

## When the Law Does Not Work: Clothing Outworkers in Australia

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*The purpose of this paper is to identify the nature and effectiveness of legal and social initiatives aimed at establishing and enforcing minimum employment conditions among outworkers in the Australian clothing industry. The factors undermining the enforcement of legal minima are analysed and insights gained to the effectiveness of the Australian system of industrial relations regulation. By contrasting the situation of clothing outworkers with that of other employees in the Australian context, the forces shaping industrial relations outcomes are highlighted.*

### Introduction

For at least twenty years, the employment conditions experienced by clothing outworkers in Australia has been a focus of considerable attention from government, unions and community groups. Despite the attention and even legislation aimed at ensuring such workers are protected from economic and other abuse, many outworkers in the clothing industry have continued to work in circumstances of low wages, long hours, repetitive work and poor safety. The home-based workforce is hidden, making it difficult to identify how many outworkers there are in Australia ([www.NoSweatShopLabel.com](http://www.NoSweatShopLabel.com)). However, research conducted by the Textile, Clothing and Footwear Union (TCFU) approximates that there is a pool of around 300,000 outworkers in Australia representing about fifteen homeworkers for every factory worker. Around 75 per cent of the companies in the clothing sector have the majority of their production performed in private homes ([www.NoSweatShopLabel.com](http://www.NoSweatShopLabel.com)). The 1996 Senate Economics References Committee Inquiry found that 'Outwork is now so prevalent [in the fashion clothing sector] that is not just a characteristic of the industry, the entire industry is structured around it' (Senate 1996: xi). The Homeworkers Code of Practice Committee asserts that in the past decade, the number of home-based outworkers has significantly increased as the garment industry has become increasingly globalised. They argue that in Australia, tariff reductions and increased monopolies by large retailers have contributed to the closure of factories and the shift to home-based outworkers, paid below the award, as a cheap option for the industry ([www.NoSweatShopLabel.com](http://www.NoSweatShopLabel.com)).

In this paper, the formal legal situation pertaining to clothing outworkers and their conditions of employment are first discussed. The factors undermining the enforcement of legal minimum standards is then analysed. Efforts in recent years aimed at addressing the situation of clothing outworkers both at home and abroad are briefly examined. Finally, the implications of the industrial situation experienced by clothing outworkers for understanding the dynamics of effective industrial regulation are explored.

### Labour Law and Clothing Outworkers

Outworkers are people doing work in a place other than premises controlled by their employer, which is usually their own home or that of another outworker. Outworkers rather than factory workers, carry out most of the clothing production in Australia ([www.dir.nsw.gov.au](http://www.dir.nsw.gov.au)). Outwork in the clothing industry is characterised by unpredictable work patterns, with long hours to complete urgent orders in short periods of time, and poor wages. Low piecework rates convert into much less than award hourly rates of pay. Underpayment, late payment and no payment frequently occur. Occupational injuries from overuse are common. Also, because outwork takes place in a domestic setting, the home life of the outworker and her family is directly affected. The sewing machine takes up space in the home, makes a lot of noise, and the materials used can create dust and dirt. The urgency of orders sometimes means that the outworker's family, even young children, must give assistance.

Although there exists an extensive range of legally enforceable minimum standards pertaining to clothing workers, many outworkers do not receive these conditions. This may occur because the outworker is not legally covered by the standards or the standards are just not being applied. The relevant laws may only apply to employees and outworkers, some of whom provide their own tools and equipment, may not pass the 'control test' and may therefore not be employees but rather contractors or self-employed. In other cases, the outworker is 'effectively unregulated' simply because the legal standards are not being enforced. The issue of whether or not a clothing outworker is an employee is a contentious one with unions and others arguing that the manufacturer (or sub-contractor) giving out the work does of course control what and when and even how the goods are produced. Under New South Wales (NSW) industrial law the issue has been clarified. In NSW, clothing outworkers are deemed by the Industrial Relations Act 1996 to be employees rather than being considered self-employed. This means that they are covered by the provisions of the Clothing Trades (State) Award, even if, on a strict legal basis, they may not be considered to be employees. The Federal Workplace Relations Act 1996 includes outwork as one of the twenty allowable matters enabling awards of the federal tribunal to apply to outworkers.

At its 83<sup>rd</sup> Session in June 1996, the International Labour Organisation (ILO) General Conference adopted Convention 177, Home Work, 1996 and Recommendation 184, Home Work, 1996. Australia has not ratified the Home Work Convention. Clothing Textile and footwear (CTF) outworkers are covered by a number of Federal and State laws, awards, agreements and Codes of Practice.

