

My home is my haven, my home is my workplace

Annie Delaney

The failure of the legal system to prevent exploitation of outworkers in the clothing industry.



A report titled 'The Hidden Cost of Fashion' was launched in 1995 by the Textile Clothing and Footwear Union of Australia (TCFUA). This report collates, for the first time, detailed information about the number of homeworkers and the true extent of the use of home-based work in the textile manufacturing industry in Australia. It documents the daily work reality for most outworkers including reported violence and sexual harassment, not being paid for the work done, suffering from work-related injuries and working to tight deadlines, often forcing women to involve their children in the production process.

Homework has emerged as a major feature of the global economy. The International Labour Organisation (ILO) has documented home-based work in Australia, Europe, North and South America, New Zealand, Canada, Africa, Indonesia, India, the Philippines and many other Asian countries. It is estimated that every year for the last 10 years the number of home-based workers in the clothing industry in Australia has doubled. Ten years ago the estimated figure was 30,000 nationally. There are now 330,000 which means that for every worker in a factory, there are approximately 15 home-based workers.

Homework has become a cheap option for industrialised countries, as foreign competition increases, trade barriers are lifted, and transnational and national monopolies increase their market share. As a consequence, factories have closed and the manufacturing sector has shifted to a home-based workforce.

The majority of homeworkers are women, who are often the main income earner of the family. In Australia, refugee and immigrant women from non English speaking backgrounds (NESB), make up the majority of home-based clothing workers. Women in rural areas also constitute a significant proportion of homeworkers. They are a captive, often invisible and vulnerable workforce, and they make up a significant part of the informal global economy. Based on gender and racial discrimination, homeworking exploits people who have difficulties working in the open labour market.

Homeworkers in the garment industry work for as little as \$1-\$2 an hour, typically 12 to 18-hour days, seven days a week, and have no access to even the minimum conditions factory workers receive. This is long way from the award rate of \$10 an hour for a 38-hour week. Often they have to pay for the equipment, such as sewing machines and cottons and cover all costs of power for lighting, heating and running the machines. Employers usually put unrealistic time lines on the production time, compelling the workers to work around the clock. Many outworkers are forced to unlawfully claim social security in order to survive. The consequent fear of being caught can be exploited by employers to discourage outworkers from attempting to recover award wages.

It has been said that home-based work is ideal for women, as it enables them to cook, clean, care for children or elderly relatives and work at the same time. For most women, however, home-based work

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Photo: Sharon Jones

means working longer hours, receiving under-award wages, having less time to spend with their children, being increasingly isolated and exposed to dangerous work practices, and an overall decline in quality of family life.

The current legal position

The TCFUA faces many difficulties in enforcing existing awards under the current legal system. The most significant barrier is that few outworkers are aware of their legal rights. If the proposed *Workplace Relations Bill* is passed, these problems will only increase.

The Clothing Trades Award 1982 attempts to provide some protection. Clause 26 requires conditions of work given outside the employer's premises to be no less favourable than the award. Clause 27 extends to an outworker all the benefits of the award provided to factory workers, other than the sick leave benefits. Clause 27A requires employers using outworkers to be registered with the Australian Industrial Relations Commission and to provide details on all contractors and outworkers. Under this clause employees are also required to keep appropriate records, such as, the number of garments sewn, number of hours worked, and the price paid for each garment.

There are significant barriers to outworkers accessing this protection. The agencies responsible for the policing of existing award provision are the Department of Industrial Relations and the TCFUA. The Department only acts on complaints that are brought before it by exploited workers. As outworkers are often isolated and intimidated, very few cases come before the Department.

The TCFUA also faces many difficulties in accessing the outworker industry, which is often invisible and difficult to find. The power of the TCFUA under the *Industrial Relations Act 1988* to access and enter employers' premises to inspect employee records and conditions of work is of limited use where widespread noncompliance with the award by employers continues. Even where outworkers are reached by the TCFUA, remedies are often difficult to find. The practice of subcontracting is widespread and it is not uncommon for shelf companies to be set up to employ the outworkers, therefore creating difficulties in recovering unpaid wages, and making prosecutions time consuming and costly. In spite of these difficulties, the TCFUA has initiated some prosecutions against companies abusing outworkers and is currently the only organisation proactively working to end the exploitation in the industry.

