CHAPTER 1

Background

Reference

1.1 On 25 November 2011, the Senate referred the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011 (the Bill) to the Senate Education, Employment and Workplace Relations Legislation Committee for inquiry and report by 27 February 2012.

Conduct of the inquiry and submissions

1.2 In accordance with usual practice, the committee advertised the inquiry on its website and in The Australian on 7 December 2011, calling for submissions by 11 January 2012. The committee also wrote to a number of organisations inviting submissions.

1.3 The committee received 29 submissions, as listed in Appendix 1.

1.4 A public hearing was held in Melbourne on 2 February 2012. The witness list for the hearing is at Appendix 2.

The purpose of the bill

1.5 The bill seeks to amend the Fair Work Act 2009 (the Act) so that certain provisions of the Act apply to outworkers in the textile, clothing and footwear (TCF) industry.

1.6 The bill proposes to implement new Part 6-4A, which would apply special provisions about TCF workers, as described in the explanatory memorandum:

...to eliminate the exploitation of TCF outworkers and ensure that outworkers are employed or engaged under secure, safe and fair systems of work, by:

- providing nationally consistent rights and protections for those outworkers, regardless of whether they are employees or contractors;
- establishing an effective mechanism for recovery of unpaid amounts from other parties in the supply chain; (and)
- providing for a code dealing with standards of conduct and practice to be complied with by parties in the supply chain.¹

¹ Explanatory Memorandum, p. 11.
1.7 The extension of the Act to TCF outworkers proposed in the bill would not apply to:

- the right of entry provisions (separate amendments in the bill address right of entry provisions);
- the stand down provisions, as these are dealt with in the relevant TCF Award;
- the provisions that provide for the extended operation of the Act or parts of it; and
- the provisions giving effect to the extension itself and associated savings, application and transitional arrangements.\(^2\)

1.8 Other amendments proposed in the bill would modify existing definitions in the Act or insert new definitions. For example, the bill proposes new definitions for 'indirectly' when used in relation to TCF work and 'indirectly responsible entity' in relation to TCF work performed by a TCF outworker.\(^3\)

**Acknowledgement**

1.9 The committee thanks those organisations and individuals who contributed to this inquiry by preparing written submissions and giving evidence at the hearing.

**Background**

1.10 A number of inquiries have been conducted and reports published, over many years, examining outwork in the TCF industry in Australia. Notable examples include reports by the Productivity Commission in 2003, the Brotherhood of St Lawrence in 2007 and Professor Roy Green's review for the Department of Innovation, Industry, Science and Research (DIISR) in 2008.

1.11 In addition, both the Senate Economics and Senate Education, Employment and Workplace Relations Committees have conducted multiple inquiries that have examined, at least in part, conditions for and the treatment of outworkers in the TCF industry in Australia:

- 1996—Senate Economics References Committee report on *Outworkers in the garment industry*;
- 1998—Senate Economics References Committee *Review of the inquiry into outworkers in the garment industry*;

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\(^2\) Explanatory Memorandum, p. 11.

\(^3\) Fair Work Amendment (TCF Industry) Bill 2011, ss 12 and 17A.
• 2008—Senate Standing Committee on Education, Employment and Workplace Relations report on the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 [Provisions]*; and


1.12 These are discussed in summary below, but the committee was struck by the words of Deputy President Riordan of the Australian Conciliation and Arbitration Commission, who presided over a case in 1987 and found that:

> The remuneration and treatment generally of tens of thousands of persons performing work in the clothing trade as "outdoor workers" is scandalous and represents a serious affront to the moral and social conscience of the community...It would be unconscionable to ignore the plight of these workers and refuse to intervene in this situation of grossly improper exploitation of a weak and unorganised section of the workforce. 

### 1996 Senate Economics References Committee report

1.13 In December 1996, the Economics Committee tabled its report on outworkers, and estimated that 'somewhere between 50,000 and 330,000 people [are] involved in outworking in the garment industry'. Of these, the majority were migrant women aged between 25–35 with young children at home. The Economics Committee found that outworkers experienced a range of problems such as:

> ...low piece rates which translate to low hourly rates; impossible deadlines for completion of work; late payment, underpayment, non-payment for completed work, rejection of work and unreimbursed expenses; physical and verbal harassment from intermediaries (blackmail, threats, coercion and bribes); substandard working environments; and worries associated with combining work with family responsibilities.