An "award" is the name commonly given by Australian industrial legislation to a legal document issued by an industrial tribunal for the purposes of settling an "industrial dispute" and/or regulating wages and conditions in an industry or occupation (or some part of an industry or occupation). Awards provide the minimum rates which must be legally paid to employees. State awards have 'common rule' application and apply to all persons performing a category of work specified in an award. Federal awards apply only to those employees working for an employer or a member of an employer organisation made respondent or party to the award. All federal awards list the respondents (CCH 1999: A-313-5, A331).

There are separate federally registered awards covering CTF industries: the Clothing Trades Award 1999, the Textile Industry Award 2000, the Footwear Industries Award 2000 and the Felt Hatting Industry Award 1999. These federal awards are replicated in some States under State legislation and are known as 'counterpart' awards. In New South Wales (NSW), there also exists a Button Makers Etc. State Award. Federal awards cover those employers and members of employer organisations made respondent to the award and employ persons performing the category of work listed in the award. The federal Textile Industry Award covers the manufacturing of fabric and its coverage extends to the making up of such fabric, its warehousing and its distribution. Thus, the relevant award applying to an employee engaged in machine sewing by an employer who is also the manufacturer of the textile/fabric will be the Textile Industry Award. The same employee working for an employer who is engaged only in making up but not manufacture of fabric, will be covered by the Clothing Trades Award. There are a number of significant demarcation lines relevant to understanding award coverage in CTF but one worth noting concerns knitted goods. Where the knitting and making up are carried out by one employer in the same establishment, the knitting work shall be subject to the Textile Industry Award and the work of making up to the Clothing Trades Award.

The Clothing Trades Award 1999 is an award of the Australian Industrial Relations Commission (AIRC) under the *Workplace Relations Act 1996* and it applies in all States and territories of Australia except for the area of far north Queensland above the 22 degrees south latitude. The parties bound by the award are: (1) The Textile Clothing and Footwear Union of Australia and its members thereof, and (2) The employers and the members of employers' organisations named in Schedule A of the award, in respect of all their employees whether members of the Union or not engaged in any of the occupations specified within the award. Counterpart awards exist in each State. For example in NSW, the Clothing Trades (State) Award 1994 (consolidated at October 2000) is an award under the *NSW Industrial Relations Act 1996* and it applies to employees referred to in Clause 7 of the award.

Employers in the CTF industries have also entered into federal and state registered enterprise bargaining agreements. The Clothing and Textile Union is party to some forty-fifty enterprise agreements across Australia. These 'sit on top of' the relevant award and usually provide for some additional payments and for workplace flexibility. They are usually entered into for a period of about eighteen months to two years. There is a form of 'pattern bargaining' evident in the industry as shown by the 'joint logging' of a number of employers in the State of Victoria whose federally registered Certified Agreements are all due to expire on the 31<sup>st</sup> August 2001. This form of bargaining is lawful in Australia subject to certain conditions such as a demonstrated willingness by the union to engage 'good faith' with individual employers.

### Engagement of Outworkers

Australian law does not prohibit working from home. However, laws such as the local government regulations do prohibit manufacturing in residential areas. Occupational Health and Safety laws require workplace amenities and safety standards which will apply to homeworkers who are deemed employees. The *Clothing Trades Award 1999* states that "an

employer must not employ an outworker to perform work covered by this award unless that employer is a registered employer of outworkers pursuant to clause 48" (cl. 47).

The *Workplace Relations Act 1996* defines an outworker as "an employee who, for the purposes of the business of the employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer" (s.89A(9)). The Act includes "pay and conditions for outworkers" among allowable award matters (s.89A(2)). The NSW *Industrial Relations Act 1996* deems outworkers performing 'work in the clothing trades' to be employees for the purposes of the Act (Schedule 1). Outworkers in the textile and footwear manufacturing industries are not specified as 'deemed employees' under the NSW Act. The national Clothing Trades Award 1999 contains very detailed provisions concerning 'outworkers' and contract work (Part 9). All employers of outworkers must be registered and the Industrial Registrar will maintain a record of registered employers (cl 48). An employer must be registered by a Board of Reference before having any work performed away from his/her workplace and may only give work to another who may have any work performed outside their workshop or factory who is also registered. Outworkers are covered by the terms of the award. Relevant State awards contain similar provisions. The employment of outworkers is also covered by State registered Government Code of Practice on employment and outwork obligations for textile, clothing and footwear suppliers and by individual codes of practice negotiated between the union and specific retailers and by the industry wide TCFUA Homeworker's Code of Practice negotiated between the union and the major representative bodies for employers involved in the manufacture and retail of TCF products.

