the registration requirements necessary for monitoring employers and their outworkers (Clause 27A).

2.18 The judgement of the Australian Industrial Relations Commission noted that:
“Employees covered by the clothing award include outworkers and factory workers. Outworkers in the clothing industry are...much less likely to receive their award entitlements than factory workers. This has led to the development of special provisions in the clothing award designed to ensure that outworkers receive their award entitlements.” 6

The clauses were allowable in their entirety since they were necessary to enable outworkers in the industry to receive their award entitlements.

2.19 The Clothing Trades Award 1999 defines outworkers as:

“a person who performs work as herein defined for an employer outside the employer’s workshop or factory under a contract of service.”7

The clause specifically relating to outworkers regulates payment rates (by the minute or by results); entitlements to leave, breaks and allowances; and written agreements with regard to hours of work and method of payment.

2.20 In addition employers and contractor who are respondents to the Clothing Trades Award 1999 are covered by Part 9 of the award which imposes explicit obligations with respect to outworkers and contractor obligations. Specifically, such employees must be registered by the Clothing Trades Award Board of Reference before having any work performed away from his or her workshop or factory.

2.21 Furthermore, an employer must not give out work to a respondent who has work done off their own premises unless that respondent is also registered. It is important to note that only those organisations that are named respondents to the Clothing Trades Award 1999 and/or full members of employer associations named in the award are eligible for registration. It is a condition of the award that consent must be obtained from the union or the Board if more than 10 outworkers are employed.

Certified agreements and Australian workplace agreements

2.22 Certified agreements can be made between employers and employees directly or with employees and their union. The Workplace Relations Act (1996) contains provisions governing the making of agreements to ensure that employees understand and accept the agreement. Certified agreements must pass the Australian Industrial Relations Commission's no disadvantage test, that is:
“its certification would not result, on balance, in a reduction in the overall terms and conditions of employment of employees covered by the agreement when compared with the relevant award and any relevant laws.”

2.23 Australian workplace agreements are individual agreements between an employer and an employee about the employee’s wages and conditions. Such agreements may be reached collectively but must be signed individually. These types of agreements are administered by the Office of the Employment Advocate and it is the Employment Advocate who approves them.

2.24 As with certified agreements, Australian workplace agreements must meet the no disadvantage test and the Employment Advocate must refer the agreement to the Australian Industrial Relations Commission if it does not.

Schedule 1A

2.25 The statutory minimum terms and conditions of employment are:

- Four weeks annual leave;
- 38 hours sick leave;
- minimum wage for the work classification of the employee (as determined by the Australian Industrial Relations Commission); or, if in Victoria, the rate of pay that applied to the employee under paragraph 1 of Schedule 1 to the Employee Relations Act 1992 (Vic) at the test time;
- unpaid maternity, paternity or adoption leave with an entitlement to work part-time in connection with the birth or adoption of a child;
- entitlement to notice of termination or compensation in lieu.

2.26 Minimum wages are expressed as hourly rates and the minimum hourly rate is confined to the first 38 hours worked per week. Above 38 hours, employers are not bound to pay the minimum hourly rate.

Industrial law compliance in Victoria

2.27 Inspectors from the Commonwealth Department of Employment, Workplace Relations and Small Business have different powers under the different regulations governing awards, agreements and Schedule 1A.
2.28 These inspectors may assist Schedule 1A employees in negotiating with employers over enforcement of statutory terms and conditions but if these fail it is the employee who is required to take court action. Federal inspectors do not have the power to enter premises to inspect time and wage records nor are they able to bring proceeding against non-complying employers. With regard to compliance with federal awards and agreements, the inspectors may enter workplaces and prosecute claims.

Differences between Schedule 1A and award or agreement employees

2.29 The Victorian Industrial Relations Taskforce heard arguments from union, community organisations and individuals that Schedule 1A employees are disadvantaged: they are not entitled to many of the terms and conditions available to federal award and agreement employees. In comparison to other States, they are less well off. As the Taskforce noted,

“Other States apply common rule award systems overseen by industrial tribunals that regulate the relationship between employers and employees, rather than the statutory prescription under Schedule 1A that limits minimum condition that may be applied in Victoria.”

2.30 Some employers argued to the Taskforce that the dual system allows employers operating under Schedule 1A to under cut employers respondent to federal awards or agreements within the same industry and “to that extent, Schedule 1A operates as an economic disadvantage to many of these employers.” Other employers took a differing view, arguing that Schedule 1A employees did not suffer disadvantage, though the current system could be maintained with some technical adjustment.

Independent contractors

2.31 The common law definition of an independent contractor is that they are engaged under a contract for service, as opposed to an employee who is employed under a contract of services. It may not always be clear whether or not a person is an employee or an independent contractor. In these instances, the courts will apply a common law test which examines the relationship between A and B. The following factors are examined:
Inquiry into the Conditions of Clothing Outworkers in Victoria

- How A pays B: if group tax is deducted it is likely that B is an employee. If A makes payment on the basis of output alone rather than a regular wage, this strongly suggests that B is not an employee;
- Whether B is making a significant capital contribution (buying own equipment, carrying maintenance and running costs) to the enterprise. If B is doing this, then that indicates an independent contractor however, if all B brings is the ordinary tools of the trade, this is not likely to be significant;
- What degree of control B has over the work: if A can direct B about significant aspects of the work, then it is likely that B is an employee;
- Whether A provides the benefits of employment to B (superannuation, annual leave, sick leave etc);
- Whether B has the right to delegate work to others – if this is the case, B is likely to be an independent contractor; and
- Whether B provides similar services to the general public – if so, B is likely to be an independent contractor.  

In addition the Committee suggests that another possible criteria is whether or not an outworker undertakes work for more than one manufacturer.

2.32 It is usual that independent contractors cannot be covered by an industrial instrument and must apply to the Federal Court for review of a harsh or unfair contract. However, where an independent contractor provides services to a respondent to the Clothing Trades Award 1982, that contractor must be paid outworker’s rates, according to the provisions of that award.

2.33 It is incorrect to infer that the only legal type of outworker is one who works as an independent contractor, with business registration, and Australian Business Number etc.  

An outworker may be an employee or an independent contractor, though the distinction is not always easily made. The following section deals with the issue of outworkers whose employment status, for a number of reasons, is not obvious.
Employment status of clothing outworkers

2.34 Determining the status of clothing outworkers is not always an easy matter. Between clear cut cases of outworkers who are employees and who receive employment entitlements (leave, superannuation etc) and outworkers as independent contractors running their own business, there are outworkers whose employment status remains unclear. The problems that arise when an outworker is not clearly defined as an employee or an independent contractor are outlined below. Also discussed are the implications of unclear employment status, namely in the cash economy and the consequent possibility of avoiding or minimising taxes and maximising social security benefits.

Outworkers as employees

2.35 One source of confusion is due to the fact that it is not always apparent who the employer of an outworker is. The chain of production in garment manufacturing can be complex and the responsibility for providing employee benefits unclear. In addition to loss of employee benefits, there may also be other unmet employer statutory obligations such as withholding PAYG amounts and payroll tax.

2.36 As previously mentioned in Chapter 1 there is a complex chain of production within the textile clothing and footwear industry.

2.37 The Textile, Clothing and Footwear Union of Australia has argued that the complexity of this chain can allow contractors and subcontractors to avoid their responsibilities towards outworkers.\(^\text{16}\)

2.38 The Institute of Public Affairs (IPA) has argued that this supply chain applies to other industries and the same checks and balances that are effectively in those industries apply in the textile and clothing industry: \(^\text{17}\)

The supply chain model here is particularly relevant. May I say at the outset that that supply chain model is not extraordinary or unusual to the clothing industry. You could draw that supply chain model for any industry — for the car industry, for the metals industry. It does not matter where you go, those sort of supply chain issues apply. The nature of regulation that we apply in our community means that at each level of the supply chain the relationship between employees and the employers is regulated and controlled through industrial relations regulation. The relationships between the people in the supply
chain — between the retailers and the wholesalers, the wholesalers and the manufacturers, and the commercial contracts that operate — are regulated through the Trade Practices Act and the fair trading acts in each state.¹⁸

As an extension of this argument the IPA commented that increasing the level of control of the industry would diminish competitiveness both within the Australian industry and against international competitors.¹⁹

**Outworkers as independent contractors**

2.39 Doubt over whether a clothing outworker is an independent contractor may arise where there is a conflict between the terms of a contract between two parties and the actual practice of the contractual relationship. Such outworkers may be regarded as independent contractors but are in legal fact employees.²⁰ In resolving such doubt, various courts have pointed to the facts of the employment relationship rather than to statements about the relationship. As the Supreme Court of Victoria noted,

> “Although it is true that a clear statement in a contract between the parties that the person is engaged is to be regarded as an independent contractor is a matter which might…be regarded as important in defining their relationship, it is also true that if the evidence otherwise shows that the relationships is one of master and servant [employer/employee], the parties can not alter the truth of that relationship by putting another label on it.”²¹

The courts have consistently maintained that the conduct of the relationship determines its nature, not the name given to it.²²

2.40 The submission by the Textile, Clothing and Footwear Union of Australia to the Victorian Industrial Relations Taskforce suggested that some outworkers have been coerced into establishing themselves as independent contractors in order to gain work.²³ In its submission to the Victorian Industrial Relations Taskforce, the Victorian Branch of the Textile, Clothing and Footwear Union of Australia noted that

> “There would now be very few outworkers who are not required to have business name registration to continue receiving work. Outworkers refer to the business registration as a license to work…The intention from the factories is very clear. They believe that if the outworker has a business registration then they will not be counted as employees and not entitled to award conditions.”²⁴
In these instances, outworkers are treated as employees in all respects except for the provision of employee benefits. It is argued that the employer of the outworker thus evades the obligations of being an employer (provision of employee entitlements, withholding of PAYG amounts, payroll tax etc) while the outworker does not receive the benefits of being an independent contractor (directing their own work, setting payment rates, being able to advertise their services to the general public etc).