The *Workplace Relations Bill* contains proposals to place limits on the existing rights of unions to gain access to employer premises. Clauses 286 and 286A of the *Workplace Relations Bill* provide that unions may only gain access to working premises on invitation from an employee or employees. Of significant concern is the requirement in subclause 286(8) that employees who have raised the complaint must identify themselves to their employers before a union can be granted access to work premises. These proposals will severely limit the ability of the TCFUA to engage in preventive policing against outworker exploitation. The majority of the Senate Economics References Committee, which tabled its report into the *Workplace Relations Bill* on 22 August 1996, recommended that clauses 286 and 286A not be implemented. The majority considered that the limitations on rights of entry in these clauses were burdensome, bureaucratic and could permit intimidation of employees. Concern was also expressed by the majority that the restrictions on union right of entry could be in breach of our international obligations. The government members of the committee, however, disagreed with the majority recommendation.

There is also concern that the intention of the *Workplace Relations Bill* to limit awards to 18 'allowable matters' (see clause 89A) will probably result in specialised provisions such as clauses 26, 27 and 27A of the Clothing Trades Award being removed. Those clauses are vital for the TCFUA to be able to provide protection to outworkers and to allow the union to monitor work practices.

Over the past two years the TCFUA began a new campaign to inform outworkers of their rights and where to get assistance. A national phone-in was conducted over two months in 12 languages. The phone-in and community seminars held in 1994 resulted in contact with over 4000 outworkers. The most common inquiry from homeworkers was how to get the award rate and how to recover money owed to them once they had completed the work. Other concerns raised included, fear of revenge if they complained, fear about coercion from employers forcing them to remain on social security payments while working, problems and uncertainty about taxation, having a licence to work, and their employment status.

The Department of Social Security, for its part, held an amnesty for outworkers from December 1995 to May 1996. The amnesty proved to have a very limited outcome because multilingual information for outworkers was available only two weeks before the end of the amnesty period, and no

complementary concessions were made by the Australian Taxation Office. Fear of repercussions from their employers and limited understanding of government departments left outworkers reluctant to take up the amnesty on offer by the Department of Social Security.

In 1994, the Labour Government funded an information campaign for outworkers. In the 1995 budget, a further \$400,000 was allocated, over two years, to continue the work the TCFUA had begun to inform outworkers of their rights, employers of their responsibilities, encourage companies to enter into ethical deeds of co-operation with the union, increase community and consumer awareness around the issues, and develop effective models of working with outworkers. The campaign was launched in February 1996 and cancelled in April 1996 by the new Coalition Government without any explanation for the decision.

Current government policy

In June 1996, International Labour Organisation Convention No. 177: The Homework Convention 1996 (the Convention) and accompanying recommendations were passed. The Convention requires governments to develop national policy for home-based workers and asserts the principal of equal remuneration for home-based workers as for the enterprise-based workforce.

It appears that the Australian Government may not ratify the Convention. Correspondence from Peter Reith's office to the TCFUA on the Convention and recommendations, stated that whilst:

the government is concerned about the exploitation of all workers, including homeworkers, it does not consider that home work is a suitable subject of regulation by a binding international instrument. Homework offers advantages to both employers and employees, including flexibility of work arrangements, improvements in productivity and the creation of employment opportunities. It is therefore important to avoid restrictions which could hinder employers and employees from enjoying the benefits of these advantages.

The proposed changes by the Coalition Government to the *Industrial Relations Act* in the name of a 'flexible workforce' will provide less protection to workers and will remove the role of unions in organising and representing workers. The proposed individual contracts in the *Workplace Relations Bill* known as 'Australian Workplace Agreements' have the potential to enshrine the exploitative work practices as documented in the textile industries into a legitimised process. Outworkers have no capacity to negotiate with their employers. In fact, it is a nonsense to use the word 'negotiate' as homeworkers either accept the work as it is offered or not at all. Moreover, it is expected that these changes would further contribute to an increase in home-based work in other industries. The changes will make union action on behalf of workers even more difficult than it currently is.

The position taken by the Australian Government is in contrast to the government initiatives presently under way in the United States. The discovery of 72 Thai immigrants held in virtual slavery in El Monte California working 17 hours a day for as little as 60 cents an hour, sewing garments for the country's major retailers resulted in a national outcry. The US Labor Secretary has personally led a program to deal with the widespread increase of sweatshops in the garment industry.

The US Department of Labor has launched a national campaign of enforcement starting with the nations retailers.

They have focused on enforcement of a 'hot goods' provision of the *Fair Labor Standards Act*. The Secretary of Labor called a retail summit to ask some of the nations major retailers to help deal with the sweatshop problem. The Department has since launched its Fashion Trendsetters list: it includes 36 retailers who have committed themselves to eradicate sweatshop conditions among their manufacturing contractors.