Australian law regulating aspects of employment apply to clothing outworkers including those concerned with freedom of association, discrimination and occupational health and safety. In general, the awards provisions pertaining to clothing industry industries apply to clothing outworkers including those relating to hours of work, meal breaks, sick leave, annual holidays, superannuation, severance pay and special leave. The National and State Clothing Trades Awards have classifications or grading based upon skill level. The minimum weekly rates of pay applicable from the first pay period on or after 23<sup>rd</sup> July 2001 are: Trainee \$413.40, Skill Level 1 \$430.10, Skill Level 2 \$452.60, Skill Level 3 \$473.50, Skill Level 5 \$548.90. Junior rates of pay for persons under twenty-one years of age are a percentage of the rate applying for a Skill Level 2. The Clothing Trades Awards provide that an employer must not pay an employee working under a payment by results system a minimum amount each week less than the minimum award rate appropriate to their skill level. The Awards also contain detailed provisions regarding the calculation of PBR earnings including the method of fixing time standards for the performance of work.

### Factors Impacting Upon Enforcement

A Committee of Inquiry Into the Status of Women in Employment in NSW found in 1985 that exploitation of clothing outworkers was rife and that although legal minimum employment conditions did apply, the workers remained 'effectively unregulated'. Three major reasons were identified as enabling this situation to continue. First, the workforce involved consisted of mainly female migrant workers lacking alternate employment skills with poor English language and lack of knowledge about their rights. The women's domestic situation often encouraged their continuing in their current situation. Secondly, inspectorial

and enforcement agencies were unable or unwilling to prosecute breaches of the law. Inspectors would sometimes move into domestic premises occupied by a number of outworkers only to have the individuals and even the equipment run out the door. Successful prosecutions usually only dealt with individuals well down the manufacturing chain. Thirdly, those at the top of the chain, the retailers purchasing the goods would take no responsibility for the conditions of employment applying to the workers producing the goods.

In 1994, the Textile, Clothing and Footwear Union of Australia (TCFUA) launched its National Outwork Information Campaign which included a multilingual outwork phone-in conducted over two months and national outwork information seminars, accompanied by extensive ethnic radio and press advertising as well as publicity in the mainstream media. The report by the TCFUA *The Hidden Cost of Fashion* was released in 1995 which documents the work environment of home based outworkers and the extent of outwork in the industry. The report identified all of the factors identified in the 1985 Inquiry but in addition recognised the impact of globalisation and cheap imports. A list of labels outworkers reported sewing for below award pay was tabled in Federal Parliament and this was followed by a Senate Inquiry into Outwork in the Garment industry initiated by the Australian Democrats.

### Recent Initiatives

After a number of inquiries and lots of unenforced regulation, some progress began to be made in September 1995 when Target Australia signed an ethical agreement called a "Deed of Co-operation" with the TCFUA. In November, a high profile Australian producer Ken Done signed an Ethical Agreement with the TCFUA and the union approached all major retailers to enter into similar agreements to the target one but received no response.

The Senate inquiry into outwork received hundreds of submissions and the Senate Hansards recorded extensive case studies of the outworkers situation. Submissions from employer organisations for the first time acknowledged the outwork issue and made public their opinions and proposals to the Senate. A good deal of publicity followed including television programs exposing exploitation. Australia Post and Country Road signed Agreements with the TCFUA following media exposure linking their names with exploitation. The final Senate hearing was conducted in June, at which the Textile Fashion Industry of Australia (TFIA) put to the Senate a proposal for an outwork industry code of practice.

The TCFUA presented a legal framework for the Code of Practice which the manufacturers rejected. They did not want a legally binding code and stated their support for a voluntary self regulatory code. The Australian Retailers Association (ARA) entered the negotiations on the Homework Code of Practice and agreed to the Retailers Part 1 Statement of Principles, while the manufacturers agree to their section, Part 2 of the Code. The ARA latter withdrew its support. Some retailers stated they would sign the code but later withdraw their support, not wanting to break ranks within the ARA. The TFIA refused to sign the code unless major retailers signed.

In 1997, the TCFUA began actions outside key stores in Melbourne and Sydney and the Fair Wear Campaign was launched with extensive media coverage. Thousands of supporters

across Australia sent letters to major companies requesting that they sign the Homeworkers Code of Practice. The TCFUA initiated legal actions against manufacturing companies using contractors, for breaches of the award in relation to outwork. Fair Wear launched the Shops of Shame Campaign at a Sportsgirl store in Pitt St Mall Sydney.

