



Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA

Justice & International Mission Unit

130 Little Collins Street
Melbourne Victoria 3000
Telephone: (03) 9251 5271
Facsimile: (03) 9251 5241
jim@victas.uca.org.au

**SUBMISSION IN RELATION TO THE INQUIRY INTO THE PROVISIONS OF THE *FAIR WORK BILL*
2008, FOR THE SENATE STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND
WORKPLACE RELATIONS**

**by the *Justice and International Mission Unit of the Uniting Church in Australia,*
*Synod of Victoria and Tasmania***

- January 2008

Author: Dr. Mark Zirnsak,
Director of the Justice and International Mission Unit of the Uniting
Church in Australia,
Synod of Victoria and Tasmania

Organisation: Justice and International Mission Unit of the Uniting Church in
Australia,
Synod of Victoria and Tasmania

Type of organisation: Church based organisation

Address: Justice and International Mission Unit,
Synod of Victoria and Tasmania,
Uniting Church in Australia,
130 Little Collins St,
Melbourne 3000

State or Territory: Victoria

Email and phone contact: 03 9251 5265 / mark.zirnsak@victas.uca.org.au

Declaration of Interest

The Justice and International Mission Unit provides in-kind support to the Victorian Campaign Coordinator of FairWear. The Justice and International Mission Unit has no pecuniary or material interest in the outcome of this Inquiry.





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Mr. John Carter, Committee Secretary
Senate Education, Employment and Workplace Relations Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

January, 2008

The provisions of the Fair Work Bill

Dear Mr Carter,

The Justice and International Mission Unit at the Uniting Church, Synod of Victoria and Tasmania, is pleased to be provided with the opportunity to make a Submission to the Senate Education, Employment and Workplace Relations Committee.

The Synod of Victoria and Tasmania has long sought justice for workers in the textile, clothing and footwear industry. This is evidenced by the Synod's long-standing commitment to the community-group FairWear, a campaign consisting of diverse Christian, employee and women's organisations working to end the exploitation of workers in the textile, clothing and footwear industry both domestically, and internationally.

The Justice and International Mission Unit has also lent its support to the No Sweat Shop label; an association of employer and employee organisations seeking to ensure¹ that workers producing Australian made garments receive award wage rates and conditions. This work is underpinned by a strong and fair system to regulate the fairness of Australian workplaces.

Yours sincerely,

Dr. Mark Zirnsak

Director

Justice and International Mission Unit

Commission for Mission

mark.zirnsak@victas.uca.org.au

¹ *Homeworkers Code of Practice / No Sweat Shop label*, 2008, [online], available from: <http://www.nosweatshoplabel.com/> [23 May 2008]



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INTRODUCTION

Judeo-Christian Scriptures speak of the importance of clothing. The link between the wearing of clothing and justice for the people who make was one of the concerns espoused by the prophet Ezekiel. In a reference to the wealth and power of the kings and those in a position to protect the poor he said “You clothe yourself with the wool...but you do not feed the sheep” (Ezekiel 34:3). In this passage, the prophet Ezekiel became angry when he saw people being able afford to have fine woollen clothes, whilst failing to make sure that those who produced the clothes were fed. Shepherds, spinners, weavers and tailors, who served them, were paid so little that they did not have an adequate income to buy food, let alone other basic necessities.

Consistent with the Judeo-Christian concern for the poor and social justice, the Uniting Church in Australia believes that human rights (*Dignity in Humanity: Recognising Christ in Every Person, A Uniting Church in Australia Statement on Human Rights*²) must be safeguarded. Without consideration for human rights our social and economic development cannot be sustained.

The commitment of the Commonwealth, exemplified by its support of the No Sweat Shop label³, and the leadership from industry and community stakeholders, will increase consumer awareness about labour rights issues in clothing and apparel manufacturing. Just laws and fair trade arrangements, together with initiatives such as the No Sweat Shop label will afford greater protection to vulnerable workers in the market economy.

