

# Innovative Legislation in Australia Protects Homeworkers in the Garment and Footwear Sector

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## Key Points

- 1 Outworkers in Australia's Textile, Clothing and Footwear (TCF) industry are known to be particularly vulnerable to exploitation and unsafe working practices.
- 2 Legislative reform took place between 2007 and 2013 when Australia had a progressive Labor government, culminating in the passage of the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012. This followed a decades-long campaign to improve the working lives of outworkers in the TCF industry by the union, its allies and outworkers themselves.
- 3 With a strong national industrial award and specific laws for the TCF industry, the industry's union has a powerful legislative architecture underpinning its work. This gives it significant leverage in negotiations with employers and fashion houses/brands.
- 4 The union is consistently active on the ground, enforcing the laws. Also, it has refined its industrial, legal and organizing strategy, and seeks to adapt to new compliance challenges. The union has sometimes initiated court prosecutions against major fashion houses and brands in a parallel naming and shaming strategy.
- 5 There is increasing awareness within the TCF industry of the laws and the risks of non-compliance. An increasing number of outworkers are now receiving minimum wages and conditions no lesser than if they undertook that work in a traditional clothing factory.



*Outwork Outreach Officer Nguyet Nguyen (front) and National Compliance Officer Elizabeth Macpherson at a TCFUA-organized protest in 2015. Photo courtesy of the CFMMEU-Manufacturing Division*

## Introduction

Outwork, otherwise known as homework, has been an intrinsic part of the textile, clothing and footwear (TCF) industry in Australia since the beginning of the twentieth century. For all that time, governments and trade unions have struggled to regulate TCF outwork effectively and to ensure decent wages and conditions for outworkers.<sup>1</sup>

It is widely acknowledged in Australia that outworkers in the TCF industry are particularly vulnerable to exploitation, abuse, wage theft and unsafe working practices. Their vulnerability is attributable to long and complex TCF supply chains, systemic sham-contracting, the nature of the work (undertaken at an outworker's home or non-business premises) and the economic position of most outworkers (migrant and refugee women) working in isolation.

During the decades-long movement for justice for TCF outworkers in Australia, unions<sup>2</sup> (and their allies) have grappled with how best to address the complexities of TCF supply chains, organizing workers within those supply chains, and representing the interests of TCF outworkers. They have employed multiple

strategies ranging from community organizing, court prosecutions of companies, public protests against fashion brands, and bringing claims in tribunals to enhance outworker rights and processes in industrial awards and legislative reforms.

This brief describes the struggle by the TCF industry union (TCFUA) together with allies for national outworker legislation, which was promulgated in March 2012 and analyzes the innovative aspects of supply chain legislation and how it has been enforced.

The brief proceeds as follows. Part one describes the problem of effectively regulating outwork in the TCF industry in Australia over many decades. Part two outlines the three key strategies employed by the TCF union to address the systemic issues faced by outworkers in obtaining fair wages and conditions. Part three explains the primary purpose and operation of national legislative reform in 2012 to protect outworkers; part four details the range of enforcement tools used by the union in implementing the legislative and industrial reforms and organizing outworkers; and part five shares lessons learned by the union in undertaking the above.

## The Problem

The nature of TCF outwork in Australia and the factors contributing to outworker exploitation have been extensively documented in Australia since the 1980s by government inquiries into the garment industry and research reports by academics, civil society, community organizations and the union. Industrial tribunals and courts have also acknowledged that TCF outworkers, as a class of worker, face particular vulnerabilities.

In 1987, in the landmark case of *Re: Clothing Trades Award 1982*<sup>3</sup> (Riordan 1987), Senior Deputy President Joe Riordan found:

*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. The present situation reveals a serious failure of the system of industrial regulation to protect one of the most vulnerable and insecure sections of the community ... Almost all of those involved are women of migrant background. Some do not speak or understand English at all*

<sup>1</sup> An early recorded example of an attempt to regulate outwork in Australia occurred in 1919 with the first industrial award made in the clothing industry. This award contained provisions that regulated (to a limited extent) the system under which outworkers (known as ‘outdoor workers’) could be engaged.

<sup>2</sup> Clothing and Allied Trades Union of Australia (1907-1992) to its successor, Textile, Clothing and Footwear Union of Australia (1992-2018) to its current formation as part of the TCF Sector, CFMMEU-Manufacturing Division (2018-current).

<sup>3</sup> *Re: Clothing Trades Award 1982* (Riordan DP) [1987] 19 IR 416; The decision was made in relation to an application by the Clothing and Allied Trades Union of Australia to vary the Clothing Trades Award 1982 to provide new conditions with respect to the performance of work by contractors and outdoor workers.

.... *Many have dependent children and have no other prospect of employment.*

*Such persons are easy prey for those with a will to deprive them of a fair and just reward for their skills and the performance of long hours of work. 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.<sup>4</sup>*

Many of the features of outwork described above persisted over the next two decades. Most outworkers worked dangerously excessive hours, received significantly less than award rates of pay,<sup>5</sup> and often contractors withheld payment for work performed. They also did not receive benefits such as paid leave, public holidays or superannuation (similar to a pension fund) and worked in very poor conditions.<sup>6</sup>

Outworkers were a mostly hidden, female migrant workforce working at the end of often long and complex supply chains (operating both vertically and horizontally), performing piece

work and being subjected to sham contracting and widespread wage theft.