Finally, the *Homeworker's Code of Practice* was signed by the ARA and the TCFUA on 15 August 1997. The Homeworker's Code of Practice agreed between the ARA and the TCFUA includes the ARA signing on behalf of their members who agree to be party to the Code together with a process of monitoring. On the day of signing a number of the largest retailers in Australia were named by the ARA as being signatories to the Code.

The Homeworker's Code of Practice is a self-regulatory system that intends to regulate and monitor the production chain from the retailer to the homeworker. The Code is designed to regulate the contracting chain from the retailer to the outworker, and enable home-based outworkers to receive an agreed wages rate, including loading for holidays. Signatories to the Homeworker's Code of Practice include the TCFTU, the Australian Retailers Association (ARA), the Council of Textile and Fashion Industries Ltd (TFIA), the Australian Chamber of Manufacturers, now known as the Australian Industry Group (AIG) and individual companies. The Code has two parts. Part 1 is directed at retailers, while Part 2 deals with the obligations of Suppliers, Fashion Houses, Wholesalers and Manufacturers.

Manufacturers and retailers who become accredited under the Code can display the 'No Sweat Shop' label in their clothes. In order to become accredited, suppliers must provide records demonstrating that they, or their contractors, are complying with the following: that homeworkers are paid the proper rate, are not working less than thirty hours or more than seventy-six hours per week, are covered by workers compensation and that their superannuation contributions are being paid; that if work is no longer available, homeworker's are given appropriate written notice of their termination; that a standard letter concerning union membership is provided to the homeworker; suppliers must maintain lists of contractors and of homeworkers, and provision 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.

To date, there have been only four companies accredited under the code although most major retail companies have signed the Homeworker's Code of Practice (Homeworker's Code of Practice Committee 2000: [www.NoSweatShopLabel.com](http://www.NoSweatShopLabel.com)).

## Conclusions

The difficulties confronted by government, unions and others in seeking to ensure that clothing outworkers in Australia receive their minimum employment entitlements demonstrates that between the law and its enforcement falls a complex array of factors. These factors can either assist or obstruct the passage of rights. In the case of clothing outworkers, they clearly obstruct. The physical presence of people at work, alternative employment skills, knowledge of rights and other forms of power help to ensure that most Australian workers receive their legal entitlements. The relative powerlessness of clothing

outworkers, their physical isolation at work and the truncated employment relationship in which the seller is separated from the workers by tiers of contractors and sub-contractors has cast a long and thick cloud between the establishment of rights and their enforcement. The Homeworker's Code of Practice is the latest and the most decisive attempt to reduce the barriers separating clothing outworkers from their rights by making those at the top of the retail and production chains responsible for the employment conditions of those at the bottom. It will take time before an assessment can be made as to whether it achieves its purpose or rather sends the work further underground or offshore to other even more vulnerable workers.

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[www.dovenetq.net.au/community/fairwear/](http://www.dovenetq.net.au/community/fairwear/)  
[www.workers.labor.net.au](http://www.workers.labor.net.au)

## Acts and Awards:

- Clothing Trades Award 1999*  
*Felt Hatting Industry Award 1999*  
*Footwear Industries Award 2000*  
*NSW Industrial Relations Act 1996*  
*Textile Industry Award 2000*  
*Workplace Relations Act 1996*,  
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## Preface

The International Employment Relations Association (IERA) actively seeks to encourage the research activities of IERA members and to facilitate the sharing of knowledge among employment relations academics in different countries. Since 1999, a particular focus of IERA activity has been upon growing the IERA membership and developing links between employment relations academics working in Pacific Rim countries. Significant contributions to this focus were provided by the 8<sup>th</sup> and 9<sup>th</sup> Annual Conferences of IERA held during 2000 and 2001 in Singapore as well as the IERA Conference 2001 in Kuala Lumpur, Malaysia. Further important contributions to developing this focus were provided by the IERA Conference held in San Francisco during 2000 and 2001.

The research papers presented by IERA members and significant contributions from colleagues in the Labor Studies Centre at San Francisco State University, the Henning Centre at Berkley and from Californian trade unions ensured that both the 1<sup>st</sup> and 2<sup>nd</sup> IERA Conferences were rich learning experiences. The papers presented were aimed at not only sharing research findings but also at developing understanding of the particular issues relevant to the employment relationships within countries on the Pacific Rim. Through this discourse, insights were gained not only regarding national differences but also similarities and factors common to international employment relations experiences.

The papers presented in these proceedings are those that were recommended for publication through a double blind refereeing process of full papers. Several other papers that were rejected for publication by the referees also provided a very useful contribution to discussions at the Conference.

I would like to thank the referees for their timely assistance.

Keri Spooner  
President, IERA

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