The marketplace is driven by the desire to generate profit. Unfortunately, some value profit over respecting the dignity of others. Because of this, the industrial relations system must be ordered in such a way that protects people from exploitation and upholds basic human rights. The success of the fair trade and ‘anti-sweatshop’ movements indicates that people are concerned about labour justice issues. If Fairtrade coffee sales provide an indication, the future looks promising for this fledgling area. Australia is the fastest growing Fairtrade market in the world with rising demand up by around 50 per cent from 2006 to 2007⁴. In Europe, ‘ethical fashion is broadening its scope as major European retailers respond to heightened consumer concerns about apparel manufacturing that damages the environment or violates human rights⁵.’ ‘In 2006, it was estimated that over 1.5 million items made out of Fairtrade Certified Cotton were sold worldwide⁶.’

In 2006, the Uniting Church in Australia affirmed previous Assembly *Resolution 91.14.17* which stated that ‘trade unions are of importance in the overall democratic process and play a role in protecting those who are vulnerable in society’.⁷ Labour justice for those on low incomes in Australia has traditionally been underpinned by a fair industrial relations system involving trade unions, professional associations, community associations and employer organisations acting to shape the systemic framework, as well as to appropriately provide practical assistance to their members.

² The Uniting Church in Australia, National Assembly, [Eleventh Assembly], 2006, *Dignity in Humanity: Recognising Christ in Every Person, A Uniting Church in Australia Statement on Human Rights*, [resolution 06.20.01]

³ Australian Government, 2008, *Homeworkers' Code of Practice Program*, [online], available from: <http://www.workplace.gov.au/workplace/Programmes/Homeworkers+Code+of+Practice+Program/> [23 May 2008]

⁴ Oxfam Australia, 2008, *Change the world one cup at a time*, [online], available from: <http://www.oxfam.org.au/media/article.php?id=457> [23 May 2008]

⁵ Groves, E., *Fair Trade Fashion a Hit in Europe*, 2006, [online], available from: http://www.organicconsumers.org/articles/article_374.cfm [23 May 2008]

⁶ Fairtrade Labelling Organisations International [edited Pérez, V.], 2007, *Shaping Global Partnerships: Fairtrade Labelling Organisations International Annual Report 2006 / 07*, [online], available from: http://www.fairtrade.net/uploads/media/Final_FLO_AR_2007_03.pdf [23 May 2008]

⁷ Uniting Church in Australia, National Assembly, 2006, *Integrity and Justice in Employment Relationships*, [resolution 06.20.02]

This submission will focus primarily on the need for a fair industrial relations system; a system that will meet Australia's commitment to ensuring that human productivity can be realised without eroding social justice. This submission will focus on issues experienced by home-based workers and the positive role that trade unions can play in identifying and countering unsafe conditions and exploitation of employees, particularly in the textile clothing and footwear industry.

FairWear

The whole basis of the FairWear campaign has been to ensure that the employee status of outworkers be recognised, and that their pay, conditions and entitlements are comprehensively protected. For over ten years, the Uniting Church in Australia, Synod of Victoria and Tasmania, has committed to protecting the rights of vulnerable employees in the clothing industry. The church has focussed on the working conditions of homeworkers (outworkers) in Australia. The FairWear campaign, which includes Uniting Church members, has sought to protect award conditions for home based workers for more than ten years. The FairWear campaign was active in 1998 to defend award conditions for home based workers against changes intended by the Federal Government at that time. The Industrial Relations Commission upheld that the outworker clauses in the Federal Clothing Award should be kept intact. Campaigners saw this as a victory for vulnerable workers.

In 2000 the Synod of Victoria and Tasmania passed a resolution⁸ to support the FairWear campaign. The Synod called for all apparel and footwear manufacturers to 'comply with a code of practice, require all their contractors and subcontractors pay their employees a living wage, and respect the right of all employees to join a trade union.'