Mainstream labour law was self-evidently not fit for purpose in regulating TCF outwork appropriately as it was premised on certain assumptions as to how and where work was undertaken. Firstly, it assumed a traditional, workplace factory environment in which trade unions could monitor the conditions of work. Secondly, it failed to acknowledge the specific nature of TCF supply chains with cascading levels of workers and increasingly lower rates of pay for each level down the chain. Thirdly, and most fundamentally, it assumed an employee/ employer relationship, ignoring the systemic practice of outsourcing work to migrant women and requiring them (as a condition of obtaining work) to establish a “business” (ABN)<sup>7</sup> as an independent contractor.

### **TCF Industry Sweatshops**

Inadequate regulation contributed to the growing phenomenon of sweatshops within the Australian TCF industry. Over time, the union observed that, increasingly, TCF work

was relocated away from traditional, organized factories to outworkers and sweatshops that share many of the same characteristics of engagement, with some outworkers moving between the two forms of work.

Sweatshops exist as part of the “formal” TCF sector on the one hand but operate in a type of parallel economy characterized by minimal transparency and scrutiny. Sweatshops are usually mobile and able to relocate at relatively short notice.

In the union’s experience, while TCF sweatshops vary in nature they share commonly consistent features – workers (many of them migrants or refugees) labouring in isolation under poor health and safety conditions, with little if any autonomy over their work and under high levels of control by the sweatshop operator. Workers are typically expected to work to unrealistic deadlines until orders are completed and often are subjected to harassment, discrimination and threats of losing work. Workers in sweatshops almost uniformly do not receive the minimum legal

<sup>4</sup> Ibid; [421-422].

<sup>5</sup> The TCF industry award provides a minimum safety net of wages and conditions for all workers in the TCF industry in Australia, including outworkers.

<sup>6</sup> See, for example:

- TCFUA; *The Hidden Cost of Fashion: Report of the National Outwork Information Campaign* (March 1995)
- Senate Economics Reference Committee report on “Outworkers in the garment industry” (1996)
- Cregan, C; *Home Sweat Home: Preliminary Findings of the first stage of a two-part study of outworkers in the textile industry in Melbourne, Victoria*; University of Melbourne (2001)
- Ethical Clothing Trades Council; *Outworkers’ Lawful Entitlements Compliance Report* (2004)
- Brotherhood of St Laurence (Diviney, E & Lillywhite, S); *Ethical Threads – Corporate Social Responsibility in the Australian Garment Industry* (2007).

<sup>7</sup> In Australia, an ABN is a reference to an Australian Business Number which is required to be obtained from the Australian Taxation Office if an entity seeks to operate as a registered business (to which different taxation rates and requirements apply) as compared to employment as an employee.

wages and conditions provided under the award and workplace laws.

## Strategies to Solve the Problem

Developed and refined over many decades, the union undertook three key strategies to improve the working lives of outworkers in the TCF industry. These were:

- (i) to include in, and improve specific outwork rights, wages and conditions in industrial awards
- (ii) to proactively enforce those rights and conditions through prosecution in the courts
- (iii) to successfully campaign for federal legislation, which provided a suite of nationally consistent rights and conditions for all TCF outworkers across Australia.

Central to these objectives was to eliminate systemic sham contracting whereby outworkers were denied employee-like rights, wages and conditions and to ensure that outworkers could more easily recover money owed to them.

## Awards, Industrial and Legislative Reform

### TCF Award

Between the 1980s and the early 2000s, the union actively advocated for outworker rights in industrial awards covering the TCF industry. An award is an industrial instrument that provides a national floor of a minimum set of wages and conditions for a particular industry, sector or occupation.

During this time, several state governments<sup>8</sup> legislated certain protections for outworkers in the clothing industry. The provisions varied both in content and how effective they were, but the union built on these early protections to strengthen outwork provisions in the national industrial award for the TCF industry: the Textile, Clothing Footwear and Associated Industries Award 2010 (TCF Award).<sup>9</sup> The union brought cases in industrial tribunals, which in a series of important decisions acknowledged that outworkers in the TCF industry were particularly vulnerable to exploitation and required additional protections under labour law.

The TCF Award contains provisions (Schedule F)<sup>10</sup> that deal with the giving out of work by principals and provides minimum protections

for TCF outworkers. Schedule F is a comprehensive framework that regulates TCF supply chains from the top (the fashion house) all the way down through all the contracting levels, including outworkers.