2.41 The general position of the Australian Taxation Office was stated during the Committees hearings in Sydney:

An issue which has arisen in the past is the taxation status of outworkers — that is, whether they are employees or contractors. Whether an individual is engaged as an employee or an independent contractor is a question of fact based on the overall impression gained from considering the contract of engagement as a whole, with no single factor being determinant on its own. There is a case of Filsell v Top Notch Fashions Pty Ltd before the Supreme Court of South Australia in 1994 which considered whether outworkers were engaged employees or independent contractors. The court concluded that the outworkers were independent contractors. While much turns on the facts of each case, generally speaking — and I emphasise ‘generally speaking’ — outworkers who are paid for a result and are required to provide their own equipment, sewing machines, overlockers et cetera, and make good any faults are considered to be in a contract for services — that is, they are in business and not an employee for taxation purposes.25

2.42 However, the Australian Taxation Office has also made a ruling that provides guidance as to whether an individual is paid as an employee, rather than an independent contractor, for the purposes of the PAYG system. Its definition is consistent with that developed at common law. It also clarifies that simply because an individual has an Australian Business Number does not mean they can never be an employee. If an employer and employee agree to a contract clause stating that the employee is an independent contractor, that clause is only valid where it is consistent with the contract as a whole.26

2.43 Under the PAYG system, independent contractors may enter into a voluntary agreement to have their payer withhold amounts from their payments, subject to certain conditions. Such an agreement does not affect the independent contractor’s employment status.27
Consequences of unclear employment status

2.44 The previous discussion has indicated some of the consequences of unclear employment status:

- Where outworkers are employees, they may not be able to identify their employer, that is, the person or company ultimately responsible for paying them employee entitlements. Recovery of unpaid wages or other entitlements is very difficult in these circumstances;
- Where an employer is not clearly identified as responsible for clothing outworkers used by their company, there may be issues of unmet statutory obligations (withholding of PAYG amounts and payroll tax, for example);
- Where an outworker is only nominally an independent contractor and is in legal fact an employee, the employer evades their obligations to pay employee entitlements and other statutory obligations. The nominal independent contractor is unlikely to pay personal income tax or other business costs and statutory obligations (WorkCover premiums, superannuation etc).

2.45 It has been suggested that such arrangements are to the benefit of clothing outworkers. Payments made in cash may provide the opportunity for outworkers to avoid or minimise personal income tax and maximise social security benefits.28

2.46 It is also the case that earning an income does not automatically revoke an entitlement to social security benefits and other entitlements such as the Health Care Card. The Newstart Allowance enables recipients to earn a small supplementary income, subject to an income and assets test.29 Family payments are also available to outworkers where income and assets tests are higher than for the Newstart Allowance.30

2.47 Evidence has been supplied to by the TCFUA to the Victorian Industrial Relations Taskforce that indicates in some cases outworkers are forced to maintain registration for social security benefits in order to guarantee future work.31

Recommendation 5: That the Victorian Government recommend the Commonwealth Government amend the Workplace Relations Act 1996 to ensure that outworkers who do not to operate as independent contractors or small businesses are deemed as employees.
Recommendation 6: That the Victorian State Government should create legislation to ensure that outworkers who do not operate as independent contractors or small businesses are deemed as employees for the purposes of industrial regulation in Victoria.

Rates of pay

Award

2.48 The wage bands for factory-based clothing workers are outlined in the Clothing Trades Award 1982, Part 5, Clause 25:

Table 2.2 Rates of pay: Clothing Trades Award 1982

<table>
<thead>
<tr>
<th>Classification/Skill Level</th>
<th>Minimum hourly/weekly award Wage Rate $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trainee</td>
<td>10.90 / 413.40</td>
</tr>
<tr>
<td>1</td>
<td>11.30 / 430.10</td>
</tr>
<tr>
<td>2</td>
<td>11.90 / 452.60</td>
</tr>
<tr>
<td>3</td>
<td>12.45 / 473.50</td>
</tr>
<tr>
<td>4</td>
<td>13.35 / 507.20</td>
</tr>
<tr>
<td>5</td>
<td>14.40 / 548.90</td>
</tr>
</tbody>
</table>

2.49 Wages for outworkers are calculated from the same wage rates, based on a payment by minute rate with provisions for hours worked in excess of the 38 hour ordinary week. The Textile, Clothing and Footwear Union of Australia estimates that the average factory-based worker operates at Skill Level Two, while the average outworker operates at Skill Level Three. The Homeworker’s Code of Practice accepts a minimum Skill Level Three for outworkers. This higher assessment for outworkers is based on the requirement to sew an entire garment and the need to establish their own work procedures. It must be stressed however that these are average figures and the Committee has heard of a wide divergence of skill levels within the outworker community ranging from trainees to highly skilled whole-garment machinists.
2.50 Employers may choose a payment by results system (piece rates) for factory-based workers (minimum wage rates still apply). This allows employees to earn more than the minimum hourly rate and results in increased productivity for the employer. In this formula, a standard sewing time for a particular type of garment is calculated against the real time worked in order to generate a higher hourly rate.

2.51 The General Sewing Data system is widely used in Australia and overseas for factory-based workers. It is based on the hand motions of workers and calculates the time required for each sewing operation. A modified system is used for outworkers, taking into account the need for outworkers to perform tasks such as unbundling, sorting and other associated tasks. In a factory setting, such tasks would be performed by other workers.

2.52 In addition to being used in the calculation of payments by results, the General Sewing Data system may be used to determine reasonable expectations of work output. Ms Annie Delaney, Outworker Coordinator for the Victorian Branch of the Textile, Clothing and Footwear Union of Australia explained to the Committee that:

"The sewing time manual has been recognised as the general sewing data (GSD) system, which measures how long it takes to sew a garment. Many factories use that system. It measures how long an outworker takes to make a jacket, a skirt or a pair of pants.

Most manufacturers know roughly how long it takes to make a shirt. If they are giving the outworker 20 shirts they know that would be X hours of work. If the outworkers says it took her five days instead of three days, they know something is wrong. They are fairly reasonable standards and expectations. But people have moved away from that sewing time measure to just a piece rate measure…”

2.53 In an example provided to the Committee, the General Sewing Data for a long-sleeve shirt with front placket indicated the length of time for unbundling, sewing, and quality checking and the payment due to the worker. Recorded with this information were the operations required to sew the garment.

**Schedule 1A**

2.54 The minimum wage for clothing employees is detailed in the *Manufacturing Industry Sector Minimum Wage Order – Victoria 1997*, made by the Australian Industrial Relations Commission:
Table 2.3 Rates of Pay: Manufacturing Industry Sector Minimum Wage Order

<table>
<thead>
<tr>
<th>Classification</th>
<th>Minimum hourly rate/ per 38 hour week ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level One</td>
<td>10.88 / 413.40</td>
</tr>
<tr>
<td>Level Two</td>
<td>11.32 / 430.10</td>
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<td>Level Three</td>
<td>11.90 / 452.20</td>
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<td>Level Four</td>
<td>12.46 / 473.50</td>
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<tr>
<td>Level Five</td>
<td>13.34 / 506.90</td>
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<td>Level Six</td>
<td>13.89 / 527.80</td>
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<td>Level Seven</td>
<td>14.93 / 567.30</td>
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<tr>
<td>Level Eight</td>
<td>16.03 / 609.10</td>
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<tr>
<td>Level Nine</td>
<td>16.58 / 630.00</td>
</tr>
</tbody>
</table>

2.55 Skill Levels One – Six are commensurate with Skill Levels Trainee – 5 of the *Clothing Trades Award 1982*.

2.56 According to Clause 5.6.4 of the *Manufacturing Industry Sector Minimum Wage Order – Victoria 1997*, and subject to the minimum wages provided for in the Order,

“an employer may remunerate any of his or her employees under any system of payment by results based on rates which will enable workers of average capacity working in ordinary conditions to earn at least 20 per cent in excess of their hourly rates.”

**Outworker’s experiences**

2.57 In 1997, the Federal Industry Commission (now known as the Productivity Commission) inquired into the Australian textiles, clothing and footwear industry. It noted that in respect to remuneration for homeworkers,

“While piece rate payments equivalent to as low as $2 per hour have been reported in the media, it is through that typical piece rates are currently equivalent to around $7 per hour for proficient workers, which is still well below the minimum award rate of around $10.60 per hour.”
The Textile, Clothing and Footwear Union of Australia and the Fairwear campaign argue that these conditions have not improved and recent reports have investigated outworkers’ wages.

2.58 Dr Christina Cregan, from the Department of Management at the University of Melbourne, is currently undertaking a study of outworkers in the textile industry in Melbourne. One hundred and nineteen outworkers are involved and Dr Cregan has reported on the preliminary findings of her study.

2.59 When surveyed about their pay, all respondents said they were paid on a piece rate system. Dr Cregan reports that:

“They were asked what they were paid for each garment they were currently sewing and it ranged from twenty cents to $5.35. There was one outlier of $9.50. The largest group – 15 – was being paid fifty cents, the next - 12 - $2.00, then 8 at $4.00 and 6 at $5.00. The garments took between 3 and 90 minutes to sew. From the information they gave, it was possible to calculate their hourly pay. The average rate was $3.60 per hour. The highest was $10, while several earned below a dollar.”

The highest hourly rate of the sample, $10.00, is nearly a dollar less than the trainee rate provided for in the Clothing Trades Award 1982 and Level One in the Manufacturing Industry Sector Minimum Wage Order – Victoria 1997.

2.60 The Institute of Public Affairs has published a report into the Australian clothing manufacturing industry. The report disputes this level of wages being paid to outworkers and argues that claims of exploitation are exaggerated. In information provided by 4 manufacturers, the report finds an average hourly rate of $14.41. Among the 58 outworkers, hourly rates ranged between $9.00 and $21.80. The average rate of pay reported by the Institute corresponds to Level Five of the Clothing Trades Award 1982 and is slightly above Level Six of the Manufacturing Industry Sector Minimum Wage Order – Victoria 1997. The lowest hourly wage rate report is nearly two dollars less than the trainee and Level One classifications in the Award and Wage Order respectively. The highest hourly wage rate is between approximately $4.00 and $5.00 higher than the highest wage rates provided in the Award and the Wage Order.
2.61 Ms Pamela Curr, Victorian State Director of the Fairwear campaign argued that reports of hourly rates of $12-$15 were rare. She observed that in five years of meeting and working with outworkers through Fairwear she had only met one outworker who was paid $15 and that was in the niche market of judicial robes.41

Recommendation 7: That the State Government implement an advertising campaign to inform all those working in the textile footwear and clothing industries of their rights and obligations as employers and employees.

Recommendation 8: That the Victorian State Government create a multi-language information hotline for outworkers to inform them of their rights and entitlements under the Clothing Trades Award 1999 and the Accident Compensation Act 1985.

Recommendation 9: That Industrial Relations Victoria appointment bilingual inspectors/advisors to work within the clothing industry to provide information and practical assistance to:

(a) outworkers with regard to their rights and entitlements; and

(b) employers in the industry with regard to their responsibilities and obligations.

Security of payment

2.62 Some outworkers have complained about security of payment, whether it be delayed payment, under payment or, in some instance, absence of payment.