The FairWear campaign has successfully persuaded some Australian manufacturers and retailers to sign the Homeworkers Code of Practice (No SweatShop label). Despite this, the Victorian Ethical Clothing Trades Council⁹ discovered many Victorian companies refused to comply with the minimum standards of lawful entitlements of clothing outworkers, as set out in the Victorian *Outworkers (Improved Protection) Act 2003*. Official enquiries into the treatment of outworkers have revealed a disturbing, and common scenario of exploitation. Over the past ten years, the following state and federal inquiries have found that outworkers receive payment and conditions significantly lower than their award and statutory entitlements. These include:

- Productivity Commission (2003), Inquiry into assistance to the TCF industry 2005;
- Senate Economics Reference Committee Inquiry (1996), Outworkers in the Garment Industry;
- Industry Commission Inquiry (1997) The Textiles, Clothing and Footwear Industries;
- NSW Legislative Council Standing Committee on Law and Justice (1998), Inquiry into Workplace Safety; and,
- Family and Community Development Committee (2002), Inquiry into the Conditions of Clothing Outworkers in Victoria.

In July 2006 the Justice and International Mission Unit made a submission¹⁰ to the Commonwealth Senate Employment, Workplace Relations and Education Legislation Committee Inquiry into the

⁸ Uniting Church in Australia, Synod of Victoria and Tasmania, 2006, 9.3 *FairWear*

⁹ Ethical Clothing Trades Council of Victoria, 2004, *12 Month Report*, [online], available from: [http://www.irv.vic.gov.au/CA256EF9000EB8A3/WebObj/332BC39C68F5407CCA256FCE0016683F/\\$File/Ethical-Clothing-Trades-Council-Report-final.pdf](http://www.irv.vic.gov.au/CA256EF9000EB8A3/WebObj/332BC39C68F5407CCA256FCE0016683F/$File/Ethical-Clothing-Trades-Council-Report-final.pdf) [15 August 2005]

¹⁰ Justice and International Mission Unit, 2006, *Submission to Commonwealth Senate Employment, Workplace Relations and Education Legislation Committee Inquiry into the provisions of the Independent Contractors Bill 2006 and Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006*, July

provisions of the *Independent Contractors Bill 2006* and *Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006*. In keeping with the stated policy commitment of the previous Commonwealth Government, the clauses of the *Federal Clothing Trades Award (1999)* that relate to outworkers were not undermined. Requirements for employers to register with the industrial relations commission to provide records of where they send work to and what they actually pay outworkers were safeguarded in the enacted legislation. The legislation did not override state 'deeming provisions' that make it more difficult for employers to enter into 'sham' arrangements with their employees by inappropriately and unjustly classifying them as 'independent contractors'. The Commonwealth concurred with the recommendation of the FairWear campaign to not create the category 'contract outworker' in the legislation. FairWear stated that the introduction of this category would have created a legal fiction that would have led to further exploitation in the industry.

Research undertaken by the Brotherhood of St Laurence suggests that the working conditions of Australian homeworkers needs to be urgently addressed. After interviewing homeworkers the Brotherhood of St Laurence made the following observations.

One group said they were paid \$2.50 for a detailed shirt which took one hour to sew. Another group said they were paid between \$2 and \$3 an hour. When asked about hours worked, most indicated that they often went weeks without a job but when the work was available they worked long hours.¹¹

Some progress has been made, but there is more work to be done.

International human rights instruments

In the 2006 policy, *Dignity in Humanity: Recognising Christ in Every Person*¹², the Uniting Church in Australia supported the human rights standards espoused by the United Nations. The Uniting Church noted that "internationally recognised human rights are indivisible, universal and inalienable¹³" and that, "no rights are possible without all that is necessary for a decent life, including the rights to work with just pay and conditions...¹⁴". Through the United Nations system, governments have developed a number of 'human rights instruments'. In addition, Australia is a member of the International Labour Organisation (ILO).

The Synod of Victoria and Tasmania of the Uniting Church in Australia supports Australia acceding to the ILO Convention concerning homeworkers.