Under the award, TCF supply chains are regulated to “mirror” as far as possible the way supply chains are structured and operate in reality. It does this through a cascading set of obligations that apply to each principal within the supply chain who enters into an arrangement (contract) to give TCF work to another entity or person for manufacture. The obligations include the following:

- (i) The principal must provide all outworkers (whether an employee or contractor) with the minimum wages and conditions contained in the TCF Award (together with the statutory National Employment Standards<sup>11</sup>), including a minimum hourly rate of pay (no less than if the outworker worked in a factory for example), overtime penalties, a range of leave entitlements and employer superannuation contributions.
- (ii) The principal must be registered with a Board Reference (Fair Work Commission).
- (iii) Each principal must maintain work records that include details of the work subject to the arrangement/contract.

<sup>8</sup> See legislation in the states of New South Wales, South Australia, Queensland and Victoria.

<sup>9</sup> The Textile, Clothing Footwear and Associated Industries Award 2010 was made by the Australian Industrial Relations Commission (AIRC) pursuant to a process called “award modernization” in the Fair Work Act 2009. It commenced operation on 1 January 2010 and is now known as the Textile, Clothing Footwear and Associated Industries Award 2020.

<sup>10</sup> Schedule F (Outwork and Related Provisions), TCF Award 2020.

<sup>11</sup> The National Employment Standards (NES) are contained in the Fair Work Act 2009.

- (iv) Each entity must submit a list on a quarterly basis that includes details of persons to whom the work has been given.
- (v) Each entity must keep copies of work agreements/contracts which set out the basis upon which the work is undertaken.

Additional obligations (records and agreements) apply when a principal gives work directly to an outworker, including:

- (i) The written agreement between the principal and outworker must specify whether the workers will be provided with full-time (38 hours per week) or part-hours (no less than 15 hours per week, or 10 with the agreement of the union) and must be expressed clearly and in a language the outworker can understand.
- (ii) The written records must contain additional information, including the date and time for the garments to be provided to and picked up from the outworker; the time standard to be used to determine the sewing time for each garment; the number of working hours necessary to complete the work; the appropriate time and date of commencement and completion of the work; the total amount to be paid to the outworker for the hours worked. Schedule F

allows the union to determine to whom TCF work is given, where work is undertaken, by how many workers and under what wages and conditions. These transparency provisions allow the union to map a particular supply chain (both vertically and horizontally).

From the late 1990s to the mid-2000s, the union regularly initiated federal court prosecutions against employers and major fashion houses for breaches of the industrial award as part of a “name and shame” brand media strategy.<sup>12</sup>

#### *The Seeds of National Legislative TCF Outworker Reform*

In coalition with community and civil society organizations (such as Fair Wear and Asian Women at Work) and outworker groups with the support of key academics, the union lobbied for national legislative change to improve the rights of TCF outworkers across Australia.

A window of opportunity came in 2007 with the election of a national progressive Labor government after 11 years of conservative rule. The union had advocated for the then-Labor opposition (1996-2007) to support a

platform of outworker reform as part of its public policy position.

The federal parliament passed the Fair Work Act in 2009. Despite opposition from the TCF industry and the conservative opposition, in March 2012, the Fair Work Act 2009 was amended to include major reforms for outworkers in the TCF industry.

## **Legislative Reforms to Protect Outworkers in the Australian TCF Industry**

### **Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012**

Prior to the passage of the TCF Bill into law in March 2012, there was an inquiry by a Committee of the Australian Senate (upper house). In a submission to the Senate Inquiry into the TCF Bill 2011, Shelley Marshall,<sup>13</sup> an academic specializing in the regulation of informal work, argued that the Bill had several important features:

- It would include and protect workers usually excluded from labour law.

<sup>12</sup> Clothing Trades Award 1982; Clothing Trades Award 1999 – This award was consolidated as part of the modern award made for the TCF industry in 2010, the Textile, Clothing, Footwear and Associated Industries Award 2010. Key decisions of the Federal Court of Australia included: *Re: Clothing and Allied Trades' Union of Australia v J and J Saggio Clothing Manufacturers Pty Ltd* [1990] FCA 279; *Textile, Clothing & Footwear Union of Australia v Lotus Cove Pty Ltd* [2004] FCA 43; *Textile, Clothing & Footwear Union of Australia v Southern Cross Clothing Pty Ltd* [2006] FCA 325; *Textile, Clothing & Footwear Union of Australia v Morrison Country Clothing Pty Ltd (No 2)* [2008] FCA 1965.

<sup>13</sup> Shelley Marshall (Senior Lecturer, Department of Business Law and Taxation, Monash University) submission to the (Senate) Standing Committee on Education, Employment and Workplace Relations, Inquiry into the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011 (January 2011).

- It recognizes that “supply chain dynamics” are exploitative.
- It would allow the tracing of the supply chain and expand inspection to workplaces outside of factories, where most TCF workers are.
- It would create a unified national system of protection, compared with what is currently a fragmented, state-based system, exacerbating confusion among outworkers and employers.

After a long campaign by the union, community and civil society organizations, faith groups and academics, the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012 (TCF Act 2012) was passed in Australia’s federal parliament on 22 March 2012. The landmark reforms amended the Fair Work Act 2009 (FW Act 2009), Australia’s primary labour law legislation, which governs the regulation of employee and employer relationships across the country. For the first time there would be a comprehensive suite of national legal rights and protections for outworkers (homeworkers) in the textile, clothing and footwear (TCF) industry. The new laws commenced operation on 1 July 2012.