2.63 Ms Pamela Curr, of Fairwear, informed the Committee of Fairwear’s work in supporting outworkers who had not received payment due to them. She related the experience of one outworker:

“…there was a young Vietnamese outworker, Lon, who had been working for the last year making baby headbands. She was paid between 30 and 60 cents a piece; she was making around $3.60 an hour. She had initially worked for a company for some years doing this and they had paid her 90 cents a piece and paid her regularly. Then the company was sold to another couple and they had not paid her to the point that come the Friday before
Christmas she was owed $3500. We went to the store and we had two actions outside that store asking them to pay. The local papers reported it with photographs and it seems to have had an effect, because as of a couple of weeks ago we heard that she had received almost all of her money. This woman had not been paid for seven months.”42

Ms Curr noted that outworkers tended to seek support from either the Textile, Clothing and Footwear Union of Australia or Fairwear only after their own attempts to recover monies owed had failed.43

2.64 In Dr Cregan’s study of outworkers, 88 of the 119 surveyed did not have their wages paid on time; 53 did not know what they would be paid for a job before they started; and 46 had been paid differently from the agreed price.44

2.65 In 1994, the Textile, Clothing and Footwear Union of Australia conducted a National Outwork Information Campaign which included a phone-in information service. In Victoria, campaign resulted in 150 outworkers approaching the Textile, Clothing and Footwear Union of Australia for assistance. Of those, 70 sought and received assistance in preparing claims for the recovery of unpaid wages. One of the claims involved 20 outworkers who worked for the same employer.45 Ms Annie Delaney of the Victorian Branch of the Textile, Clothing and Footwear Union of Australia confirmed that patterns which had emerged from the 1994 campaign were repeated when a similar exercise was undertaken in 2000.46

**Legislation in other States**

2.66 This section looks at legislative provisions dealing with outworkers in Queensland, New South Wales and South Australia. To a great extent, these legislative provisions are concerned with deeming outworkers to be employees. This has been done to clarify the employment status of outworkers and consequently clarifies industrial regulation of outworkers.

2.67 Additionally, in these three States, where an employer of outworkers is not a respondent to a federal award or agreement, the common rule state award applies. This occurs regardless of whether or not at common law the outworker is an employee or independent contractor.47
Queensland

2.68 In the *Industrial Relations Act 1999* (Qld), the definition of an employee includes an outworker. The Schedule 5 Dictionary of the Act, defines an outworker as:

“a person engaged, for someone else’s calling or business, in or about a private residence or other premises that are not necessarily business or commercial premises, to pack, process, or work on articles or material, or to carry out clerical work.”

To complement this definition, Section 6(2)(f) an employer is defined as a person for whose calling or business an outworker works.

2.69 The Wageline service of the Queensland Department of Industrial Relations notes that changes to the definition of an employee were prompted by

“…considerable concern over the increasing use of ‘non-standard types of employment’ and so-called ‘dependent contractors’ in industries and occupations where historically work had been performed by employees…The clear inference was that some unscrupulous employers would characterise a work relationship as being a contract for services rather than a contract of employment in an attempt to avoid responsibility to provide entitlements to their workers…”

South Australia

2.70 The *Industrial & Employee Relations Act 1994* (SA) has adopted a similar approach to that of Queensland. It is limited however to outworkers employed under the terms of an award or enterprise agreement.

New South Wales

2.71 The *Industrial Relations Act 1996* (NSW), at Section 5(1) defines an employee as “a person employed in any industry, whether on salary or wages or piecework rates”. For the purposes of this Act, outworkers are deemed to be employees. Schedule 1 of the Act states:

1(f) *Outworkers in clothing trade:* Any person (not being the occupier of a factory) who performs, outside a factory, for the occupier of a factory or a trader who sells clothing by wholesale or retail, any work in the clothing trades for which a price or rate is fixed by an industrial instrument. (In such a case, the occupier or trader is taken to be the employer).

2.72 In *Behind the Label – the NSW Government Clothing Outwork Strategy*, the limitations of this definition were discussed. Submissions to the New South Wales Pay
Equity Inquiry noted that, in a court of law, an argument might be made that the deeming provisions were insufficient to ensure that outworkers were treated as employees. The circularity of the definition could mean that it would have to be shown that in a particular case the outworker was “employed in an industry”. The Act also introduced sections of the Behind the Label Strategy which will be discussed later in the chapter.

**Codes of Practice**

**Homeworkers Code of Practice**

2.73 Negotiations for a system of self-regulation in the clothing industry began in 1996 following the Senate Economic References Committee inquiry. The inquiry found that outworkers were subject to a range of industrial and workplace disadvantages and that the number of people performing outwork was increasing. The Homeworkers Code of Practice was agreed to by unions and industry in 1997. The Code of Practice is a voluntary agreement entered into by retailers, manufacturers and unions with two parts. Part one relates to retailers and Part two to manufacturers and fashion houses.

2.74 The Committee notes that the Code is designed to complement the relevant awards and to make the contracting chain transparent and enable outworkers to receive their lawful entitlements. It involves an accreditation process for manufacturers, an agreement by retailers to use suppliers that comply with employment laws and minimum award conditions and a process to identify ethically produced clothing—the No Sweat Shop Label. The Code is a self-regulatory system that purports to regulate and monitor the production chain from retailer to the outworker. There has been considerable debate as to whether the intention of the Code has been fully realised.

**Retailer responsibilities under the Code**

2.75 Part one of the Code calls for retailers to require their TCF suppliers to comply with award provisions and other laws relevant to the engagement of outworkers. The Australian Retailers Association (ARA) is to compile a list of the names and addresses of all TCF suppliers.

2.76 If the Textile Clothing and Footwear Union can reasonably demonstrate a suspected award breach by a particular supplier, the ARA will match that supplier to the relevant
Chapter 2: Terms and Conditions of Employment

retailer on the list and inform the union as to how to contact the retailer. The retailer is to provide assistance to the union in the investigation of the suspected breach. Where compliance by the supplier is not achieved, the retailer is to terminate contracts with that supplier. Retailers may promote the fact that they only deal with accredited manufacturers who do not exploit outworkers.

2.77 The first version of Part one of the Code was a Statement of Principles drafted in October 1996. The Statement required retailers to provide details of their suppliers to the Textile Clothing and Footwear Union in writing each quarter but was never signed by the ARA. A second version of Part one of the Code was negotiated and signed in September 1997. Currently there is no onus on retailers to advise the TCFUA of details of their suppliers of goods and services.\textsuperscript{53}

Manufacturers responsibilities under the Code

2.78 Part two of the Code sets out the criteria for participating manufacturers, wholesalers, warehouses and fashion houses—the suppliers.

Manufacturers seeking accreditation must:

- provide statutory declarations of their compliance with legal requirements and award provisions for outworkers, including rates of pay, hours of work, workers compensation, superannuation and notices of termination;
- maintain up to date records of orders taken, retailers to be supplied and addresses of any outworkers and contractors employed; and
- ensure that any contractors that are used sign contracts obliging them to comply with award provisions.\textsuperscript{54}

2.79 Suppliers must maintain lists of contractors and outworkers, and provide a copy of these lists to the TCFUA on demand. Manufacturers risk losing accreditation and contracts with retailers if their contractors fail to pay outworkers correctly or do not comply with all parts of the Code.

2.80 The TCFUA is responsible for monitoring compliance with the Code. This includes identifying problems and providing details to the manufacturing/fashion house/wholesaler or retailer.
Code of Practice Committee

2.81 The Code establishes a Code of Practice Committee, comprised of equal number of representatives of the union and employers, whose role it is to oversee the establishment and ongoing management of the Code. The Committee, comprised of members of the TCFUA, Australian Industry Group, Australian Business Limited and the Council of Textile and Fashion Industries of Australia:

- Accredits manufacturers;
- Accredits retailers;
- Registers and maintains trademarks, logos and other identification items;
- Administers education, publicity and compliance funds;
- Establishes grievance procedures and settle disputes; and
- Develops standard product specification.55

The Code of Practice Committee will oversee the accreditation process which will ensure that, from the retailer to the homeworker, the chain is transparent.

2.82 The Committee notes that while the Code of Practice Committee is constituted by groups from the larger employer associations and the union there is little representation from smaller manufacturers and community groups who could directly represent the interest of homeworkers.

Accreditation

2.83 In order to become accredited, suppliers must provide records demonstrating that they, or their contractors, are complying with the following:

- homeworkers are paid the proper rate;
- homeworkers are not working less than 30 hours or more than 76 hours per week;
- homeworkers are covered by workers compensation;
- superannuation contributions are being paid;
- if work is no longer available, homeworkers are given appropriate written notice of their termination;
- a standard letter concerning union membership is provided to the homeworker;56 and
- payment of a standard accreditation fee of $2,200.
2.84 Suppliers must maintain lists of contractors and of homeworkers, and provide a copy of these lists to the TCFUA on demand. Accredited companies must keep a check on their contractors and require them to comply with the same criteria. Manufacturers will risk losing accreditation and contracts with retailers if their contractors fail to pay homeworkers correctly or do not comply with all parts of the Code.

Monitoring

2.85 The TCFUA is responsible for monitoring compliance with the Code. This includes identifying problems and providing details to the manufacturer / fashion house / wholesaler or retailer. If the problem is not fixed within a short time frame, the company responsible will lose their contract to supply the retailer or accredited manufacturer. The Code Committee is able to revoke a manufacturer's accreditation.57

The Code and the Trade Practices Act

2.86 The Australian Competition and Consumer Commission (ACCC) has exempted the Code from the Trade Practices Act for five years. The ACCC ruled that the arrangements under the Code are likely to result in a benefit to the public which is sufficient to outweigh any likely anti-competitive detriment resulting from the Code's implementation. The decision provides immunity from court action to companies which become accredited under the Code.

Recommendation 10: That the Victorian State Government encourage manufacturers and retailers to seek accreditation with the existing national Homeworkers Code of Practice.

Activities of Retailers and Manufacturers in relation to their obligations under the Homeworkers Code of Practice

2.87 The Committee notes that the Code is yet to become fully operational with only four manufacturers accredited under Part two of the Code. Manufacturers have been slow to enter into the accreditation process because they are unsure about the commitment of retailers to the Code and about the level of commitment that retailers will provide to those of their suppliers who do accredit. It has also been argued that the entrance fee ($2,200) for accreditation is a significant deterrent for small manufacturers and contractors.58 Whilst a
number of retailers have signed the Code, their explicit obligations under Part one of the Code are quite limited.

2.88 The major problem with the Homeworkers Code of Practice is the small number of manufacturers who have become accredited:

    The accreditation part of the process is where they put the moral commitment into practice by signing statutory declarations. There are a number of mechanisms by which they do that and in return, because they are doing the right thing, they get the No Sweatshop label to put on their clothing. Of the 140 companies who signed the code saying they would do the right thing, when it came to putting it into action there were only four.59

This makes it unattractive for manufacturers to become accredited as they may lose a competitive advantage compared to those who remain unaccredited:

    However, all of them suffer from the problem that they are essentially voluntary agreements which can be voided with a certain amount of notice. Even to the extent that they are binding, they disadvantage the ethical players because they are doing the right thing and the unethical ones are doing the wrong thing and profiting from it.60

2.89 In order to alleviate the low accreditation rate it has been argued that the Code could only operate effectively when it became mandatory. In talking of the introduction of the NSW the TCFUA commented:

    What this legislation does is create the possibility to be determined finally by February of next year for those code obligations to be taken out of the voluntary category and put into a mandatory category so they can then be enforced and applied across the sector, not just on the ethical ones that agreed to do it.61

2.90 As the introduction of mandatory codes within industries can cause major confusion disruption and inequities in the short term the effectiveness of such regulatory action would have to be assessed closely.

