THE LAW

Outworkers are in for rights

Reforms tackle exploitation concerns.

Contract outworkers in the textile, clothing and footwear (TCF) industry across Australia will be given the same rights as direct employees under amendments to the Fair Work Act.

Outworkers are generally subcontractors for small factories who are in turn contracted by other larger manufacturers or fashion houses to produce clothing and other goods. They are known as 'outworkers' because they work outside of standard business premises, generally in their own homes.

Introducing the amendments into the Senate, Manager of Government Business, Senator Joe Ludwig said there was widespread concern these arrangements often lead to exploitation.

"Most recently, a report by the Brotherhood of St Laurence in 2007 found that outworkers experience poor working conditions and are frequently underpaid, sometimes as little as two or three dollars per hour," Senator Ludwig said.

"These reviews have found, and the government accepts, that outworkers in the TCF industry suffer from unique vulnerabilities as a result of their engagement or employment in non-business premises.

"These vulnerabilities are made worse by the fact that outworkers are often migrants with poor English language skills, a lack of knowledge about the Australian legal system and low levels of union membership."

Under the amendments contract outworkers will be deemed to be employees of the company which directly engages them and entitled to all relevant award conditions, such as rates of pay and superannuation. The amendments also strengthen protections for outworkers who are not paid by their employers, allowing them to claim payment from other entities in the supply chain who they work for indirectly.

The normal 24 hour notice period for union entry to a workplace will also be waived in most cases, giving unions more power to monitor conditions in the broader TCF industry.

"This recognises that poor practices in the TCF industry are not confined to work conducted in people's homes, but also take place in conventional workplaces operating under sweatshop conditions," Senator Ludwig said.

"The government believes that strong action on this issue is required, as reports continue of people working in sweatshops in the TCF industry."

While the changes have been supported by unions and community groups, they have faced strong criticism from businesses working in the sector. The Australian Industry Group labelled the amendments unfair and warned the changes would threaten the future of the entire industry.

"It is not legitimate or fair to deem contractors to be employees in circumstances where parties have agreed to enter into a contractor arrangement," the group said in a submission.

"It is not legitimate or fair to apply different right of entry regulations to employers in the TCF sector merely because they are employers in the TCF sector.

"Outworkers experience poor working conditions and are frequently underpaid"

"It is not legitimate or fair to hold businesses accountable for the actions of others when they have no control or knowledge of those actions and indeed may never have any contractual relationship with that other party.

"Ai Group has a substantial membership in the TCF sector and is concerned that not only do these proposals assume that all operators in the TCF sector operate illegitimately but furthermore the terms of this bill may dramatically and adversely affect decisions regarding the engagement of outworkers and the ongoing viability of the TCF sector in Australia."

"It is not legitimate or fair to hold businesses accountable for the actions of others"

Christine Metcalfe, director of The Ark Clothing Co, said in a submission the amendments will harm the very people they are designed to protect by failing to recognise they are independent contractors rather than employees.

"Many outworkers run successful businesses and have done so for many years," Ms Metcalfe said. "The current regulatory framework is proving inflexible and does not cater for those outworker businesses that are successful and profitable.

"In some cases, the need for those outworker businesses to begin receiving employment-like benefits poses a risk to the continuing operation of their businesses."

However the Australian Immigrant and Refugee Women's Alliance said that in many cases the only reason outworkers are employed on a contract basis is to avoid employment obligations.

"AIRWA is gravely concerned about the ongoing exploitation of outworkers in the Australian clothing industry," AIRWA said in its submission.

"Outworkers have little or no control over their working conditions and pay, so to suggest they are contractors with freedom to negotiate their contracts does not reflect the reality."

TACKLING EXPLOITATION: *Award conditions for garment workers*

AAPONE

"Strong action on this issue is required"

Senator Ludwig acknowledged business concerns with the amendments, but said they were merely a national extension of similar legislation already in force in many states and territories.

"If a business already complies with the outworker provisions in the TCF award and relevant state legislation, then these amendments should have limited impact," Senator Ludwig said.

"Only those that flout existing laws — by exploiting outworkers, by forcing employees to work in sweatshop conditions, and by taking advantage of the vulnerable position of migrant workers — should be concerned." •

HEALTH

Health e-records equal healthy treatment

System to save lives and costs.

New e-health legislation passed by the House of Representatives will allow patients to access their medical history at any health practitioner in Australia.

Patients will be able to register for an e-health record of their medical information, which will be both accessible by the individual and available when they see a new doctor or other provider.

Former Health Minister and current Attorney-General Nicola Roxon told parliament the new system will improve consistency in treatment, helping to avoid unnecessary duplication of procedures and potentially serious medication errors.

"Medication errors currently account for 190,000 admissions to hospitals each year," Ms Roxon said. "Up to 18 per cent of medical errors are attributed to inadequate patient information."

Despite expressing concerns about the potential long-term costs of the project, the opposition supported the Personally Controlled Electronic Health Records Bill 2011, ensuring its passage through the House.

Shadow Parliamentary Secretary for Primary Healthcare Dr Andrew Southcott said a properly implemented e-health system could save both time and lives.

"The government's own projections show that electronic health records alone will have a net economic benefit of $1.5 billion up to 2025," Dr Southcott said.

"In addition, forecasts by Booz and Co have shown that a comprehensive e-health platform, of which electronic records are a significant part, could save up to 5,000 deaths annually once fully operational."

Registrations for the new system are set to begin from 1 July 2012. •

THE LAW

AAPONE

NO FORM NEEDED: *Automatic enrolments under electoral reforms*

ELECTORAL MATTERS

Electoral reforms to allow automatic enrolments

Move to boost number of enrolled voters.

The Australian Electoral Commission (AEC) will be able to directly enrol people and automatically update their address under major changes to the Electoral Act currently being considered by federal parliament.