### Aims of the TCF Industry Reforms

The reforms included the harmonization across states of existing protections so that all TCF

outworkers are “employed under secure, safe and fair systems of work”.<sup>14</sup>

In summary, the reforms, in relation to the TCF industry are the following:

- extending the operation of most of the provisions of the FW Act to contract outworkers (i.e., deeming contract outworkers to be employees for certain purposes under the FW Act)
- providing a mechanism for outworkers to recover unpaid amounts up the supply chain (i.e., against entities other than the direct employer)
- extending TCF industry specific union right-of-entry powers to TCF “sweatshop” premises
- enabling the government to issue a TCF outwork code of practice.

A new part 6.4A (Special Provisions about TCF Outworkers) was inserted into the FW Act, with the following aims:

- to eliminate the exploitation of outworkers in the TCF industry
- to 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 by which those outworkers can recover amounts owed to them in relation to their work from other parties in a supply chain
- to provide for a national code dealing with standards of conduct and practice to be complied with by parties in a supply chain.

### Pillar 1: Deeming of Contract TCF Outworkers to be Employees<sup>15</sup>

The key purpose of this first pillar of the reforms was to pierce, once and for all, the entrenched system of sham contracting in the TCF outwork sector by which outworkers were required to set up a “business” as an “independent contractor” in order to receive work. That is, whether a TCF outworker was called or treated like a so-called independent contractor by those engaging them becomes effectively irrelevant under the deeming laws.

The TCF Act 2012 extended the protections of the FW Act to so-called “contract outworkers” by “deeming” contract outworkers to be employees for most purposes of the FW Act. The person who directly engages the contract outworker is deemed to be their “employer”.

The effect of the deeming provisions is that contract outworkers enjoy the same terms and conditions, rights and entitlements as other workers, regardless of their status as

<sup>14</sup> Ibid.

<sup>15</sup> Fair Work Act 2009, Part 6-4A, Division 2 (ss789BA – 789BB).

employees (contract of service) or contractors (contract for services), and have the same right to minimum terms and conditions of employment, minimum wage rates, leave entitlements, access to unfair dismissal remedies, protections against adverse action, and collective bargaining rights<sup>16</sup>

### **Pillar 2: Recovery of Money Owed to TCF Outworkers**

The second pillar to the TCF Act 2012 was the introduction of a legal mechanism to enable outworkers (whether employee or contract worker), or the union on their behalf, to recover unpaid monies from entities further up the contracting supply chain for whom they had *indirectly* done the work.

Under the recovery mechanism, the person who directly engages the outworker is the “responsible person,” but critically it includes a definition of an *indirectly responsible entity* in relation to the TCF work undertaken by the outworker<sup>17</sup>

The definition of what constitutes an “unpaid amount” includes any amount due under a



A union-organized picnic day with outworkers in 2018. Photo courtesy of the CFMMEU-Manufacturing Division

contract, the FW Act, an award, industrial instrument, state or federal laws. These include wages, piece rates, commission, leave entitlements, superannuation contributions and reimbursement for expenses incurred.

Where the responsible person fails to pay the unpaid amount to the outworker and there are one or more indirectly responsible **entities**,

these indirectly responsible entities become jointly and severally liable.

To start the recovery process, the outworker (or the union on their behalf) gives a written demand to the party it believes is indirectly responsible for the payments owed. The demand must include details of the amounts claimed, the work undertaken, why the entity is

<sup>16</sup> In terms of coverage, all outworkers engaged by a constitutional corporation and outworkers engaged by a non-constitutional corporation in all states and territories (other than the state of Western Australia). Consequently, almost every outworker (whether employee or contractor) is now covered by the majority of rights and entitlements provided to employees under the Fair Work Act 2009.

<sup>17</sup> Section 17A contains a definition of what is meant by “directly” or “indirectly” in relation to TCF work:

- (1) If there is a chain or series of 2 or more arrangements for the supply or production of goods produced by TCF work performed by a person (the *worker*), the following provisions have effect:
  - (a) the work is taken to be performed *directly* for the person (the *direct principal*) who employed or engaged the worker (and the direct principal is taken to have arranged for the work to be performed *directly* for the direct principal)
  - (b) the work is taken to be performed *indirectly* for each other person (an *indirect principal*) who is a party to any of the arrangements in the chain or series (and each indirect principal is taken to have arranged for the work to be performed *indirectly* for the indirect principal).

responsible and that if the amounts are not paid legal proceedings may be commenced. Once a claim is raised for unpaid amounts, the legal onus shifts to the indirectly responsible entity to disprove the liability.

If the amount remains unpaid, the outworker/union may start legal proceedings in a court to recover the money owed, plus interest to the outworker (within six years).

This reform gives the union significant leverage to recover money owed to outworkers by seeking payment from the principal (usually a brand/fashion house) at the top of the supply chain. This mechanism incentivizes the principal to come to the table to resolve the outworkers' claim for unpaid wages and entitlements.