2.91 It is also argued that the Homeworkers Code of Practice is “quite good for manufacturers, but at the retail level it is virtually useless.”62 At present the TCFUA is conducting discussions with Australian Retailers Association in an attempt to rectify weaknesses it perceives in the current Code.63 It has been suggested that such amendments may resemble sections of the Target agreement described below
Voluntary Deeds of Co-operation

2.92 In the mid 1990’s, the TCFUA concluded voluntary Deeds of Cooperation with a small number of retailers, namely Country Road, Ken Done, Australia Post and Target.

2.93 Deeds of co-operation between retailers (or other principals) and suppliers have also been used as a means to ensure that outworkers are employed under terms and conditions equal to those contained in the Award. Under deed arrangements the principle is responsible for calculating the terms of payment to the supplier and for ensuring that the supplier observes the contract. These Deeds of Co-operation make the contracting chain more transparent in relation to the contracting provisions between retailers and their suppliers. Agreements reached with individual companies differ in contractual detail, particularly on enforcement and reporting requirements.

2.94 The Target Deed requires Target to provide regular information about its suppliers to the union, and to keep records of their contracts for use by the union on reasonable notice. This is in addition to the obligation to investigate union allegations of non-compliance by suppliers and their sub-contractors (similar to obligations under the Homeworkers Code of Practice).

The NSW Government Code of Practice on employment and outwork obligations-TCF suppliers.

2.95 The Code establishes NSW Government policy, procedures and performance standards expected of the parties in all dealings between NSW Government agencies and members of the Textile, Clothing and Footwear Industries including contractors, agents, suppliers and all employers in the industry. The Code covers employment obligations with respect to employees and outworkers in the procurement of textile, clothing, footwear and related goods.

2.96 The specific objectives of the Code are to:

- Eliminate unsavoury work practices;
- Ensure suppliers comply with industry Awards and relevant industrial legislation relating to employees and outworkers;
- Achieve high standards in occupational health and safety; and
• Ensure that all industry members comply with their obligations in relation to training and skill formation, EEO and affirmative action.65

2.97 The code applies to all contracts for the supply of textile articles, clothing, footwear and related goods and components to government agencies. Government agencies and their employees or agents are required to implement this Code as part of their responsibilities to Government.

Conditions of Tender

2.98 As with Codes operating in the private sector, tenders must provide evidence of compliance with applicable industrial awards, legislation and other legal obligations relating to employees and outworkers. The evidence is to be provided in the form of a statutory declaration and must include:

• Name of the relevant Award or agreement in force at the workplace;
• Registration number of the factory or workshop;
• Evidence of compliance in the 12 months prior to the tender being lodged;
• Evidence of workers compensation insurance;
• Evidence of current superannuation fund membership and contributions; and
• Location of time, book sheet or records required to be maintained under the relevant industrial legislation.66

2.99 Contractors and employers are to ensure that a copy of the Code is available to all parties in the supply chain.

2.100 Anyone that engages outworkers, whether they are engaged as sub contractors or employees must provide information to the outworkers about their employment entitlements, each time work is given out and obtain a signed statement from the sub contractor or employee acknowledging receipt of the information.

Agents Roles

2.101 Government agencies as clients must:

• Ensure that a copy of this Code is available to service providers invited or requested to submit tenders;
• Establish internal procedures for managing Code matters;
• Provide the State Contracts Control Board (SCCB) with a quarterly report on contract work;
• Provide the SCCB with a quarterly report on whether contractors have met all their Code obligations;
• Adopt and promote a co-operative approach; and
• Establish internal mechanisms to deal with transgressions from this Code.67

2.102 All employers and contractors who employ outworkers must make these workers aware of all their rights, responsibilities and entitlements under the relevant industrial legislation.

2.103 The Committee finds the New South Wales Government Code of Practice is comprehensive in the obligations it places on manufacturers, contractors and suppliers in regard to outworkers in the procurement of goods for the NSW Government. However, as the national Homeworkers as Code of Practice is already familiar to manufacturers in the industry and is more comprehensive in its affect across the industry the creation of another code may lead to confusion over differences in accreditation standards.

Recommendation 11: That the Victorian Government commits to the purchase of textiles clothing and footwear goods from suppliers who have met their full obligations as employers.

Behind the Label

The elements of the NSW Government's Outwork Strategy

2.104 A draft Clothing Outwork Strategy was initially developed by the NSW Department of Industrial Relations (DIR) as proposals in a 1999 Issues Paper. Submissions were received from and consultations held with a variety of interested parties, including representatives of retailers, manufacturers and outworkers, as well as community organisations. The proposals in the Issues Paper were redeveloped into the Behind the Label Strategy. There are five key elements to the Strategy.
1. Amendments to the Industrial Relations Act 1996

2.105 The Industrial Relations (Ethical Clothing Trades) Act 2001 commenced on 1 February 2002. The Act inserts special provisions into the Industrial Relations Act 1996 as follows:

- As previously mentioned the provision that deems clothing outworkers to be employees (paragraph (f) of Schedule 1) has been modified to remove the phrase *for which a price or rate, is fixed by an industrial instrument* and to make other modifications to avoid possible restriction on the employee status of outworkers within s5(1) of the Act; 68

- to assist outworkers to recover unpaid remuneration from principal contractors and other suppliers in the clothing production chain, new sections, s127A-s127G, specific to the clothing industry have been inserted into the Act. Clothing outworkers will be able to recover unpaid remuneration by serving a statutory declaration that the work was done and not paid for (or not paid in full), in the first instance on an apparent employer. If necessary, the apparent employer can transfer that liability to the actual employer. The new sections make it clear that retailers cannot be the subject of such claims unless they are the principal contractor in a supply chain; 69 and

- the powers of inspectors have been amended to clarify in s358(2) that inspectors have the power to inspect records required to be kept by any person or company with obligations *under the Clothing Trades (State) Award* for work done under that award and to amend s386 so that inspectors have powers of entry for premises used both for residential purposes and for work in or in connection with the clothing trades. 70

2. Establishment of an Ethical Clothing Trades Council

2.106 The Industrial Relations (Ethical Clothing Trades) Act 2001 also provides for the establishment of an Ethical Clothing Trades Council. The council itself is an advisory body to the Minister for Industrial Relations. It consists of clothing industry representatives, retailers, manufacturers, the union and community groups and an independent chairman. The Council will provide advice to the government on levels of compliance with the obligations that currently exist for outworkers, to promote compliance with and possibly identify
enhancements to existing self-regulatory agreements such as codes of practice and voluntary deeds of cooperation.


2.107 After 12 months the council is required to advise the minister on the operation of self-regulatory mechanisms and whether there is a need for the government to introduce a mandatory code.

3. Appointment of bilingual inspector/advisers to work with the clothing industry

2.108 Four bilingual inspector/advisers have been appointed to work within the Vietnamese, Chinese and other communities to provide assistance and information to employers and employees in the clothing industry on rights and responsibilities. The Unit also has the power to conduct industry inspections, targeted campaigns and investigate individual complaints. The Unit also conducts an outworkers telephone hotline, information seminars for clothing industry employer groups and provides a number of outreach activities.

4. Clothing Worker Entitlements Taskforce

2.109 A Taskforce was established to inspect fashion houses and clothing manufacturers to ascertain whether they are observing their basic employee obligations relating to workers compensation, superannuation and the keeping of wages records.

Industry adjustment - supply chain management project

A supply chain management project aims to identify savings and efficiency improvements in the flow and management of work.

5. Establishment of education and retraining programs for outworkers

2.110 The Strategy also establishes an education and retraining program for outworkers, to provide certification for existing skills and alternatives for outworkers who wish to leave the industry.
Recommendation 13: That the Victorian Government develops clothing specific legislation based upon the New South Wales Behind the Label strategy.

Recommendation 14: That the Victorian Government consider establishing an advisory body with membership from key stakeholders to consider issues of relevance to the Victorian clothing industry and to advise government of industry issues and recent developments.
Endnotes


3 Corney, B. (2002), Briefing Notes. Family and Community Development Committee. Melbourne, Department of State and Regional Development.


6 (1999), Clothing Trades Award: S.107 Reference to the Full Bench, Australian Industrial Relations Commission. C0037CRA Dec 232/99 S.

7 Clothing Trades Award 1999, (Australian Industrial Relations Commission).


10 Ibid.: 71.


12 Ibid.: 91.

13 Ibid.: 92.


16 Ibid.: 7.


21 (1996), Roy Morgan Research Centre Pty Ltd v the Commissioner of State Revenue, Supreme Court of Victoria. No. 4506 of 1996.

Inquiry into the Conditions of Clothing Outworkers in Victoria


29 Allowance Income Test (including Newstart), effective 20 March 2002:


42 Ibid.: 45.

43 Ibid.: 46.


Chapter 2: Terms and Conditions of Employment


51 www.dir.nsw.gov.au/behindthelabel/media/fs_codes.html


53 www.dir.nsw.gov.au/behindthelabel/media/fs_codes.html

54 www.dir.nsw.gov.au/behindthelabel/media/fs_codes.html

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64 www.dir.nsw.gov.au/behindthelabel/media/fs_strategy.html

65 www.dir.nsw.gov.au/behindthelabel/media/fs_strategy.html


67 www.dir.nsw.gov.au/behindthelabel/media/fs_strategy.html

68 *Industrial Relations (Ethical Clothing Trades) act 2001 - sect 7*

69 *Industrial Relations (Ethical Clothing Trades) act 2001 - sect 7*

70 *Industrial Relations (Ethical Clothing Trades) act 2001 - sect 7*
CHAPTER THREE
OCCUPATIONAL HEALTH & SAFETY

- Occupational health and safety responsibilities and entitlements
- Victorian occupational health and safety data
- Occupational health and safety in the textile, clothing and footwear industries
- Occupational Violence and Intimidation

Introduction
3.1 This chapter reviews occupational health and safety in Victoria with particular reference to outworkers. The responsibilities and entitlements of employers, employees and independent contractors are outlined, as is recent Victorian data on occupational health and safety. This is followed by an overview of studies and investigations into the incidence of workplace injury and disease among textile, clothing and footwear workers.

Occupational health and safety responsibilities and entitlements
3.2 The Occupational Health and Safety Act 1985 provides for the Victorian WorkCover Authority and states objectives and general duties as well as providing the machinery to establish a framework for standards development and enforcement. The Victorian WorkCover Authority (“WorkCover”) is responsible for managing workplace health and safety, public safety and workers’ compensation.