The International Labour Organisation Convention Concerning Home Work

At the annual meeting of the Synod of Victoria and Tasmania in 2006, the plight of home workers was discussed. The church acknowledged that in both industrialised and developing nations, homeworkers are used as a vulnerable and cheap source of labour. The Synod agreed on the need for a national and coordinated approach to these issues to build on current State and Commonwealth initiatives.

¹¹ Brotherhood of St Laurence [Diviney, E. & Lillywhite, S.], 2007, *Ethical Threads*, [online], available from: http://www.nosweatshoplabel.com/media/Diviney&Lillywhite_ethical_threads.pdf [23 May 2008]

¹² The Uniting Church in Australia, National Assembly, [Eleventh Assembly], 2006, *Dignity in Humanity: Recognising Christ in Every Person, A Uniting Church in Australia Statement on Human Rights*, [resolution 06.20.01]

¹³ The Uniting Church in Australia, National Assembly, [Eleventh Assembly], 2006, *Dignity in Humanity: Recognising Christ in Every Person, A Uniting Church in Australia Statement on Human Rights*

¹⁴ Ibid.

The Synod resolved¹⁵:

- to call on all Australian State and Territory Governments to support the Commonwealth of Australia acceding to the International Labour Organisation (ILO) – C177 Convention concerning Home Work; and,
- to call on the Commonwealth of Australia to accede to the ILO – C177 Home Work Convention, 1996, Convention concerning Home Work.

The Synod wrote to all Australian State and Territory Governments requesting their support of the International Labour Organisation (ILO) – C177 Convention concerning Home Work (the Convention), and these requests were favourably received. Before forming Government the Federal Australian Labor Party stated that *in order to participate and take a lead role in global efforts to end the exploitation of home based workers, Labor will, in Government, accede to the Convention*¹⁶. The Deputy Prime Minister, the Honourable Julia Gillard wrote to the Justice and International Mission Unit in 2008 to confirm that the Commonwealth Government will seriously consider acceding to the Convention.

A national approach needs to be coordinated to respond to the human rights violations that take place within the textile, clothing and footwear industry. The Convention stipulates minimum requirements for governments to comply with. It also provides a guide to developing these laws. The Convention defines homework and who homeworkers are. It reiterates that homeworkers are entitled to equal remuneration as well as training, and parity in relation to other conditions that enterprise based workers receive.

Anecdotally, there are reports of outwork being undertaken in areas other than textile, clothing and footwear industry (TCF). Some examples include outworkers making dim-sims, making ribbons and bows (and other packaging for things like chocolate boxes), folding boxes together from flat perforated cardboard, sewing cushions and other items (which fits under "furniture" - not TCF). If Australia were to accede to the Convention, a national policy would be developed for homework, and the Commonwealth Government would be required to record statistics about the number of homeworkers in their country. As the Textile Clothing and Footwear Union of Australia (TCFUA) has noted¹⁷, there is discrepancy over the number of TCF outworkers in Australia, with estimates ranging from an unrealistic 25,000 to 330,000. Greater research into the number of outworkers, as well as finding out the types of work undertaken, is required so that resources can be appropriately applied to reduce instances of injustice. Any person engaged in outwork, no matter what their industry, should be afforded their minimum legal entitlements in relation to their remuneration and working conditions.

The Justice and International Mission Unit is of the view that the principles set out in the International Labour Organisation (ILO) – C177 Convention concerning Home Work should be reflected in the Fair Work legislation.