Senate Economics Committee Inquiry 1996

In April of this year, the Senate Economics Committee commenced an inquiry into outwork in the garment industry. This inquiry was initiated by Democrat Senator Sid Spindler. The committee will report on the outwork inquiry by the end of the year.

The TCFUA's submission recommended that a 'Sale Of Clothing Act', modelled on the *Trade Practices Act 1974*, be enacted so as to ensure that outworkers in the clothing industry receive conditions of employment which are fair, just and reasonable. This proposed Act would be similar to the *Fair Labour Standards Act* in the US. The TCFUA recommended that a monitoring body be established under this proposed Act, which would monitor industry compliance with the conditions of employment set for outworkers. The TCFUA also strongly recommended that a provision similar to Schedule 1 of the *Industrial Relations Act 1996* (NSW) be incorporated into the 'Sale of Clothing Act', so as to deem outworkers to be employees for the purposes of industrial relations legislation. Other recommendations put forward by the TCFUA included proposals for government ethical sourcing procedures, programs to assist NESB women workers in relation to childcare and overseas qualifications recognition, and labour adjustment programs for retrenched clothing industry workers. It was also recommended that current award provisions to protect outworkers be maintained, and that proper resources be provided to the unions to assist outworkers.

As a consequence of this inquiry, some employer groups have acknowledged the existence of exploitation within the industry and have submitted a proposal called a Code of Practice for the industry. The proposal is currently being discussed with the TCFUA. It has the potential to develop into a substantial system of regulation. It would include an accreditation process for manufacturers, a garment sewing time manual to standardise sewing times, and a 'clean clothes' labelling system. Retailers would commit to use suppliers who provided proof that their goods were produced by award paid workers, whether they be factory or home based.

Industrial action

The TCFUA recognises that it is crucial to develop strong links with community-based organisations to reach outworkers and to find ways to inform them of their rights.

A recent example of combined union and community-based action was a demonstration held outside a Melbourne Westco store. This action was an attempt to recover moneys allegedly owed to an outworker by a Westco contractor. Had the outworker been paid, the TCFUA says she would have received \$1 a shirt, which Westco sells for \$39.95. It was successful in that shoppers were supportive of the action and alarmed to learn that women are sewing in their homes for next to nothing, as major retailers in Australia are making record profits. However, the TCFUA says the company still

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Conclusion

Permanent part-time work is one way for women to combine work and family responsibilities, although it is not necessarily the best possible solution. It does not cater well for school holidays, for example. Nor does it enable women to achieve the feminist ideal of economic independence. Other measures are also needed, such as subsidisation and/or tax deductibility of commercial childcare,¹⁹ and a breakdown of the gender division of labour in the workforce and in the home. Likewise, a series of indirect discrimination cases would not, in isolation, achieve a systemic improvement in the status and value of part-time work. Nevertheless, the potential of indirect discrimination provisions to provide access to permanent part-time work, on decent terms and conditions and at family-friendly hours, has not yet been fully exploited in Australia. Current deregulatory moves present both dangers and opportunities, as sex discrimination legislation gains wider coverage of employment arrangements. This is an area that could fruitfully be explored by unions, Working Women's Centres and women's legal services in their efforts to make the labour market more responsive to the needs of women with family responsibilities.