The main limitation in the recovery process is that an outworker cannot recover money from a retailer if the retailer does not have the right to supervise or control the performance of the TCF work before the goods are delivered to the retailer.

### ***Pillar 3: Improved Capacity of the Union to Enter TCF Workplaces***

At the time of these reforms, the FW Act already contained certain union right-of-entry rules specifically aimed at the TCF industry. However, the rules required the union to have a member at the workplace in order to enter the site to investigate breaches of wages and conditions. Yet in reality, most TCF sweatshops were not unionized. The union also was aware that some outworkers moved between working at home and sweatshops, with both having similar levels of wage theft and exploitation.

The third pillar of the TCF Act 2012 reforms extended to the TCF industry more generally (including sweatshops), the pre-existing TCF specific right-of-entry provisions, which allow union entry to workplaces (without the requirement for the union to give 24 hours' notice) to investigate breaches affecting outworkers. Critically, the union no longer needed to have a member working on the premises to investigate contraventions relating to TCF award workers.<sup>18</sup>

### ***Pillar 4: Code of Practice Relating to TCF Outwork<sup>19</sup>***

The fourth pillar of the TCF Act 2012 reforms empowered the government to issue a national Code of Practice for the TCF industry.

*This bill allows an outwork code of practice to be issued dealing with standards of conduct and practice in the TCF industry.*

*The code may impose reporting or other requirements on employers or other persons engaged in the TCF industry to enhance the transparency of supply chains that result in outwork being performed.*

*An outwork code will enable arrangements for the performance of TCF work through the supply chain to be monitored.<sup>20</sup>*

It was envisaged that a TCF Outwork Code of Practice (once implemented) would be based on several state outwork codes which existed at the time<sup>21</sup>, but would operate on a national level. It was intended include larger retailer entities. Under the TCF Act 2021, the federal government was empowered to make a code (by regulation) to outline the standards of conduct and practices to be complied with in relation to:

<sup>18</sup> "TCF award worker" is defined under the FW Act to mean "an employee whose work is covered by a TCF award" or "an individual, who for the purposes of a contract for the provision of services, performs work that is covered by a TCF award." Fair Work Act 2009, Part 6-4A, Division 4 (ss.789DA - 789DE).

<sup>19</sup> Fair Work Act 2009, Part 6-4A, Division 4 (ss.789DA - 789DE).

<sup>20</sup> Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2012, Second Reading Speech, Minister for Employment and Workplace Relations, Bill Shorten, House of Representatives, 22 March 2012.

<sup>21</sup> Outwork Codes of Practice existed under state legislation in New South Wales, Queensland and South Australia.



- employment or engagement of TCF outworkers
- arranging for TCF work to be performed, if the work is to be performed by TCF outworkers or is of a kind that is often performed by outworkers
- the sale of goods produced by TCF work.

The Code would apply to anyone who arranges for TCF work to be performed, such as an employer of an outworker or anyone in a supply chain, including retailers.

It would include details about record keeping, the reporting of compliance and general matters relating the operation administration of the code (but could not deal directly with the regulations of wages and entitlements).

However, the then-federal Labor government lost power in the 2013 federal election. At that time, the Code was still being developed. The incoming government declined completing the process. Although the capacity to regulate a national outwork code of practice remains in the legislation, it remains an important piece of unfinished business arising from the suite of reforms.

## Enforcement of the Legislation

While the TCF Act 2012 amendments were a significant achievement for the reform of TCF outworker rights and conditions, the necessity of mapping TCF supply chains and enforcing

such rights remains a consistent challenge for the union. Without a strong union presence on the ground and a clear enforcement framework, there is always the risk that gold-plated laws will not achieve their intended purpose.

### Union Compliance and Outwork Outreach Officers

The TCF industry provisions of the FW Act and the outwork provisions of the TCF Award 2020 form the fundamental core of the enforcement framework used. The union has a discrete compliance team which includes both Compliance and Outwork Outreach Officers (bilingual) supported by Industrial/Legal officers employed by the union. The union's enforcement strategies have developed significantly over time and continue to adapt as the more unscrupulous parts of the TCF industry seek to avoid, in part or in whole, regulation of their businesses. The compliance and outwork officers are learning all the time and continue to tweak and make changes to improve the enforcement strategy wherever possible.

A key role of the Compliance Officers is the detailed mapping of TCF supply chains to identify the key participants, the number of arrangements to give work out, the value and volume of work subject to the arrangements, how many workers are undertaking that work and what has been paid for that work. In following TCF supply chains in this way, a high level of transparency is achieved which

assists in TCF outworkers receiving their full legal wages and employment entitlements. The Compliance Officers deal with the fashion house/label at the top of the chain to ensure rectification is completed.

The union Outwork Outreach Officers have, in most cases, worked as TCF outworkers previously and understand intimately the issues faced by outworkers in seeking redress for wage theft and the failure to be afforded minimum entitlements. The Outwork Outreach Officers explain the role of the union, the laws which apply to TCF outwork and provide ongoing language support and assistance to outworkers through the process. The making and retention of a trusted relationship between the union and the outworker is fundamental to effective enforcement.