3.3 WorkCover provides a compulsory insurance policy for employers in the event of a worker being injured. This policy covers all employees and, in certain circumstances, contractors. Outworkers may be covered under the Act as employees or contractors and regardless of the location of their workplace.

3.4 The Act “deems” certain contractors as employees for the purposes of that legislation. WorkCover has developed a simple test to determine whether contractors should be deemed to be employees. If the contractor runs a business that renders services to a range of clients and employs one or more people (two or more in the case of an incorporated company), then the contractor is not deemed a worker. If the contractor renders services to primarily one company and does not employ others to service the contract, then that contractor is deemed a
worker. This means that the employer is responsible for including payments to the contractor when estimating their payroll for premium calculation purposes.

3.5 Employers are obliged to provide a safe and healthy workplace for their workers and contractors. This includes:

- providing and maintaining safe plant and systems of work;
- arrangements for safe use, handling, storage and transport of plant and substances;
- maintaining the safe condition of the workplace;
- providing workers and contractors with adequate facilities; and
- ensuring that workers have adequate information, instruction, training and supervision to work in a safe and healthy manner.

3.6 Employers must also monitor worker’s health, keep records and information relevant to the health and safety of workers and nominate a senior management representative to deal with workers and their health and safety representatives. Where appropriate, workplace health and safety information must be provided in languages spoken by the workers.3

3.7 Employees are required to take reasonable care for their own health and safety and for the health and safety of others affected by their acts (or omissions) in the workplace. Employees must also cooperate with their employer when their employers are implementing standards imposed by the Act.4

3.8 Under section 21 of the Occupational Health and Safety Act there is a general duty of care on employers to provide a work environment that is safe and free of risk to employees’ health as far as is practicable, and this duty extends to independent contractors engaged by an employer and any employees of the independent contractor. Workcover informed the Committee that there is confusion about the employment status of outworkers as it is often obscured by employers who describe them and treat them as contractors.5 Often the outworkers do not know who their employer is as defined under the act because they are middlemen in a chain of contractual relationships. This ends up abrogating the employment-related responsibilities of the intermediaries and other parties in the production chain.6
3.9 It is often unclear whether section 21(3), which places responsibilities on subcontractors and principal contractors, applies in situations where the relationship is more than one step removed in a chain of contracting. The chain is not clear and often the outworkers are dealing with intermediaries. Similarly, there is not total clarity under the Accident Compensation Act because of the nature of these relationships. For example, under the Accident Compensation Act employers are able to encourage outworkers to register a business name, which may transfer occupational health and safety responsibility over to them. Yet this does not apply under other sections. It is not a straightforward situation where the responsibility both for prevention and for compensation and premium is always clear. 

There are two acts that are relevant: one is the Occupational Health and Safety Act, which is the prevention act; and the other is the Accident Compensation Act. The reality is that in both there is quite a lot of uncertainty and ambiguity as to coverage. In some cases people may be covered and not be aware that they are, and in other cases they may not be covered, and that is one of the problems. The first question is: what are their legal entitlements? The second question is: even if they have those legal entitlements, what is their capacity to enforce those legal entitlements? They have problems at those two levels. 


Victorian occupational health and safety data

3.10 The impact of injuries at work is recognised as having far-reaching effects: on the worker, employer, and economic losses in terms of compensation and medical costs. In Victoria in 1998/99 across all industries, 31,340 claims for workers’ compensation were reported. 125 claims were made for the death of a worker, either through occupational disease or injury (fatalities which occur through traumatic incidents are investigated by WorkCover). 

3.11 In 1999/2000, the manufacturing sector registered 9,547 claims, of which 237 were for textile, clothing and footwear machinery. A particular problem in the textile, clothing and footwear industries is occupational overuse syndrome, the name given to a range of conditions that involve repetitive or forceful movements or the maintenance of constrained or awkward postures. Symptoms of occupational overuse syndrome include swelling,
numbness, restricted movement and weakness in or around muscles and tendons of the back, neck, shoulders, elbows, wrists, hands or fingers. Given the gender make-up of outworkers as identified in some studies, it is interesting to note that WorkCover reported in 1998/1999 that

“This Female claims…have a high incidence of sprain and strains to the neck and to the shoulder/upper limbs (accounting for 49% and 43% of all such injuries compared to female claims comprising 29% of reported claims).”

3.12 In their submission to the Victorian Industrial Relations Taskforce, Working Women’s Health reported on the incidence of occupational overuse syndrome among outworkers. Although the syndrome is best treated promptly with rest and without this develops into a chronic injury, Working Women’s Health recorded that it was very rare for outworkers to reduce their workload due to chronic pain. Evidence received from Asian Women at Work tended to confirm this situation.

3.13 In addition to the incidence of injury due to an outworkers limited knowledge of occupational health and safety provisions, it was suggested to the Committee that many subcontractors within the employment chain are also unfamiliar with occupational health and safety standards and their responsibilities under the Act.

Recommendation 16: That the Victorian State Government through the Victorian Workcover Authority fund educative programs on occupational health and safety for outworkers.


Occupational health and safety in the textile, clothing and footwear industries

3.14 The issue of occupational health and safety for outworkers was considered by the National Occupational Health and Safety Commission (NOHSC) as part of WorkSafe Australia’s submission to the Senate Economic References Committee Inquiry into Outworkers in the Garment Industry.
3.15 The NOHSC reported the following data on the rate of injury within the textile, clothing and footwear sector. The NOHSC submission was made in 1996 from the data collected in 1992-1993. On the basis of reported incidents/per 1,000 employees, the textile, clothing and footwear industries recorded an average of 18.4 incidents/1,000 compared to the Australian average of 25.2/1,000. Sub-groups within the clothing sector recorded “extraordinarily low” incident rates. Underwear and infants clothing was reported at 1/1,000; women’s outwear at 3.7/1,000 and men’s suits and coats at 10.6/1,000 employees.

3.16 The low incidence of injury compared to the national average did not tally with the experience of those who work in the industry. The NOHSC noted that

“It may be that with these figures we are seeing illustrated one of the primary motivations assigned to the growth in the use of outworkers, that is the shifting of associated costs of labour onto the workers themselves. With a decrease in factory employment within the clothing sector and an increased use of outworkers who are not covered by the workers’ compensation system it would appear that significant savings are being made within this sector on workers’ compensation costs.”

3.17 It should be noted however that Victorian legislation deems some contractors to be workers thus creating a duty of care for their employer (refer paragraph 3.4). The NOHSC also noted the possibility of a “significant level” of under-reporting of incidents due to the fear of loss of employment.

3.18 The Victorian WorkCover Authority also observed that there is probably more ill health and injury among outworkers than is reflected in the data. This under-reporting, which is “reasonably high relative to other sectors”, was attributed to the vulnerable nature of the workers who fear loss of work if they make a claim.

3.19 A comprehensive survey of the effects of outwork on occupational health and safety was conducted by Claire Mayhew and Michael Quinlan of the University of New South Wales and was published in 1998. The focus of the research study was on “the hazards and risks textile, clothing and footwear workers are exposed to, injury outcomes, and appropriate and ‘workable’ intervention strategies to improve occupational health and safety in the textile, clothing and footwear industry.”
3.20 The study compared 100 factory-based workers with 100 outworkers. Subjects were interviewed face-to-face and completed a detailed questionnaire. The following direct comparisons were made:

- Factory-based workers had a 10% annual incidence ratio (injuries which required cessation of work) while among outworkers this rose to 27%;
- A further 37% of factory-based workers reported an injury which did not require time off work while a further 48% of outworkers reported the same;
- 34% of factory-based workers cited one or more chronic injuries; among outworkers this rose to 79%;
- Very few factory-based workers reported experiencing occupational violence while 49% of outworkers were exposed to verbal abuse; 23% to threats and 7% had experienced physical assault.24

3.21 Mayhew and Quinlan reported that for both groups of workers the types of injury were consistent: back, shoulder, neck, arm and hand soft tissue injuries, that is Occupational Overuse Syndrome related conditions. Further analysis separated out the 200 workers into three categories: (1) those paid solely on a wage basis; (2) those paid a wage with additional production-based bonuses; and (3) outworker paid solely by piece rate. Mayhew and Quinlan stated that “analysis provided evidence of a clear rising incidence ratio across these three categories.”25 Mayhew and Quinlan also observed that the development of an injury did not always result in time off work since earning an income was regarded as an overriding priority.26

3.22 Mayhew and Quinlan found that “the occupational health and safety of outworkers was unequivocally and significantly worse than that of factory-based textile, clothing and footwear workers.”27 With regard to outworkers, Mayhew and Quinlan recommended:

- The establishment of contact points for occupational health and safety information;
- The translation of brief occupational health and safety guides into Chinese and Vietnamese (and other languages);
- The enforcement of duty of care obligations on middlemen;
- Practical advice on how to set up workstations utilising ergonomic principles; and
- A standard hourly rate of pay to prevent injury.28
3.23 Both WorkSafe Australia and the Mayhew and Quinlan study reported that the cost of injuries to outworkers – medical treatment, the provision of social security benefits when chronic injury proscribes work – were being passed on to the tax payer. This occurred because of the shifting of labour on-costs from employers to outworkers who claimed public health or welfare benefits rather than lodging (more appropriately) workers’ compensation claims. The Victorian WorkCover Authority also confirmed the cost-shifting effects of occupational injury and ill health when workers do not lodge WorkCover claims. Mayhew and Quinlan noted a further complication in that complex employment relationships between factory owners, middlemen and outworkers reduced the chances of a successful claim for workers’ compensation. Outworkers may not be able to identify exactly who is their employer.

3.24 The Victorian WorkCover Authority also observed that confusion over duty of care may be a contributing factor to under-reporting of ill health and injury. There is confusion about the employment status of outworkers and identifying responsible employers within the chain of contractual relationship. WorkCover acknowledged a lack of legal clarity in both the Occupational Health and Safety Act and the Accident Compensation Act about the allocation of responsibility for occupational health and safety.

Recommendation 18: That the Victorian Government define the duty of care responsibilities of sub-contractors and principal contractors within the production chain for the health and safety of outworkers.

3.25 WorkCover cited two issues related to duty of care and outworkers: what are their legal entitlements and their capacity to enforce those legal entitlements. Enforcement of occupational health and safety legal requirements is made difficult due to the number of unregistered workplaces and the associated issue of inspectors entering people’s homes. WorkCover acknowledges the problems outworkers have in the area of occupational health and safety but the nature of industry (such as a high number of individual, private and possibly unregistered workplaces) makes effective sectoral enforcement difficult.

3.26 As a preliminary to the New South Wales Behind the Label strategy, the NSW Government introduced new regulations to the Occupational Health and Safety Act 2000.
Occupational Health and Safety (Clothing Factory Registration) Regulation 2001 requires all textile, clothing and footwear factories to be registered on a publicly available register.