1.14 As a result of the inquiry, the Economics Committee believed 'that there are sufficient people involved in the industry for concern about them to be warranted'. The Economics Committee made several recommendations, including (but not limited to):

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4 Mr Deputy President Riordan, Australian Conciliation and Arbitration Commission, *Decision: Clothing Trades Award 1982*, 7 April 1987, p. 9.


that the Government examine ways to clarify the employment status of outworkers in the garment industry;

that an industry 'Homeworkers Code of Practice' should be adopted by all participants in the garment retailing and manufacturing process;

that the garment industry voluntarily adopt an agreed label declaring that the employment conditions under which the garment was made complied with legislative requirements;

that the government investigate the concept of a National Outwork Committee which would have responsibility, inter alia, for the initiation and allocation of funding for projects relating to outwork;

that the Australian Bureau of Statistics conduct a comprehensive survey of the number of home-based workers across all industries;

that the government review federally funded arrangements for English language education with a view to increasing accessibility for migrants involved in outwork; and

that the government review educational arrangements in TCF industries for industrial relations and small business management.

1998 Senate Economics References Committee review

1.15 During 1997 and 1998, the Economics Committee conducted a review examining the progress of the recommendations of the inquiry into outworkers in the garment industry (see previous section). The Economics Committee was pleased that a Homeworkers Code of Practice had been implemented but noted that 'more needs to be done by all parties to ensure the code’s success'. The Economics Committee also continued to have concerns about 'the lack of action in the past 18 months to officially deem outworkers as employees'.

2003 Productivity Commission report

1.16 In 2003, the Productivity Commission conducted an inquiry into assistance provided to the TCF industry. In its final report, 'Review of TCF Assistance: Inquiry Report', the Productivity Commission recognised the flexibility afforded to outworkers by this type of work, but also the risk of their exploitation:

...the potential for the exploitation of outworkers through low rates of pay, long working hours and poor working conditions is a longstanding concern. While there is little hard information on the extent of exploitation, a variety

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of regulation has been introduced to try to ensure that outworkers are properly remunerated and work under appropriate conditions.\textsuperscript{10}

1.17 The commission went on to recommend that emphasis continue to be placed on compliance with voluntary codes as a way of addressing the problem.\textsuperscript{11} The lack of progress in subsequent years suggests that the Commission's confidence in non-binding approaches was misplaced.

\textit{2004 Senate Economics Legislation Committee report}

1.18 During 2004, the Senate Economics Legislation Committee conducted an inquiry into the provisions of the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 scheme) Bill 2004 and the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004.

1.19 During the course of the inquiry, the Economics Committee 'heard a substantial amount of evidence relating to the continued employment of outworkers in substandard conditions in the TCF industry'.\textsuperscript{12} Given the Economics Committee's 1996 inquiry and 1998 review of outworkers in the TCF industry, the Committee was:

\begin{quote}
...disappointed that, nearly seven years after the tabling of that report in December [1996], it is still hearing evidence of the continued and systematic exploitation of outworkers in the TCF industry.\textsuperscript{13}
\end{quote}

1.20 Ultimately, the Economics Committee reiterated its view that:

All participants in the TCF industry should sign up to the Fair Wear Homeworkers Code of Practice, or to an equivalent code of practice, and end the exploitation of outworkers in this industry.\textsuperscript{14}

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Note: The Homeworkers Code of Practice was a voluntary code of practice.
1.21 In their dissenting report, Labor Senators shared the committee majority's disappointment that improvements had not been made with respect to the treatment of outworkers\textsuperscript{15} but argued:

\begin{quote}
...we do not share the Committee Majority's apparent view that the Government is unable to do any more than stand by and hope that the TCF industry will voluntarily improve working conditions for outworkers...Given that the current bills propose arrangements which will fundamentally change the TCF industry in Australia, [it] is disappointing that not one proposed measure, in a package worth some $600 million, specifically addresses the challenges faced by outworkers in this industry.\textsuperscript{16}
\end{quote}

\textit{2006 Senate Employment, Workplace Relations and Education Legislation Committee report}

1.22 In June 2006, the Senate Employment, Workplace Relations and Education Legislation Committee was referred the provisions of the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006 for inquiry and report.

1.23 The Independent Contractors Bill 2006 sought to exclude state and territory laws which deemed as employees many independent contractors entering into commercial agreements with employers.\textsuperscript{17} The Workplace Relations Legislation Amendment (Independent Contractors) Bill sought to make consequential amendments to the \textit{Workplace Relations Act 1996}, especially in relation to TCF outworkers and to unfair contracts.\textsuperscript{18}

1.24 In an unusual step, the Committee presented a brief report of the whole committee followed by additional reports from each of Government Senators, Opposition Senators and the Australian Democrats.