References

1. 'Only So Many Hours', *Work and Family*, Issue No.9, Work and Family Unit, Department of Industrial Relations, September 1995, p.4.
2. Dawkins, Peter and Norris, Keith, 'The Growth of Part-Time Employment in Australia and the United Kingdom, 1978-93', (1995) 7 *Labour Economics and Productivity* 1, 2-3.
3. Dawkins and Norris, above, p.7. See also Lever-Tracy, Constance, 'The Flexibility Debate: Part Time Work', (1988) 1 *Labour & Industry* 210, 217; Jamieson, Natalie and Webber, Michael, 'Flexibility and Part-Time Employment in Retailing', (1991) 4 *Labour & Industry* 55, 61.
4. Jamieson and Webber, above, pp.64, 56.
5. Watts, Martin and Rich, Judith, 'Equal Employment Opportunity in Australia? The Role of Part-Time Employment in Occupational Sex Segregation', (1991) 17 *Australian Bulletin of Labour* 160, 168.
6. 'Only So Many Hours', above; Meadows, Helen, 'Flexible Work Practices: Individual experiences', (1995) 69 *Law Institute Journal* 646, 648. Some law firms are 'receptive' to individual requests from legal staff to work part-time, while the general organisational culture of full-time work remains firmly in place: see Meadows, 649; Martin, Michelle, 'Working Nine to Five: Not a Way to Make A Living if You're Bringing up Young Children', (1992) 66 *Law Institute Journal* 286, 287.
7. Jamieson and Webber, above, pp.59, 67; see also NSW Public Employment Office, *Guidelines on Flexible Work Practices*, p.9.
8. See Hunter, Rosemary, *Indirect Discrimination in the Workplace*, Federation Press, Sydney, 1992; Hunter, Rosemary and Leonard, Alice, 'The Outcomes of Conciliation in Sex Discrimination Cases', Centre for Employment and Labour Relations Law, The University of Melbourne, Working Paper No.8, August 1995, p.9.
9. Owens, Rosemary J., 'Women, "Atypical" Work Relationships and the Law', (1993) 19 *MULR* 399, 407.
10. *Sex Discrimination Act* s.50A; *Industrial Relations Act 1988* (Cth), ss.93, 111A, 113(2A), 150A; *Workplace Relations and Other Legislation Amendment Bill 1996* (Cth), Schedule 5, cls 34, 43(6), 45(7).
11. *Sex Discrimination Act*, s.7C.
12. Dawkins and Norris, above, p.5.
13. Charlesworth, Sara, 'Women and Workplace Bargaining Issues in the Hospitality Industry', in Edward Davis and Catherine Harris (eds), *Making the Link 6: Affirmative Action and Industrial Relations*, AGPS, Canberra, 1995, pp.72-3.
14. Barlow, Kerry, Junor, Anne and Patterson, Michelle, 'Banking on Flexibility', *Arena Magazine*, June-July 1993, p.45; 'Only So Many Hours', above, p.3.
15. Charlesworth, above, p.75.
16. Barlow and others, above, p.44.
17. *Rinner-Kuhn v FWW Spezial-Gebaudereinigung* [1989] ECR 2743; *Kowalska v Freie und Hansestadt Hamburg* [1990] ECR I-2591; *Bilka-Kaufhaus v Weber von Hartz* [1986] ECR 1607; *Vroege v NCIV Instituut voor Volkshuisvesting BV* [1994] ECR I-4541; *Jenkins v Kingsgate* [1981] IRLR 228; *Nimz v Freie und Hansestadt Hamburg* [1991] ECR I-297.
18. Barlow and others, above, p.44; Charlesworth, above, p.72; Alcorso, Caroline and Hage, Ghassan, 'Bargained Away? Enterprise Bargaining and Non-English Speaking Background Women Workers', ANESBWA, Policy Paper 2, Sydney, 1994, p.35.
19. Watts and Rich, above, p.161.

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refuses to pay the outworker. This highlights the limitations for industrial action by outworkers, who are isolated and disorganised. Westco is one example of the 146 labels documented by the TCFUA as being made by below award paid outworkers. A list of such labels was submitted to the Senate Inquiry by the TCFUA, including well known brands: Susans, Katies, Laura Ashley, JAG, Perrie Cutten, Ojay and Anthea Crawford.

The TCFUA has also been working directly with retailers and manufacturers, who have the ultimate responsibility of eradicating the exploitation of their workers. One example of employers recognising this responsibility is the deed of co-operation signed between the TCFUA and Target Australia in 1995. The agreement subjects the company and its suppliers to monitoring to ensure that all Target garments are made by workers who receive their lawful pay and conditions. Companies who sign these agreements are promoted as best practice organisations. The TCFUA is encouraging other retailers and label owners to enter into similar agreements rather than continue to shield themselves from responsibility for the workers producing their products.

Most recently, the TCFUA and the Uniting Church are involved in the Fair Wear Campaign. The Campaign is intended to lobby retailers and manufacturers to adopt a code of practice for the garment industry, to lobby the Australian

Government to ratify the Convention and to educate consumers about the exploitation of homeworkers and ethical shopping.

Conclusion

In conclusion, the nature of outworking links women as workers, mothers, carers and producers into an exploited and vulnerable underclass in Australia today. Conditions for this group of workers are now worse than those experienced by garment workers 100 years ago. Legal protection has gone some way to legitimising outwork, but so far minimum conditions elude the majority of home-based workers. Labour organising has focused on the factory-based workforce which is declining in numbers. The challenge now before unions and the legal system is how to be relevant to this group of workers.

Broader initiatives have begun in earnest in the last two years which now show evidence of the links between ethical sourcing and ethical consumerism and the issues affecting outworkers. Working alliances between the union and community organisations, women's groups, churches and aid organisations have laid the foundations for future work to assure outworkers can access minimum protection.

For more information about the Fair Wear Campaign contact: Uniting Church, 4th Floor, Little Collins Street, Melbourne (03 9654 2488) or Annie Delaney, Outwork Coordinator, TCFUA (03 9347 3377).