¹⁵ Uniting Church in Australia, Synod of Victoria and Tasmania, 2006, *Resolution S06.4.25.1*

¹⁶ Australian Labor Party, 2007, ALP National Platform and Constitution, *Outworkers*, pg. 109, [online], available from: http://www.alp.org.au/download/now/2007_national_platform.pdf [23 May 2008]

¹⁷ Textile, Clothing and Footwear Union of Australia, 2006, *Senate Employment, Workplace Relations and Education References Committee Inquiry into Workplace Agreements*, August

Problems with certain provisions of the Fair Work Bill relating to the Convention

The definition of outworkers in section 12 of the Commonwealth *Fair Work Bill* - subsection (b) (i) states that outworkers can only be found in the *textile, clothing or footwear industry*. Subsection (b) (i) defines independent contractor “outworkers” as only those who perform work “in the textile, clothing and footwear industry” and this very restrictive definition applies to all use of the term “outworker” throughout the new Commonwealth Bill – including the reference to that term in the phrase “matters relating to outworkers” in section 27 (2) (d) of the *Fair Work Bill*.

The Justice and International Mission Unit is concerned that this, and any like sections in the Bill, will impede the ability of the Commonwealth to accede to the Convention.

Other potentially problematic sections include those relating to coverage of State and Territory laws. Section 142 (see pages 21-22 of the *Explanatory Memorandum* for the *Fair Work Bill*) where Paragraph 27(1) (c) of the Fair Work Bill 2008 saves State or Territory laws dealing with non-excluded matters which are set out in subclause 27(2) of the Bill - including (d) matters relating to outworkers, This appears to provide for the continuing coverage of State and Territory protections. However section 27 of the Bill will actually exclude protections for non-TCF workers contained in the *Queensland Industrial Relations Act 1999* and the *South Australian Fair Work Act 1994*, owing to the restrictive definition of “outworker” contained in section 12 (as previously discussed in this submission).

The Convention concerns the human rights of all home and outworkers across all jurisdictions of the Commonwealth of Australia. All outworkers should be afforded basic protections and safeguards in the legislation.

Recommendation 1: Consistent with the principles set out in the *International Labour Organisation (ILO) – C177 Convention concerning Home Work*, all relevant sections of the *Fair Work Bill* be amended to ensure that all Australian outworkers, not just those found in the textile, clothing or footwear industry, are protected from exploitation. In addition, State and Territory legislation providing for greater protections for non-TCF outworkers should not be overridden by any part of the Bill.

The role of Trade Unions

Certain content in workplace agreements is now prohibited under current Commonwealth industrial relations legislation. This content includes provisions that enable workers to be better assisted by trade unions. Maintaining higher penalties for unauthorised strikes and industrial action limits the right of employee organisations to pursue workplace justice. There are undue restrictions on employee organisations that seek to liaise with current and potential members in their workplaces. It is very difficult for trade unions to provide the choice of membership to people where an employer does not support freedom of association. It is in the interests of an exploitative employer to stop his or her employees from becoming a member of a union through impeding union access to the worksite.

Trade Union access

There are strict rules regarding where these meetings can be held if there are no union members employed at a work site. It is easy for unscrupulous employers to make it very difficult for officials to meet with workers in a comfortable, unmonitored atmosphere where issues of concern can be freely

discussed. The Justice and International Mission Unit found in 2007¹⁸ that in the textile, clothing and footwear industry, these rules make it difficult to ascertain if problems are occurring for on-site employees and if a company is hiding any exploitative outwork arrangements.

Under current Commonwealth industrial relations law the union may only inspect work records of union members who are employed directly in a factory. If there are concerns about sweatshop exploitation at the workplace, but the employees are not members of the union, it is extremely difficult for the union to investigate unfair and abusive work practices. Section 481 (*Entry to investigate suspected contravention*) of the Commonwealth *Fair Work Bill* is explained in *Explanatory Memorandum* (EM). The EM states that a union may only enter premises if:

- a suspected contravention relates to or affects a member of the permit holder's organisation;
- the organisation is entitled to represent the industrial interests of that member; and
- that member performs work on the premises.

