



THE LAW SOCIETY
OF NEW SOUTH WALES

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13 May 2014

Ms Caitlin Paton
TCF Post Implementation Review
Industries and Award Branch
Department of Employment
GPO Box 9880
CANBERRA ACT 2601

By email: tcfreview@employment.gov.au

Dear Ms Paton,

Review of the textile, clothing and footwear industry provisions in the Fair Work laws

I am writing to you at the request of the Law Society's Employment Law Committee ("Committee").

The Committee appreciates the opportunity to comment on the regulatory impact of the *Fair Work Amendment (Textile, Clothing & Footwear Industry) Act 2012* (Cth) ("TCF Act") which commenced on 1 July 2012.

The Committee notes that the TCF Act extended the operation of the *Fair Work Act 2009* ("FW Act") by deeming textile, clothing and footwear ("TCF") industry contract outworkers to be national system employees for most purposes. In addition, the TCF Act enabled TCF contract outworkers to recover unpaid amounts up the supply chain and allowed a TCF Outwork Code to be prescribed. The Committee provides comments in relation these matters below.

1. Background

The Committee notes that the TCF Act was introduced in response to the acknowledged need to protect vulnerable TCF contract outworkers. In the Explanatory Memorandum it was stated that:

"Research has consistently shown that outworkers in the TCF industry suffer from unique vulnerabilities as a result of their engaging employment in non-business premises. These vulnerabilities are often exacerbated by poor English language skills, lack of knowledge about the Australian legal system and low levels of Union membership in the industry."¹

¹ Explanatory Memorandum of *Fair Work Amendment (Textile, Clothing & Footwear Industry) Act 2012* (Cth), p.1.

In making the *Textile, Clothing, Footwear and Associated Industries Award 2010* ("Award"), the Full Bench of Fair Work Australia noted that there was no disagreement between unions and employer bodies as to the need to protect this class of employees.²

2. Deeming outworkers employees

The concept of deeming outworkers in the clothing industry to be employees is not new in New South Wales. For example, the Committee notes that section 1(f) of Schedule 1 of the *Industrial Relations Act 1996* (NSW) defines employee to include any person who performs any work in the clothing trades or the manufacture of clothing products, outside a factory.

In the Committee's view, there is no additional regulatory impact for entities that engage TCF outworkers in NSW.

3. Recovering unpaid amounts up the supply chain

The ability for TCF outworkers to recover unpaid amounts up the supply chain is also not a new concept. The Committee notes that a similar federal scheme has been in place since 1987 when provisions were inserted into the *Clothing Trades Award 1982*. Riordan DP in *Re Clothing Trades Award 1982* explained:

"The evidence of material in this case discloses a very distressing situation which has no place in a society which embraces the concept of social justice. The undisputed facts reveal the existence of widespread and grossly unfair exploitation of migrant women of non-English speaking background who are amongst the most vulnerable persons in the work-force".³

His Honour further stated:

"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. Some are persons who have an urgent, and even desperate, need to earn whatever money is possible by the performance of this work for a relative pittance under appalling conditions. Almost all of those involved are women of migrant background. Some do not speak or understand English at all and some have only a very limited knowledge of it. 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 those workers and refuse to intervene in the situation of grossly improper exploitation of a weak and unorganised section of the work-force."⁴

² Request from Minister for Employment and Workplace Relations 28 March 2008 [2008] AIRCFB 1000 at [150].

³ (1987) 19 IR 416 at 421.

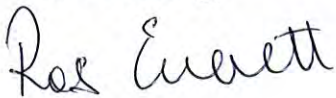
⁴ (1987) 19 IR 416 at 422.

Similar schemes which allow TCF outworkers to recover unpaid amounts up the supply chain have also been in place at a State level.⁵ Similarly, before the implementation of the TCF Act, mandatory codes of practice in the clothing industry also existed at a State level.⁶

In the Committee's view, the TCF Act plays an important regulatory role in extending the rights and protections of TCF outworkers. In light of the vulnerable nature of TCF outworkers, the Committee supports the continuation of the TCF Act in its current terms.

The Committee thanks you for the opportunity to comment. If you have any questions please feel free to contact Menaka Venkata, policy lawyer for the Committee on menaka.venkata@lawsociety.com.au or (02) 9926 0214.

Yours sincerely,



Ros Everett
President

⁵ In NSW see sections 129D-129H of the *Industrial Relations Act 1996* (NSW); in Victoria see Part 2, Division 2 of the *Outworker (Improved Protection) Act 2003* (Vic); in SA see sections 99A – 99J of the *Fair Work Act 1994* (SA); and in QLD see sections 400A – 400I of the *Industrial Relations Act 1999* (Qld).

⁶ In NSW see the *Ethical Clothing Trades Extended Responsibility Scheme* made under Part 3 of the *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW); in South Australia see the *Fair Work (Clothing Outworker Code of Practice) Regulations* made pursuant to the *Fair Work Act 1994* (SA); in Queensland see the *Mandatory Code of Practice for Outworkers in the Clothing Industry* made pursuant to section 400I of the *Industrial Relations Act 1999* (Qld).