Under Section 3 of the regulation:
Clothing factory means any building or place in which:

a) four or more persons are engaged directly or indirectly in any handicraft or process in or incidental to the making, altering, preparing, ornamenting or finishing of any clothing fabrics, footwear, hats, buttons or related products for trade, sale or gain, or

b) mechanical power is used in aid of any handicraft or process in or incidental to the making, altering, preparing, ornamenting or finishing of any clothing fabrics, footwear, hats, buttons or related products for trade, sale or gain.34

And as a consequence:
An occupier of a clothing factory who is an employer and is a respondent to, or subject to, a clothing industry award, is guilty of an offence unless the clothing factory is a registered clothing factory.35

**Occupational Violence and Intimidation**

3.27 The Committee was also informed that there was “considerable occupational violence involving the predominantly migrant women who work as clothing outworkers.”36 Professor Quinlan in evidence reported conducting research into comparative violence in a number of industries:37

You can check these in the report. From memory, 49 per cent of women had been verbally abused or threatened, and 5 per cent had been actually physically assaulted, which is actually quite high by comparison. Road transport and construction are industries where you would expect that might occur on a work site. We were actually quite stunned at the level of actual physical assaults. Women would say that at some periods of time the middlemen — often from the same ethnic group — which was predominantly where the pressure was coming from, would be really friendly to them at one point and would be offering them presents and then when the pressure was really on they would get quite aggressive. I can quote the actual figures in the report: of the outworkers, 49 per cent had been verbally abused, 23 per cent had been threatened, and 7 per cent had been assaulted. Comparing that to factory-based workers, only 4 per cent reported being verbally abused, 1 per cent reported being threatened, and 1 per cent reported being assaulted. So that is a
very significant difference and it also indicates that the home is not quite as safe and family
friendly as sometimes people imagine — because these people were being assaulted in their
own homes.\textsuperscript{38}

3.28 Internationally there is an emerging body of literature on the danger of occupational
violence for people working in home-based settings which is not restricted to the clothing
industry. This research suggests that the home based workers are more vulnerable due to
their isolation.

If somebody tries to assault you in a factory, it is a very visible act in front of lots of
witnesses, but you can be assaulted at home and no-one will see it. These people, because
they are often recently arrived immigrants, are not going to speak out and report these sorts
of issues particularly because they fear if they do they will never get any future work.\textsuperscript{39}

3.29 In addition, Professor Quinlan stated that reports of these incidents would be highly
unlikely:

My feeling on the industry is that I would be extraordinarily surprised if any of these
incidents are actually reported. In general, occupational violence is usually not reported; all
the studies that have been done on occupational violence across a range of industries show
that very little is actually reported. For every incident that is reported, somewhere between
6 and 10 other incidents occur which are not reported. Particularly given that these are
usually predominantly recent South-East Asian immigrants, they are going to feel in a very
vulnerable position about going to the police to complain about these sorts of issues.\textsuperscript{40}

3.30 The Committee was informed of various strategies outworkers engaged in to control
contact with middlemen or sub-contractors including conducting business away from the
house or only allowing male members of the family to make arrangements and pick up and
deliver goods.\textsuperscript{41}

Conclusions

3.31 There are two main issues that appear to have arisen from the studies under review in
this section with regard to the occupational health and safety of clothing outworkers: the
ignorance or avoidance of occupational health and safety standards and duty of care
obligations by both employers and employees; and piece work rates which may encourage
long working hours leading to Occupational Overuse Syndrome.
Endnotes

2 Ibid., pp. 5-6.
18 Professor M. Quinlan, Professor of Industrial Relations and Organisational Behaviour, University of New South Wales.Sydney Transcript of Proceedings: Inquiry into Conditions of Clothing

82
Outworkers. Family and Community Development Committee Parliament of Victoria. Sydney 15 July 2002


20 Ibid. p. 7.


22 Ibid., p. 60.


24 Ibid. pp. 2-3.

25 Ibid. p. 3.

26 Ibid. p. 3.

27 Ibid. p. 1.

28 Ibid. p. 144.


33 Ibid., p. 60.

34 OCCUPATIONAL HEALTH AND SAFETY (CLOTHING FACTORY REGISTRATION) REGULATION 2001 SECT 3

35 OCCUPATIONAL HEALTH AND SAFETY (CLOTHING FACTORY REGISTRATION) REGULATION 2001 SECT 5

36 Professor M. Quinlan, Professor of Industrial Relations and Organisational Behaviour, University of New South Wales.Sydney Transcript of Proceedings: Inquiry into Conditions of Clothing Outworkers. Family and Community Development Committee Parliament of Victoria. Sydney 15 July 2002

37 Professor M. Quinlan, Professor of Industrial Relations and Organisational Behaviour, University of New South Wales.Sydney Transcript of Proceedings: Inquiry into Conditions of Clothing Outworkers. Family and Community Development Committee Parliament of Victoria. Sydney 15 July 2002

38 Professor M. Quinlan, Professor of Industrial Relations and Organisational Behaviour, University of New South Wales.Sydney Transcript of Proceedings: Inquiry into Conditions of Clothing Outworkers. Family and Community Development Committee Parliament of Victoria. Sydney 15 July 2002

39 Professor M. Quinlan, Professor of Industrial Relations and Organisational Behaviour, University of New South Wales.Sydney Transcript of Proceedings: Inquiry into Conditions of Clothing
Outworkers. Family and Community Development Committee Parliament of Victoria. Sydney 15 July 2002


CHAPTER FOUR
SOCIAL INTEGRATION ISSUES

➢ Social isolation
➢ Language barriers
➢ Education and Training

Introduction

4.1 As part of the Terms of Reference for this Inquiry, the Committee was asked to examine any social integration issues of relevance to outworkers. A range of issues have come to the Committee’s attention through the course of conducting the Inquiry and are outlined in the following pages. As noted in previous sections of the Report, the Committee recognises that clothing outworkers are not a uniform group. Rather the cultural backgrounds, religious orientations, educational qualifications and vocational experiences of outworkers vary widely. While acknowledging such factors, this chapter largely focuses on those outworkers from non-English speaking backgrounds (NESB) who form a particular group within the Victorian community with a specific set of problems and needs. The Committee was disappointed with the lack of appropriate submissions in relation to the social integration issues of relevance to outworkers yet this is indicative of the problem of reaching outworkers as their work and experiences are largely hidden.

4.2 It is generally acknowledged that outworkers experience a range of social integration issues including:

- General social isolation;
- Language barriers;
- Poor educational opportunities;
- Lack of vocational training and skill development, and
- Limited knowledge of the complaints system

4.3 Asian Women At Work (AWATW) together with the Cambodian-Australian Welfare Council of New South Wales (funded through the NSW Government’s Behind the Label initiative) has set up a focus group to identify issues facing outworkers. The issues that have
been identified by the group are comparable with issues identified by numerous other groups and organisations. They include the following:

- Language difficulties;
- Isolation and family issues;
- Lack of information and education;
- Lack of training and skills required to search for employment in other industries;
- Limited knowledge of the complaint procedure;
- Pressure to keep working and provide an income for the family, and
- Occupational health and safety issues.¹

4.4 While each of these issues is important in their own right, they often overlap and compound problems for individual outworkers and may contribute to the marginalisation of the most vulnerable within this group. For instance, the inability to speak English fluently hinders any form of interaction within the broader Australian community. Those outworkers with poor English language skills may rely on own-language media as a source of news information on both local and national events. Similarly, they may be limited to a smaller range of employment positions advertised in community newspapers printed in their own language.

Social isolation

4.5 Migrants are an important element of the Australian cultural milieu. The social isolation suffered by many new migrants in Australia is not specific to the Australian nation. Arguably, the general hardships in adapting to a new cultural environment are the same for migrants across the globe. Such issues can largely be attributed to the differences between the individual’s country of origin and the dominant culture of the migrant’s new society. Acute language barriers, divergent religious and cultural expectations, and minimal knowledge of the mainstream Australian culture compound the sense of social isolation felt by new arrivals.

4.6 It has been noted that the ‘immigration experience’ itself and the process of integrating oneself into a new culture (known as acculturation) can be a traumatic and difficult period in an individual’s life.² The experiences of new migrants in Australia have been well documented over time. A publication by Working Women’s Health³ has stated
that, “immigration can bring many stresses including; acculturation, isolation, racism, uncertainty, frequent negative events, and poor access to helpful resources.”

The report goes to the extent of suggesting that, “NESB immigrants find themselves a despised minority group or one that has little status in Australia.”

4.7 Evidence from Melbourne University academic, Dr Christina Cregan suggests that some outworkers have forged relationships with members of the local community and do not live in complete separation from the community at large. In her study of 119 outworkers, she found that, “these workers did not live in isolation…yet they lived in their own ethnic world within Australia. [Their] acquaintances were clearly mainly people of their own race. At home and with friends, most of them used their language.” Most of them gained information about Australia and the world through own-language media.

4.8 Working from home may contribute to a sense of isolation amongst outworkers as they are excluded from the normal culture of a shared workplace. While some may have forged friendships with neighbours, local communities and perhaps other outworkers, there are those that find themselves isolated from the broader community.

4.9 During consultation with outworkers in both Sydney and Melbourne the Committee was informed of the impact long and at times fractured work hours had on the ability to socialise and be active in the community. In fact, the Committee was informed that some workers had not been outside the suburb in which they lived for many years. In NSW, Asian Women at Work has sponsored a number of activities to increase the limited social sphere of outworkers such as bus trips and organised community gatherings. Such activities are not only beneficial for individual outworkers but also their family as a whole and form part of a broad community development agenda involving training and skill development, educational training and social interaction.

**Recommendation 19:** That the Victorian State Government establish funding to provide outreach services for outworkers including those working as contractors and small business operators to reduce isolation and vulnerability.
Language barriers

4.10 English language and literacy difficulties are a significant problem for outworkers who are of NESB. Language barriers impact on the lives of these individuals in various ways. Everyday interaction with the broader Australian community is a considerable task for anyone who lacks a command over the English language. The inability to read and write English intensifies problems for those attempting to find employment in the Australian labour market. In the workforce, such issues are further compounded in terms of communicating effectively with an employer and understanding employee rights and responsibilities.

Literacy in Australia

4.11 The last decade or so has seen an increasing emphasis placed on adult literacy in Australia. International Literacy Year (ILY) in 1989 raised public awareness about literacy in Australia. Achieving greater levels of ‘active literacy’ rather than ‘functional literacy’ was the aim according to the International Literacy Year Secretariat. These terms are explained below:

“Functional literacy,…put simply is the ability to accomplish simple reading and writing tasks. Active literacy is more than just reading and writing. It involves integration of listening, speaking, reading, writing and critical thinking as well as numeracy skills. It includes cultural and social knowledge which enables us to participate fully in society.”