1.25 The report of the whole committee explained:


This chapter reports the unanimous views of the committee as they relate to aspects of the bill dealing with the regulation of outworkers. This is a subject of long-standing interest to the committee, and this report describes the ultimately successful process of ensuring that the legislation effectively addressed some of the concerns of outworkers in the clothing industry, within the current workplace policy framework.19

1.26 The report of the whole committee continued:

While members of the committee differ on the philosophy which underpins the Independent Contractors Bill, all agree that the increasing prevalence of independent contracting, which these bills seek to regulate, brings with it a possible danger for those workers most vulnerable to unscrupulous employers and to extreme forces in particular markets.20

Supplementary report by government senators

1.27 Government (Coalition) senators presented a supplementary report reiterating their view of the importance of catering for independent contractors, but not at the expense of vulnerable TCF outworkers. Notably, Coalition senators agreed with Labor senators that outworkers 'require unusual protection':

This legislation delivers on a 2004 election pledge, in which the government promised to recognise the special status, and growing importance, of independent contractors, who constitute an increasing proportion of the workforce. The government's policy position is that parties which choose to enter independent contracting arrangements should not be prevented from doing so...Although the Government's policy is to minimise imposition of industrial relations laws on independent contractors, it does recognise that many outworkers in the textile, clothing and footwear (TCF) industries are vulnerable to exploitation and require unusual protection.21

2007 Brotherhood of St Lawrence report

1.28 Little if any improvement in the situation is apparent from the Productivity Commission's 2003 report, and the 2007 report published by the Brotherhood of St Lawrence titled 'Ethical Threads: Corporate social responsibility in the Australian garment industry', which found that:


...the Australian garment industry has been slow to embrace both mandatory and voluntary mechanisms to protect workers in international and local manufacturing supply chains.22

1.29 With respect to conditions for outworkers in Australia, the report stated:
Over the past decade, state and federal inquiries have consistently found that outworkers receive payment and conditions significantly lower than their award and statutory entitlements...Outworkers interviewed for this research indicated that conditions had worsened in the last five years. A shortage of work had left them with very little bargaining power with contractors.23

1.30 The Ethical Threads report made numerous recommendations including:
• establishing a multi-stakeholder platform, in collaboration with state and territory governments and industry stakeholders, to 'promote and implement the uptake of the global dimensions of [Corporate Social Responsibility] in the Australian garment sector';
• introducing regulations in line with the European Union and Britain which require large corporations to demonstrate a process for monitoring and improving conditions in their contracting chain, both locally and internationally;
• ensuring that high value-added manufacturing is supported in Australia while monitoring that sector's compliance with regulatory frameworks;
• supporting the development and promotion of a database of ethical manufacturers;
• investigating the feasibility of harmonising state outworker regulation without eroding existing standards; and
• funding further research to provide up-to-date data on working conditions and numbers of outworkers in Australia.24

2008 review of TCF industry by Professor Roy Green

1.31 In March 2008, the Commonwealth Government announced a review of the Australian textile, clothing and footwear industry. Professor Roy Green was appointed to conduct the review and was asked, via the review's terms of reference:

...to consider the nature and needs of the industries post-2010, when tariffs are scheduled to reduce further and the current post-2005 Strategic Investment Program arrangements are due to be rescaled.25

1.32 The Green report stated:
The Review maintains, contrary to the manufacturing sceptics, that Australia's TCF industries have a promising future, but this can only be achieved through a concerted effort to differentiate their products through uniqueness, product quality and design, branding, quick response and new approaches to supply chain management, with a clear emphasis on corporate social responsibility in the application of labour and environmental standards.26

Committee comment

1.33 These inquiries and reports demonstrate the mistreatment and exploitation TCF outworkers have endured over a period of at least 15 years. The road to justice for these vulnerable workers has been long and the achievement of equity is well overdue. The optimism expressed for voluntary codes by the Productivity Commission and others has proven misplaced. There has been bipartisan support to improve working conditions for TCF outworkers, as evidenced in previous Senate Committee reports; however, to date these attempts have failed to deliver the fair and equitable work conditions to which TCF outworkers are entitled.

1.34 The time has come to resolve the endemic mistreatment and exploitation of outworkers in the TCF industry so that these workers can share in the rights and protections enjoyed by other Australian workers.
