

# Protecting Homeworkers in the Garment and Footwear Sector: Lessons from Australia

Outwork, also called homework, has been part of Australia's Textile, Clothing and Footwear (TCF) industry for over 100 years. Outworkers were a mostly female migrant workforce. They were hidden at the end of long and complex supply chains, performing piece work and being subjected to sham contracting and widespread wage theft.

What TCF outwork involves, as well as how and why outworkers face exploitation, have been extensively documented since the 1980s, in government inquiries into the garment industry and research reports by academics, civil society, community organizations and the outworkers' union.

The country's TCF industry reforms have now been in operation for more than a decade and changes are happening. There is rising awareness within the TCF industry of the laws and the risks of non-compliance. An increasing number of outworkers receive minimum wages and conditions no less than if they did that work in a traditional clothing factory.

But addressing the exploitation of outworkers in the TCF industry remains a challenge and the union is acutely aware that the laws need to be consistently used and enforced. The union is active on the ground enforcing the laws on a daily basis.

## Why the TCF Industrial Award Mattered

Between the 1980s and the early 2000s, the union fought for specific outworker rights in industrial awards. An award is an industrial instrument that sets a national "floor" of a minimum set of wages and conditions for a particular industry, sector or occupation. The union built on several state governments' 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). The Award's Schedule F is a framework that regulates TCF supply chains from the top (the fashion house) all the way down, through all contracting levels, including outworkers.



*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*

From the late 1990s to the mid-2000s, the union regularly prosecuted employers and major fashion houses for breaches of the industrial award federal court, as part of a “name and shame” brand media strategy. Central to the union’s goals was to eliminate systemic sham contracting (where outworkers were denied employee-like rights, wages and conditions) and to ensure that outworkers could more easily recover money owed to them.

## Outworkers’ Voice Central to Law Reform Campaign

Opportunities for legislative reform come rarely and are hard won. In the case of the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act of 2012, a relatively brief window opened when Australia had a progressive Labor government from 2007 to 2013 – and the union was prepared and ready to make that case for change.

The voice of outworkers was central to the law reform campaign and the reforms came about after many years of work by the union, its allies and outworkers themselves. They grappled with how best to address the complexities of TCF supply chains, organizing workers within those supply chains, and representing the interests of outworkers. Their strategies ranged from community organizing, court prosecutions of companies, public protests against fashion brands, and bringing claims in tribunals to enhance outworker rights in industrial awards and legislative reforms.

## Pillars of the Reforms

The TCF Act 2012 has four main pillars of reforms.

1. **Outworkers deemed to be employees:** Contract TCF outworkers were deemed to be employees. Deeming means treating an outworker as an employee, even if they are called or treated like a so-called independent contractor by those engaging them.
2. **Responsibility across the chain:** A mechanism was introduced to allow 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. 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. This means the worker can ask any one of them to pay the full amount owed.
3. **Improved entry to workplaces:** Previously, the union’s right of entry had been limited and they could only enter workplaces where they had a member. Through the reforms, the union does not need to have a member working on the premises to be able to enter to investigate contraventions relating to workers. This is significant as most TCF sweatshops were not unionized.
4. **Code of practice:** The fourth pillar empowers the government to issue a national code of practice for the TCF industry. Although some work to develop this code was done, this remains an important piece of unfinished business.



*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*



## Enforcing the Law While Protecting Outworkers

Enforcing the law is now the union's main focus. The union relies on its compliance team, which has compliance officers and outwork outreach officers and is supported by industrial/legal officers employed by the union. In the union's "two-pronged approach", the compliance officer deals directly with the top fashion house/label and works down the supply chain. At the same time, the outreach team members are meeting with the outworkers.

**Finding the "missing outworkers":** An important tool the union uses is collecting Value and Volume data relevant to the particular supply chain. The 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 information for the previous 12 months that includes, at least: the name of the outworker or contractor; the date of work given, and date of work completed; the number of garments/articles within a particular order; the type of garment/article; the price paid for each garment/article; and the minute rate – the time taken to complete the work on each garment/article (including sewing time).

With this data, they apply a formula to identify how many workers are required to complete the work for that fashion house/label. The information 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 must then give the union the details of every worker.

They compare the data to check if companies are hiding or underpaying workers. For example, if the company has five workers inside the factory and the union's calculations show that 12 workers are needed to do the work, where's the other seven? The union often finds that the "missing" workers are outworkers.

A compliance officer will exercise right-of-entry rights under the Fair Work Act to visit factories. The officer never mentions they are aware of the outworker/s in the supply chain. But they look for information that identifies the outworker (e.g., in the time and wage records or other documents).

**Reaching out to outworkers:** Outwork outreach officers have, in most cases, worked as TCF outworkers and understand the issues faced in seeking redress for wage theft and other rights violations. They explain the role of the union and the laws that apply to TCF outwork, and support the outworkers throughout the process.

Community outreach to outworkers makes sure outworkers understand they have enforceable legal rights to a minimum safety net of wages and conditions.



*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*

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



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

## Key Lessons

- With a strong national award and specific TCF laws for the TCF industry, the outworkers' union has a **powerful legislative architecture** underpinning their work. This gives the union strong bargaining power in negotiations with employers and fashion houses/labels.
- The union has – over many years – strengthened its **industrial, legal and organizing strategies**. It has not been afraid to take major fashion houses and labels to court, alongside a naming and shaming strategy. The union must stay flexible and ready to deal with new problems in making sure the laws are followed.
- **Tracing TCF supply chains** is key to enforcement. Transparency must be built into the system of compliance. The union gathers information from both ends of the supply chain and at all levels: from the fashion house/label at the top (using the mechanisms in the award and exercising TCF right-of-entry powers) and from the bottom, by talking with TCF outworkers via its outwork outreach officers.
- Developing trust with outworkers is essential. 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 negative action taken against them is minimized.
- **Enforcement is everything**. Having landmark laws is not enough. The union needs to be consistently active on the ground, enforcing the laws, week on week, otherwise the reforms lose their impact 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.

## 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.

Visit [www.wiego.org](http://www.wiego.org)



\* This resource is based on WIEGO Organizing (Law) Brief No 14, [Innovative Legislation in Australia Protects Homeworkers in the Garment and Footwear Sector](#), by Vivienne Wiles and Elizabeth Macpherson.