Sections like this in the *Fair Work Bill* would, if enacted, severely restrict the ability of trade unions to visit premises like backyard sheds where outworkers could be subject to gross exploitation. Businesses operating in such premises can be impermanent. Section 493 (*Residential Premises*) of the Bill may also negatively impact upon the ability of a trade union to quickly respond to a situation of gross exploitation. Similarly, notice requirements set out in Section 495 (*Giving notice of entry*) in relation to *occupational health and safety* matters could potentially allow an unscrupulous employer to camouflage or remove grossly unsafe working conditions before inspection (or vacate). It should be noted that section 508 of the Bill penalises any abuse of right of entry in the area of occupational health and safety; although there have been no complaints in the TCF area to WorkCover NSW in relation to misuse of this right by a union. Once a trade union is aware of possible exploitation, or potentially unsafe conditions, they should be able to access such premises immediately; otherwise, an unscrupulous employer may quickly falsify records, cover over safety abuses or simply 'pack up shop' and leave temporary or semi-temporary premises.

A note on unfair dismissal

The Justice and International Mission Unit found in 2007 that a lack of access to the unfair dismissal framework for workers in the generally low paid retail and hospitality sectors can have a negative impact on freedom of association.¹⁹ Unfair dismissal is a significant issue in the TCF industry, as almost all TCF workplaces are small businesses²⁰ (in the Bill defined as fewer than 15 employees). Small business employees in their first year of employment who express interest in trade union membership should feel safe to do so. In addition the Small Business Fair Dismissal Code (see section 388 in the Bill) should accord with the principles of procedural fairness and natural justice.

Recommendation 2: The Commonwealth should relax excessive entry restrictions placed upon trade unions seeking to investigate exploitative and/or unsafe workplaces and promote the choice of union membership. This commitment should be reflected in all aspects of the *Fair Work Bill*.

¹⁸ Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, 2007, *Submission to the Tasmanian House of Assembly Select Committee on Work Choices Legislation*

¹⁹ Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, 2007, *Submission to the Inquiry into the impact of the federal government's Work Choices legislation on workers and employers in the Victorian retail and hospitality industries conducted by the Office of the Workplace Rights Advocate*

²⁰ Australian Bureau of Statistics, 2007, *Counts of Australian Businesses* [8165.0]
[ABS estimates 93% are comprised of 20 employees or less]

CONCLUSION

The Justice and International Mission Unit is grateful for the opportunity to make a Submission to the Senate Education, Employment and Workplace Relations Committee. The FairWear campaign and the Textile, Clothing and Footwear Union of Australia (TCFUA) are also providing submissions to this inquiry and the Justice and International Mission Unit commend these to the Committee for due consideration.

There are various areas where there could be a diminution of rights afforded to workers in the textile, clothing and footwear industry in the Bill. In particular the protection afforded by the previous Commonwealth Government that no workplace agreement would be able to undermine Award protections for outworkers (see the current Act – section 349) could be undermined by section 57 of the Bill. In addition, requirements for a completely transparent supply chain, i.e. all employers are compelled to provide records of where they send work to and what they actually pay outworkers - must be safeguarded in the Bill.

The Justice and International Mission Unit believes that, on the whole, outworker protections have been supported on a bi-partisan basis. The current Commonwealth Government has deepened this commitment by providing significantly greater funding to the No Sweat Shop label (Homeworkers Code of Practice).

We ask that all Parliamentary parties, as well as independent Members of Parliament continue to work in a constructive way to protect outworkers.

Recommendations

This Submission by the Justice and International Mission Unit recommends:

- Recommendation 1: Consistent with the principles set out in the International Labour Organisation (ILO) – C177 Convention concerning Home Work, all relevant sections of the *Fair Work Bill* be amended to ensure that all Australian outworkers, not just those found in the textile, clothing or footwear industry, are protected from exploitation. In addition, State and Territory legislation providing for greater protections for non-TCF outworkers should not be overridden by the Bill.
- Recommendation 2: The Commonwealth should relax excessive entry restrictions placed upon trade unions seeking to investigate exploitative and/or unsafe workplaces and promote the choice of union membership. This commitment should be reflected in all aspects of the *Fair Work Bill*.