### Protecting Outworkers in the Enforcement Strategy

The TCF outworker laws have been hard fought for over many years. Fundamental to the reform success has been the strength of TCF outworker participation, including sharing their stories and highlighting the problems that they have experienced in union submissions and at government inquiries. They have done so often at great risk to their own job security. Without the voice of outworkers being central to the law reform campaign, the TCF Act 2012 amendments would either not have happened at all or been in a much-diminished form.

A key objective in the union's compliance work is to ensure that throughout the entire process, outworkers in the particular supply chain are protected from intimidation, bullying and the loss of work (blacklisted) from the Fashion house/label or a supply chain participant who is giving them the work directly. At all times, it is important to ensure that the pressure on the principal/fashion house is coming from the union and not from the TCF outworker. When speaking to the company, no matter where they are in the supply chain, the union does not disclose any information obtained from the outworker.

There are other matters that can impact the TCF outworker that the Compliance Officer may not be aware of in the early stages of the investigation. For example, the employer/direct engager/subcontractor is the outworker's sponsor in Australia or is otherwise a prominent person in the outworker's community. Their employer may also own the house where the outworker is living or have lent them money. The outworker may not be an Australian citizen, have permanent residence or hold a valid work visa and is fearful of deportation if they make a complaint about their work wages and conditions.

The role of the Outwork Outreach Officer is key in identifying, contacting and supporting the outworker throughout the process. The data collected by the Outwork Outreach Officer is provided to the Compliance Officer for analysis and rectification. The Compliance Officer will

then typically contact the fashion house/label and discuss the areas of non-compliance.

### Tools of Enforcement

One of the important tools the union employs as part of its enforcement strategy is the collection of the Value and Volume data relevant to the particular supply chain. This data is required to be kept as part of the Schedule F obligations of the TCF Award and can be inspected (with copies made) pursuant to the TCF specific right-of-entry rights available to the union. The Value and Volume data is used by the union to trace all the work that is given to every company or TCF outworker from a fashion house/label. Generally, the union will ask the Fashion house/label for Value and Volume information for the previous 12 months that contains, at a minimum, the following information:

- name of outworker or contractor
- date of work given, and date of work completed
- number of garments/articles within a particular order
- type of garment/article
- price paid for each garment/article
- minute rate – time taken to complete the work on each garment/article (including sewing time).

This allows the application of a formula to be applied that identifies how many workers are required to complete the work for that fashion house/label. It also clarifies how many

equivalent full-time workers are engaged to do the work required, based on a 38-hour week, which is the legal maximum working hours per week in Australia. The company is then obligated to provide the union with the details of every worker. For example, if the company has five workers inside the factory and our calculations show that there should be 12 workers, where's the other seven? The union often finds that the other "missing" workers are outworkers. Prior to the union starting the process of checking the Value and Volume data, it was exceedingly difficult to identify how many workers were required. Obtaining the Value and Volume data (which includes the number of garments given to the factory, the minutes taken to complete the garment/article and the amount paid for each garment) allows better clarity on the number of workers engaged, whether in-house or as TCF outworkers.

The compliance officer will exercise right-of-entry rights under the FW Act, which permits inspection of records and documents relevant to the suspected breaches of the TCF Award and the FW Act. While at no time does the Compliance Officer mention awareness of the outworker/s in the supply chain, the union nevertheless looks for information that identifies the outworker in the time and wage records or other documents. There may also be other visual clues on the premises (for example, shelving with the name of the outworkers clearly identified, where they pick up and deliver the TCF work).

The key information that is sought from the company includes:

- disclosure of the full extent of the supply chain (i.e., all participants and their details)
- checking the company has written agreements in place with the outworkers; these should contain each of the matters prescribed by the TCF Award (i.e., identify agreed hours of work per week)
- checking that the work records for arrangements contain each of the matters prescribed by the TCF Award
- all relevant requirements for outsourcing of work, for both contractors and outworkers
- that outworker details are recorded in time and wage records and that the outworker receives payment and a payslip on a weekly basis.

This helps identify any “hidden” outworkers that were not declared by the company to the union or via the TCF Board of Reference registration (if registered). The Board of Reference registration is a legal requirement under the TCF Award in which an entity/person must be registered if outsourcing work in the TCF industry (i.e., a principal).

Mostly companies the union audits are non-compliant to a greater or lesser extent. As part of its compliance strategy, the union commonly identifies multiple contraventions of the TCF Award and the outworker provisions of the FW Act, such as:

- no set agreed hours of work with the outworker
- irregular or late payment to the outworker
- underpayment of the minimum ordinary hourly rate
- no accrual of leave entitlements
- no superannuation paid on behalf of the outworker.

Another important and successful part of the supply chain strategy is what the union describes as the “two-prong approach”. That is, the Compliance Officer deals directly with the top principal and works down the supply chain at the same time as the Outwork Outreach team members are meeting with the outworkers.