For enrolment and change of address, the AEC will be able to use trusted third party information from sources such as Centrelink and roads and traffic authorities.

Currently people must fill out and sign a voter enrolment form to become eligible to vote, and need to inform the AEC when they move address to avoid being removed from the roll. An estimated 1.5 million eligible Australians are not enrolled to vote.

After reviewing the legislation, federal parliament's Electoral Matters Committee supported the reforms. Committee member Daryl Melham (Banks, NSW) said using trusted information to add people to the roll makes sense, given it is already used to remove people from the roll who have failed to update their address details.

"If we trust this data to disenfranchise Australians by removing them from the roll, then surely the AEC should also have the flexibility to use this data to enfranchise eligible electors," Mr Melham said.

However opposition members of the committee have criticised the amendments, which they claim will undermine the integrity of the electoral roll.

"The bottom line is that under the Electoral Act there is an obligation on an elector to enrol," Bronwyn Bishop (Mackellar, NSW) said. "If people are not on the roll, it is because they have failed to meet that obligation."

The changes will also give the AEC discretion to consider further any provisional votes cast at elections by people not currently on the electoral roll, allowing more of those votes to be counted. •

BROADCASTING

Summer break for local content

Greater flexibility for regional radio.

Legislative amendments passed by parliament will loosen requirements for regional commercial radio stations to broadcast local content.

Reforms in 2006 required regional commercial radio stations to broadcast a minimum of three hours of local content per working day.

Radio stations are also required to permanently maintain local content and staffing levels in the event of a licence being sold or transferred or a new cross media group being formed.

The Broadcasting Services Amendment (Regional Commercial Radio) Bill 2011 will allow licensees to alter staffing and content levels two years after a licence has changed hands.

The local content requirements will also be lifted for five weeks per year over summer, while remote area and regional racing broadcasters will be exempted from the requirements entirely.

Manager of Government Business in the Senate Joe Ludwig said the 2006 reforms have not allowed the industry the flexibility to survive while still providing a local presence.

A review in 2010 showed the requirement to maintain staffing levels and use of facilities in perpetuity after the transfer of a licence has been of particular concern for the industry.

"With many regional commercial radio licensees already struggling to maintain profitability, these onerous requirements — as well as the administrative reporting burden associated with them — significantly reduce the ability of licensees to adapt their business to deal with new or changed market conditions," Senator Ludwig said.

However the review also showed opposition to reducing the

THINKSTOCK

OFF THE AIR: *Local content requirements relaxed*

local content requirement from the community radio sector.

The Community Broadcasting Association of Australia (CBAA) said the government should require regional commercial broadcasters to produce more local content, not less.

"Greater flexibility for regional radio broadcasters is hardly the pressing need to be addressed," the CBAA said in its submission to the review.

"The opportunities for coverage of local weekend issues and events in regional and remote Australia are too obvious and numerous to mention."

But Senator Ludwig said the amendments strike the right balance between local content and flexibility for the industry.

"This bill eases the regulatory burden on regional commercial radio broadcasters which has arisen as a result of the operation of provisions introduced in the former government's 2006 media reforms," Senator Ludwig said.

"It provides greater flexibility to the regional radio industry while maintaining the government's commitment to local content for regional audiences." •

INSURANCE

Defining moment for flood insurance

Measures to reduce consumer confusion.

In a bid to reduce the number of disputes over flood insurance, the federal government has moved a step closer to introducing a standard definition of flood with the Insurance Contracts Amendment Bill 2011 passing parliament.

The bill is an attempt to address the problem faced by many flood victims who think they are covered but are not. The House Economics Committee described this as a devastating discovery.

The committee said the tragedy of lives lost and property destroyed in the 2010-11 summer of floods was only made worse when many people found they were underinsured or their insurance policies did not provide cover.

In many cases, people thought they were insured only to be advised that their policies did not provide for the types of floods that occurred. The discovery that homes were not adequately insured against the floods was devastating for families.

While the actual definition of flood is not included in this bill — it will be in the regulations to follow — the insurance industry and consumer groups have welcomed the legislation as a step in the right direction towards clearing up the ongoing confusion over what is and what is not covered.

The bill also introduces a requirement that insurers provide consumers with a key facts sheet to highlight the important points of their home building and home contents insurance policies. It is hoped this will help consumers understand their policy better, will make it easier to compare policies, and will lead to more effective and informed decision making.

Speaking in the House of Representatives, then Assistant Treasurer and Minister for Financial Services and Superannuation, Bill Shorten said confusion over flood cover has lingered long enough.

"A standard definition of flood will reduce consumer confusion regarding what is and is not included in insurance contracts. It will also avoid situations where neighbouring properties in the same street, affected by the same flood event, receive different claims assessments because the policies covering them use different definitions of flood," Mr Shorten said.

At an insurance industry roundtable organised by the House Economics Committee as part of its inquiry into the bill, participants welcomed the measures, although several MPs expressed frustration that without the regulations the bill provides no clarification for thousands of consumers.

"My understanding based on the evidence that we have heard from the Insurance Council and others is that this framework is absolutely nothing other than skeletal in the sense that it provides the coat hanger upon which all meaningful and substantive aspects and impacts of this are yet to be rolled out, yet to be consulted on and yet to be informative in any way, shape or form to the general public as well as to the industry," House Economics Committee Deputy Chair, Steven Ciobo (Moncrieff, Qld) said.

Treasury told the public hearing draft regulations on the standard definition of flood are currently out for public consultation, and a discussion paper relating to the key facts sheet will be released shortly.

In the committee's report on the bill, Mr Ciobo and two other committee members expressed concern that these regulations could in fact make matters worse rather than better, and therefore their support for the bill was on a principles only basis. •