4.12 The importance of increasing community awareness about literacy was a major component of the ILY campaign in order to “…ensure a wider understanding of the social and personal costs of inadequate literacy.” ILY prompted Government action following the release of findings from a national study on adult literacy, *No Single Measure*. The study tested literacy on three main levels including:

- *Document literacy*, the ability to identify and use information documents such as forms
- *Quantitative literacy*, the ability to apply mathematical operations to information contained in print material (for example, adding prices on a menu)
- *Prose literacy*, the ability to read and interpret prose in newspaper articles and books
4.13 The results of *No Single Measure* showed that 1 in 10 Australian adults and 1 in 7 workers had major literacy deficits.10 Around 10% of the sample failed to achieve at all on quantitative literacy. Furthermore, around 70% of those surveyed could not identify the issues in a newspaper article.11 The figures from the report acted as a vehicle to reform within the area of adult literacy in Australia.12

4.14 In 1991, the Australian Language and Literacy Policy (ALLP) was released. Under this Policy, Commonwealth Government funding was put into adult literacy training programs, to take place in Technical and Further Education facilities (TAFE), together with a variety of community centres and a range of workplaces. Between 1991-2 and 1993-4, funding for the Workplace English Language and Literacy (WELL) program increased from $2 million to $5 million in an attempt to improve adult literacy across the country along with increasing employment opportunities for Australians.13 However, it seems fair to say that, by and large, these initiatives have missed out workers as their employment is outside of the standard workplaces that would be making use of such programs. Research has pointed out that the primary goal of the policy was that:

“All Australian residents should develop and maintain a level of spoken and written English which is appropriate for a range of contexts, with the support of education and training programs addressing their diverse learning needs.”14

4.15 Data from an ABS document titled *Education and Training in Australia* showed that despite these efforts, literacy in Australia in the mid-to-late 1990s continued to be a significant problem. In 1996, 44% of 15-64 year olds had poor or very poor prose literacy skills.15 This group could be expected to experience some or considerable difficulties in using many of the printed materials encountered in daily life. In their analysis of labour force participation and literacy, the ABS found that those individuals with very poor prose literacy skills were most likely to be employed as labourers and related workers (representing 30% of those who were employed).16

4.16 Research in the area of adult literacy in the workplace has noted that:

“In today’s workplace culture a worker is a motivated team player able to make and relay critical decisions, a far cry from the role of mass production workers, who, by the very nature of their jobs did only the task or tasks required, with little initiative or creative input required.”17
4.17 With the decline in demand for unskilled and manual labour in the traditional manufacturing industry (as outlined in Chapter 1), the job prospects for those without appropriate English language and literacy skills are limited.

**English language courses**

4.18 Over recent years, various organisations have run a range of English language and literacy classes for migrants in order to address some of these concerns. Currently in Victoria, English language classes for outworkers are run by the TCFU and a range of other organisations offering courses in English as a second language (ESL) including; Adult Multicultural Education Services (AMES), various TAFES and Universities around Melbourne and a range of community centres.¹⁸

4.19 In NSW, AWATW provides English classes for Asian women working within the TCF industries. Since 1994, AWATW has been working with Asian women who are employed as factory workers, cleaners, restaurant workers and outworkers. The organisation aims to assist these women to understand their employment rights and obligations in Australia. AWATW runs a range of classes and activities in an attempt to provide access to information and resources that may otherwise be unavailable to this group. In addition to English classes, AWATW provides educational seminars and community legal aid.¹⁹ AWATW is one of the organisations committed to working in partnership with other key players and the NSW government in implementing the *Behind the Label* strategy.²⁰

4.20 A component of the NSW Government’s outworker strategy is to assist outworkers to access training programs. According to AWATW, these programs increase women’s understanding of their rights and responsibilities in relation to the work environment but also assist with communication within the general community. In her evidence to the Committee, Chinese Community Worker Ms Huang, suggested that “beyond the work environment [outworkers who have undergone training] talk to the staff in the post office, bank and local shops, giving them a greater quality of life in the community.”²¹ This statement is indicative of the many benefits of English language training. Not only do such classes increase the ability of individuals to communicate with employers in the work environment but can help these women participate in local community life. This works to decrease the isolation
suffered by those migrant outworkers who previously could not communicate with the broader Australian community as a result of language barriers.

4.21 More recently, in July of this year the Cambodian-Australian Welfare Council of NSW in partnership with AWATW set up an English class for outworkers. The class aims to improve the language and literacy skills of migrant outworkers as a first step toward increasing the knowledge of outworkers with regard to their employment rights and responsibilities. Improving the ability of these outworkers to communicate will work toward opening up a discourse between employees and their employers to discuss issues and problems related to their work and conditions of employment.

**Bi-lingual inspectors**

4.22 To date, one of the major obstacles to reform of the working conditions of outworkers has been the unwillingness or inability of outworkers from NESB to speak up about their work conditions to traditional Department of Industrial Relations (DIR) workplace inspectors. The Committee acknowledges that non-compliance within the industry is partly fuelled by the reluctance or inability of outworkers to report issues or to have government involvement in their employment. Attempts have been made in recent years to offset these issues through the appointment of bi-lingual workplace inspectors. Under the auspices of the NSW Government’s outworker strategy, the Cambodian-Australian Welfare Council of NSW has employed a former outworker as a full-time community worker to build a support network for Khmer outworkers. Improving the ability and willingness of outworkers to communicate with employers will help empower workers to access services and complaints systems and participate in the general everyday life of their local community.

**Education and Training programs**

4.23 The NSW Department of Industrial Relations (NSW DIR) and the Department of Education and Training (DET) are working in partnership in NSW to provide training programs for outworkers in the clothing industry. In their submission to the Committee, the NSW DIR emphasised the importance of recognition of existing skills and the need to increase the number of individuals who have attained nationally recognised qualifications.

4.24 As part of the *Behind the Label* initiative, a number of education and training projects have been developed for outworkers in NSW. These are outlined below:
• Education and retraining program for outworkers (recognising prior skills and providing training for those working in the area)
• Providing alternative forms of employment for those wishing to leave the industry
• Co-ordinating the design and delivery of community based programs (to support and assist outworkers to access & participate in training)
• DIR funding to employ community support and community development workers to work on building an understanding of the situation of clothing outworkers

4.25 It is envisaged that a number of specific training programs for outworkers will be developed including:
• Prevocational language and literacy, numeracy, computer and other skills
• Vocational training within the TCF sector such as skills recognition, gap training and clothing production qualifications
• Vocational training in other industry sectors

4.26 The delivery of training programs to groups of outworkers will be supported through funding from DIR. These programs may include bi-lingual assistance, venue hire & scheduling of programs, childcare, transport and a subsidy for unpaid remuneration. In addition, there have also been a number of specific projects that have been developed to support the design of training programs, including:
• Funding of community development workers to work with outworkers in the Chinese, Vietnamese, Khmer and possibly Korean communities;
• Exploratory profiling to ascertain the extent of outwork in emerging migrant communities
• Employment of an education liaison officer to negotiate and supervise the delivery of training programs between DET, DIR and the community

4.27 An underlying premise of education and training programs is to provide the skills necessary for outworkers to move to new forms of employment either within or outside of the clothing industry if they choose to do so. Ms Carstens, Coordinator of AWATW commented to the Committee in Sydney that outworkers would prefer a job in the workforce rather than at home if it were available to them. She put forward the argument that, “...if the
result of legislation was to decrease the number of outworkers and increase the number of factory jobs, there would be a ready work force willing to move into these jobs.”

4.28 However, she also acknowledged that there are a number of workers who are willing to continue their work from home. During the Committee’s consultation with outworkers in Melbourne and Sydney, a number of individuals expressed this view saying that are willing to continue their work at home because of the flexibility it offers but wanted to receive the appropriate remuneration. It is important that those wishing to work as outworkers are given the option to continue their work in an environment where their skills are recognised and they are awarded their legal entitlements.

**Recommendation 20: That the Victorian State Government provide funding for educative and training services for outworkers including those working as contractors and small business operators - these could include English language courses, trade certification and alternative vocational training.**

4.29 The NSW government has a number of specific outcomes it hopes to achieve in the next three years through the implementation of its *Behind the Label* outworker strategy. A number of these can be seen as relevant to improving the social integration issues currently facing clothing outworkers across the country including Victorian outworkers.

- Improving awareness among outworkers of their lawful entitlements and creating a safe environment, and
- Creating a more skilled labour force for the clothing industry through vocational training

**Conclusions**

4.30 The available evidence, although limited, has suggested to the Committee that many outworkers in Victoria experience a range of problems that work to marginalise and isolate them from the broader community. To date, NSW is one of few Australian States with a comprehensive strategy aimed at addressing some of the social isolation issues relating to outworkers. The work of organisations such as AWATW are not only beneficial to individual outworkers but to their families and the community at large. A multi-faceted approach in needed in order to address the complex needs of those outworkers who are the
most disadvantaged and isolated and to ensure the continuing viability of the TCF industries in Australia.
Endnotes

2 Acculturation is the process by which one learns the cultural expectations of a new society. The traditional beliefs and values of the migrants’ culture are eroded to a large extent by new dominant cultural status quo.
3 Working Women’s Health is a Victorian women’s health service that conducts health promotion with immigrant and refugee women, with particular focus on women in the clothing, textile and footwear industries. The organisation conducts health promotion work by visiting women in their workplace during lunch breaks to provide multilingual health information. WWH also visits women in their homes if they are working from home. Additionally, WWH conducts research and consultation into health issues faced by working women, investigating occupational health and safety issues for working immigrant and refugee women, including outworkers.
5 Ibid., p.21.
8 Ibid., p.16.
9 Ibid., p.15.
12 Ibid., p.177
13 Ibid., p.176-177.
14 Ibid., p.176.
16 Ibid
18 For a n extensive list of locations for English language classes available to new migrants visit: http://www.agd.com.au/elicos_vic01-1.html
19 http://www.awatw.org.au/. Accessed 18/07/02
23 NSW Department of Industrial Relations (NSW DIR) (2002) Submission no Five, pp.11-12
24 NSW Department of Industrial Relations (NSW DIR) (2002) Submission no Five, pp.11-12.
25 Ibid
26 Ibid
28 NSW Department of Industrial Relations (NSW DIR) (2002) Submission number five, pp.11-12.
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Mr Ken Phillips, Senior Officer
Ms Vanthida Lao, Officer, Khmer Community of Victoria

Monday 18th February, 2002

Fairwear
Ms Pamela Curr, Director

Monday 13th May, 2002

Victorian Workcover Authority
Mr Bill Mountford, Chief Executive

Monday 15th July, 2002

Industrial Relations Research Centre
Professor Michael Quinlan, Professor of Industrial Relations and Organisational Behaviour, University of New South Wales
Textile, Clothing and Footwear Union of Australia