This allows the team to collect information at or around the same time, match it up and see whether or not it equals – most of the time it doesn’t. It is really valuable information for the union to be able to understand exactly what’s happening in the supply chain and be able to get a better overview of the scale and complexity of the rectification required. The recovery mechanism in the FW Act gives the union significant leverage with the principal fashion house/label to correct the non-compliance within its supply chain.

It is essential the Outwork Outreach Officer develops a trusting relationship with the outworkers, which can take a period of some time. Information is then obtained on the areas

of non-compliance, which the Compliance officer will use to develop a strategy to rectify the issues in a way that does not negatively impact the outworker. In the process, it is imperative that the outworker’s work is not disrupted. We ensure that the principal/ employer/direct engager cannot see a direct link between the union contacting them and the outworker themselves.

The union also retains the option to take recalcitrant companies to court for contraventions of the TCF Award and the FW Act. However, initiating court proceedings is usually a much longer process than working with the primary principal to bring their supply chain up to full compliance. Court proceedings are also very expensive and resource intensive. Practically, in a majority of cases the union is able to negotiate a settlement to address all levels of non-compliance within a particular supply chain, including addressing money and entitlements owed to any outworkers.

### **Outwork Community Outreach**

Community outreach to outworkers is crucial to the union’s work and ensuring that outworkers understand they have enforceable legal rights to a minimum safety net of wages and conditions. The Outwork Outreach Officers engage outworker communities in a range of ways, including face-to-face catch-ups (usually in relation to individual work matters); Zoom meetings (to provide updates on their rights at work and annual changes to pay rates, etc.,

but also to share experiences with others in a similar situation); and community and cultural events (used to bring outworkers together in a social setting where they feel safe and meet other outworkers experiencing similar workplace issues).

### Nguyet's Story

Nguyet Nguyen is employed as an Outworker Outreach Officer with the union. Nguyet has a deep understanding of the myriad difficulties facing TCF outworkers, both from her own personal experience as an outworker, and in working for the union over the last decade.

*I am a refugee, fled out of Vietnam at the age of 16 with my brother. Whilst we were at sea, we got picked up by a Dutch ship and lived in Holland for 8 years. I got married and migrated to Australia with my husband and a young daughter in 1987. A few weeks after we settled in Melbourne, I quickly bought my sewing machines to work from home for more than 20 years.*

*I worked in the TCF industry as an outworker for 20 years. My experience was I had no control over wages except working hard and long hours. I had no idea that outworkers had the right to be treated fairly. I was too afraid about losing the work. It was hard if my jobs did not meet the deadline, or any mistakes would have to be compensated out of my own pocket at retail price, which is enormous. I*

*had to deal with the middleman, who speaks the same language as the outworkers.*

*I was a highly skilled machinist in the sewing industry and made complex garments for big brand labels. I would be paid from \$5-\$7 per garment, each took me about an hour to complete, an hourly average of \$7 at best. There was no such thing as superannuation, holiday pay or sick pay nor the Workcover in case any accident happens.*

*Most of the time I had to hide the work stress from my kids; this was not easy as they soon discovered the different lifestyles from their school friends, and even in a school assembly the students were shown a video about outworkers where my daughter recognized people in the video, and only then did she start to understand my work situation. Sitting alone in the corner of the garage, I felt isolated.*

*While listening to the SBS Radio, I became aware of the Union, then decided to step out of my shell and got into the pattern-making course at the RMIT University. Joining the union was a big risk for me, but then I had the big support. It was a privilege for me to speak at the Senate Inquiry in 2007. I became an outworker Outreach Officer with the TCFUA in 2009.*

*The start of a new journey to make a difference and meeting people in the same situation as me was a great experience since I became an outworker Outreach Officer to build people's trust in the Union and make known the rights of those who work from home. I was*



Outwork Outreach Officer Nguyet Nguyen at an outworker information stall. Photo courtesy of the CFMMEU-Manufacturing Division



End-of-year outing to the Blue Hills Cherry Orchard and Dandenong Ranges Park, bringing outworkers together in a social setting. Photo courtesy of the CFMMEU-Manufacturing Division

*also elected to a number of positions in the TCFUA. I believe I am the first outworker to hold an elected union office in Australia.*

*Working as an outworker myself and unable to find any help, I had an opportunity to help other outworkers in similar circumstances. My outreach role is to support the vulnerable workers who are sewing for work at home, to ensure that they are protected and are receiving the working conditions and rights as per the TCF Award and other legislation.*

*We have a range of ways to meet and communicate with TCF outworkers. Outworkers are invited to join meetings via the National Outworker Zoom meetings*

*that we hold twice a year. This provides another opportunity for outworkers to receive information without leaving their home, but also everyone can see each other online and the sharing of stories and asking questions is helpful to them to confirm that they are not alone. An Outworker newsletter is developed twice a year to provide updated information. This is circulated via a number of ways, handing out at community events, attending activities or sending to their home address.*

*Each year, outworkers and their family are invited to come together for a picnic day on the bus, where they can spend a day at various farms, such as the lily farm, lavender farm, fruit picking and attending the National Park (Thousand Steps), water dam and many more interesting places. This brings the outworkers together to share experiences and develop networks within their community.*

*We discuss with the outworkers their working conditions and rights at work. This includes how the Union can assist if they aren't receiving the correct rate of pay or irregular hours of work and not receiving their lawful entitlements.*

*During the pandemic, we weren't able to hold meetings with the outworkers face to face like we have done in the past, so to maximize communication we held meetings via phone to provide assistance to the outworkers to receive government support and explain what was happening etc.*

## Have the TCF Reforms Made a Difference?

The TCF industry reforms have now been in operation for over a decade. The union acknowledges that although the laws are significant in both ambition and reach, addressing the exploitation of outworkers in the Australian TCF industry remains a constant challenge. In the union's experience, the laws need to be consistently used and enforced on a daily and weekly basis. The union must both be on the ground and be seen to be so.

There will always be fashion brands, employers, manufacturers and other supply chain participants looking for creative loopholes to avoid having the laws apply to their operations. The union's enforcement strategies must be alert to and remain fluid and adaptive to new unscrupulous practices in the industry. We must also think of other and varied ways to engage with the outworker community.

However, change is happening. There is increasing awareness within the TCF industry of the laws and the risks of non-compliance. An increasing number of outworkers are now receiving minimum wages and conditions no lesser than if they undertook that work in a traditional clothing factory. We have provided a number of individual examples below of outworker stories where they have experienced positive changes to their working lives.

## Nancy's Story

*My name is Nancy. I'm originally from Vietnam and I now live in Melbourne. I've been working as a sewing machinist for a long time! I have been doing this job for over 20 years. I started working in the industry because it was the family business. Some of my family members are still working in the industry here and back home in Vietnam, but I'm the only person working from home (as an outworker) in my family. I am very happy now that I get good pay and regular hours of work thanks to the union. Before this job, I was being paid per garment, but now I have a signed agreement and part-time hours. I have more job security, better pay, and other entitlements.*



Photo courtesy of the CFMMEU-Manufacturing Division



Photo courtesy of the CFMMEU-Manufacturing Division

## Ann's Story

*It's like a piece of gold for me to work in the clothing industry. I am proud to see the beautiful ladies' fashions in the shop that has been completed in my lounge, although my wage was a bit low. One day I decided to look for the Union and now I receive the workers' rights that has been taken away. I now take paid annual leave to spend with my family.*

## Key Lessons

- Opportunities for legislative reform come rarely and are hard won. In the case of the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012 reforms, there was a relatively brief window of opportunity between 2007 and 2013 when a progressive Labor government was elected nationally in Australia. The union had to be prepared and ready to prosecute that case for change. The reforms crystalized after a decades-long campaign by the union in coalition with academics, community, activist and faith organizations, and of course outworkers themselves. Having a strong national award and specific TCF laws for the TCF industry means that the union has a powerful legislative architecture underpinning our work. This gives the union significant leverage and bargaining power when we are in negotiations with employers and fashion houses/brands.
- Additionally, over the years the union has refined its industrial, legal and organizing strategy and needs to remain adaptive to new compliance challenges. When necessary, the union has not been afraid to initiate court prosecutions against major fashion houses and brands in a parallel naming and shaming strategy.
- Tracing and mapping TCF supply chains is critical to successful enforcement.



*From left: Elizabeth Macpherson (National Compliance Officer), Hanh Tran (TCF Outworker), Vivienne Wiles (Senior National Legal and Industrial Officer) and Nguyet Nguyen (Outwork Outreach Officer). Photo courtesy of the CFMMEU-Manufacturing Division*

Transparency must be embedded in the system of compliance. We gather information, records and intelligence from both ends of the supply chain and at all levels: from the fashion brand/principal at the top through the mechanisms in the award and exercising TCF right of entry powers, and from the bottom by direct engagement with TCF outworkers via the union's outwork outreach officers.

- Developing trust with outworkers is fundamental. It takes time, resources, patience and understanding. Appropriate language and cultural support need to be provided. At all times in its work, the union seeks to protect the identity of the

outworker, so that the risks of an outworker losing work or having other adverse action taken against them is minimized.

- Enforcement is everything. Having landmark laws of themselves is not enough. The union needs to be consistently active on the ground, enforcing the laws, week on week, otherwise the reforms wither on the vine and become open to attack by conservative forces. Finally, the union, in coalition with its allies, must be prepared to defend the laws when needed. Outworkers rightly expect nothing less.

**WIEGO Organizing Briefs** contain information on organizing strategies and practices in the informal economy. This series aims to support organizing efforts and disseminate better practices.

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### About WIEGO

Women in Informal Employment: Globalizing and Organizing (WIEGO) is a global network focused on empowering the working poor, especially women, in the informal economy to secure their livelihoods. We believe all workers should have equal economic opportunities, rights, protection and voice. WIEGO promotes change by improving statistics and expanding knowledge on the informal economy, building networks and capacity among informal worker organizations and, jointly with the networks and organizations, influencing local, national and international policies.

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