Mr Igor Nossar, Chief Advocate
Mr Barry Tubner, National President
Mr Anthony Woolgar, National Secretary
Mr Hung Nguyen, Senior Community Liaison Officer

Department of Industrial Relations, NSW
Ms Pat Manser, Deputy Director-General
Mr Jeremy Tucker, Manager, Behind the Label Unit
Ms Suzanne Ashby, Senior Project Officer, Behind the Label Unit

Labor Council of New South Wales
Ms Nancy Carl, Industrial Officer

Asian Women at Work
Ms Debbie Carstens, Coordinator
Ms Qi Fen Huang, Chinese Community Worker
Ms Bich Thuy Pham, Vietnamese Community Worker

Cambodian Australian Welfare Council
Ms Phanna Pao, Community Development Officer,
Cambodian-Australian Welfare Council of New South Wales
Australian Taxation Office

Mr Rob Walsh, Assistant Commissioner, Small Business Line

Mr Steve Marsh, Compliance Manager

Australian Retailers Association

Mr Phil Naylor, Chief Executive Officer

Mr Stan Moore, Policy Director

Monday 26th August, 2002

Victorian Office of Manufacturing

Mr Peter Rea, Director

Australian Defence Apparel

Mr Maverick Spiteri, Operations Manager

Victorian Employers Chamber of Commerce and Industry

Mr David Gregory, General Manager, Workplace Relations

Australian Business Limited

Ms Leigh Brooks, Advocate

Motto Fashions

Mr John Brown, Proprietor
Yakka Pty Ltd

Mr Andrew Edgar, Managing Director
Inquiry into the Conditions of Clothing
Outworkers in Victoria

Minority Report submitted by
Hon Bruce Atkinson MLC, Hon Jeanette Powell MLC and
Inga Peulich MLA

Pursuant to S4 N (4) of the Parliamentary Committees Act
1968

At a meeting of the Victorian All Party Family and Community Development Committee on 4 September, 2002, non-government members, the Hon Bruce Atkinson MLC and Inga Peulich MLA, abstained from voting on the adoption of the report on The Inquiry into the Conditions of Clothing Outworkers in Victoria because of serious concerns regarding the inquiry process and therefore the adoption of recommendations which were neither fully considered by the inquiry process nor substantiated by Victorian evidence tendered to the committee.

The Hon Jeanette Powell MLC was not in attendance at the meeting of September 4 but shared the concerns of the other two non-government members and is a signatory to the Minority Report.

Inadequate Process of Inquiry

The Family and Community Development Committee commenced work on the inquiry on 10 December, 2001 and held preliminary hearings in Melbourne on for the purpose of preparing a discussion paper for dissemination to stakeholders and interested parties.

The discussion paper was circulated in 1 June, 2002.

On 1 July, Committee members visited three locations at which outworkers or makers worked. Despite the repeated requests for independent interpreters to be engaged for the purpose of inquiry on these occasions, this did not occur. Given that these outworkers were the only three who provided evidence for the purpose of the final report, it was indeed frustrating to rely upon services of an interpreter provided by the Textile, Clothing and Footwear Union rather than an independent interpreter.

The Committee conducted hearings in Sydney on 15 July, 2002 and undertook site visits to factories and the community agency, Asian Women at Work, in Sydney on the following day.
The Committee subsequently distributed a questionnaire for completion by outworkers or makers after a meeting on 22 July.

Hearings for the purpose of the final report were convened in Melbourne on 26 August at the insistence of the Members who are party to this Minority Report in a bid to obtain Victorian evidence.

At a meeting of the Committee on 12 August, 2002, which none of the non-Government Members were able to attend, the Committee discussed a request by the Premier that Committees should complete their inquiries to enable reports on those inquiries to be tabled in the State Parliament on the first day of the Spring Session on 10 September, 2002.

The August meeting was held after no meetings of the Committee were convened in the previous two weeks because of Party commitments of the Government Members.

The Government Members of the Committee decided at its meeting on 12 August that it would follow the Premier's direction to finalise its report for tabling in the State Parliament on 10 September.

The decision to finalise the report was further discussed at the following meeting of the Committee with the Members who are party to this Minority Report expressing strong concerns that the inquiry was being truncated and that the Committee was not in a position to finalise and table a report.

To complete a report pursuant to the decision taken by Government Members at the meeting on 12 August, a sub committee was established to finalise a report and to determine the recommendations of the Committee.

The Committee adopted the report completed by the sub committee on 4 September meeting by a formal vote of the Government Members of the Committee.

In view of the decision to truncate the inquiry, non-government members of the committee did not vote against the report adopted by the Committee but also did not support or endorse the report.

The Members submitting this Minority Report contend that the Committee was not in a position on 4 September, notwithstanding the diligent work of the Committee's staff and the Member's sub committee between 29 August and 4 September, to finalise a report.

It is our view that the Committee was not able to provide the Parliament with a competent and informed report that would substantiate the recommendations or even some of the evidence included in the report because the work of the Committee had been truncated.
It is our view that the request by the Premier for our Committee to finalise its report was potentially based on two political imperatives and in contravention of precedent and established practice in respect of all-Party Committee inquiries.

The two political imperatives would seem to be (I) there was an enthusiasm for the Government to "clear the decks" with reports with the prospect of an election possible from November 2002 onwards and (II) a desire to have a report that might justify legislation covering outworkers that the Government had proposed to the Opposition ahead of the 22 August date as being on the legislative program for the Spring Session.

**Inadequate Evidence Gathered**

It is our strong view that the work of the Committee was not satisfactorily completed and that the report does not include a sufficient body of evidence, particularly evidence drawn from Victorian outworkers and the experience and views of Victorian industry, to support the conclusions and recommendations of the report.

Notwithstanding the Committee hearings on 26 August conducted at the insistence of Opposition MPs, very little of the evidence, observations or conclusions from those hearings was incorporated into the report because the text was essentially written before the hearing.

- This was unfortunate because evidence tendered to the committee provided some perspectives and experiences that warranted further examination by the Committee on this very important area of inquiry.

One example is the evidence submitted to the inquiry on behalf of Australia Defence Apparel which indicated less concern about the entitlements or exploitation of outworkers or makers than with the elimination of perceived competitive advantages for other companies competing with ADA for tenders in Australia.

The evidence tendered to the committee by Australia Defence Apparel and Yakka was from companies that are heavily unionised and who have limited exposure to the retail market, especially fashion markets. To that extent, their evidence was not particularly helpful to the Committee's deliberations.

The evidence of Mr. John Brown of Motto was more valuable in providing an insight into the use of outworkers or makers who were clearly established as and operating as small businesses and contractors in their own right and not as employees.
It is our concern that the undue haste in finalising this report prevented the Committee from exploring further the experience of Motto and other Victorian-based manufacturers.

The parties to this report would have been interested in pursuing discussions with companies such as Country Road, Pelaco, Fletcher Jones and Holeproof as a means of establishing a better understanding of the industry in Victoria and the use of outworkers or contract makers.

- Indeed, not only was there limited evidence taken from outworkers and industry participants in Victoria, but there were no industry site visits in rural or metropolitan Victoria.

- The absence of any view or information from the Federal Department of Employment and Workplace Relations is a deficiency in another critical area of inquiry given that the Victorian Government transferred its industrial relations powers to the Federal Government in 1996.

- The Hon Jeanette Powell and most other Members of the Committee were keen to examine the issues raised in this inquiry in regional centres and to understand rural employment impacts. It was disappointing that the truncating of the inquiry prevented this important work being undertaken by the Committee.

Non-Government MPs are concerned that the process of this all party inquiry was diminished as a result of an apparent pre-existing ideological commitment of Labor members of the Committee to replicate the New South Wales State Government model for regulating outworkers, irrespective of evidence or availability of alternative policy responses.

- The report has failed to seek adequate advice and input from the Victorian industry on the New South Wales model. The report has not established that the model is viable and appropriate in this state given the transfer of industrial relations powers to the Federal Government in 1996.

Inconclusive Evidence on Key Issues

The evidence presented to the Committee was largely inconclusive and does not provide adequate support for the conclusions and recommendations advocated by the report. Indeed, some of the evidence presented to the Committee, particularly anecdotal evidence, was not substantiated by site visits and by other available data.

- The evidence presented to the Committee in many ways demonstrated that outworkers and makers are not a homogenous, easily defined group. They range from low skill piece workers at the entry level to the industry through to highly skilled people who are undertaking sophisticated work.
Not surprisingly, the lower skilled workers earned less money than those who had greater experience and skill but it was evident that people can start out doing modest entry level tasks and can advance themselves, improving their skills and remuneration.

- Some of the evidence tendered to the Committee about excessive hours of work and the pressure of tight deadlines is not unusual in small businesses in most industries. In fact, while claims of $2 an hour in pay for outworkers or makers were made but not satisfactorily substantiated to the Committee, we are aware that a published survey of the Australian Retailers Association found that many small retailers earn less than $3 an hour.

- It was also interesting to note that a number of the outworkers or makers told the Committee that they appreciated the flexibility of working from home, particularly where they had family responsibilities. Working from home in many small businesses or contract work positions can translate to lower wages as a trade off for flexibility in working hours and savings in the costs of going out to work including the cost of transportation to work, meals and clothing costs.

- Furthermore, the report carries little examination of the supply chain in the clothing industry and of the role of retailers despite evidence from manufacturers in Sydney that the policies and price parameters set by retailers had a significant influence on manufacturers and on the income and profitability of all participants in the production side of the industry.

- Some evidence about illegal workers being recruited as outworkers was tendered to the committee. However, an industrial relations regime that requires the reporting of names of workers and businesses to the union does not seem to be an appropriate mechanism for dealing with the problem of illegal workers.

- A significant concern for non-government members is the potential for mandatory codes governing outworkers and makers to be used as an anti-competitive measure or barrier to entry for other companies, especially those companies that do not have high union membership.

- Of significant concern to non-government committee members is that ill-conceived government policies may potentially destroy the jobs of small business as well as outworkers, most frequently women from non English speaking backgrounds who choose to work from home.

The issues discussed in this Minority Report are not exhaustive but should have been considered fully as part of genuine process of inquiry for the benefit of outworkers, the industry and the Parliament. However, the opportunity to provide the Parliament with an adequate, fully researched
report was lost with the requirement for the Committee to report to the Parliament on 10 September.

It is regrettable that the conclusions implicit in the report and its recommendations are not substantiated by the work that was undertaken by the Committee. It is equally regrettable that the process of this all party inquiry was so flawed that it missed a significant opportunity to explore the terms of reference fully, frankly and with the practical vision and policy responses suited to the needs of Victorian outworkers and Victoria’s clothing industry.

Bruce Atkinson, Member for Koonung Province

Jeanette Powell, Member for North Eastern Province

Inga Peulich, Member for Bentleigh (Deputy Chair)