

Tabled by Mr Barry Tubner, TCFU  
accepted by Arthur Chesterfield - Evans

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

S106/109

MLC

*Workplace Relations Act 1996*

CS156

CNo. 33994 of 1998

IN THE MATTER OF an application by the Textile Clothing and Footwear Union of Australia under Item 49 of Schedule 5 of the *Workplace Relations and Other Legislation Amendment Act 1996* to vary the Clothing Trades Award 1982.

### STATEMENT OF BARRY TUBNER

On 24th August 1998, I, Barry Tubner, of [redacted] Bay NSW, TCFUA Secretary, say on oath -

#### My Experience with Outworkers

1. My name is Barry Tubner and my residential address is [redacted] Bateau Bay NSW. I am the Secretary of the Textile, Clothing and Footwear Union of Australia, NSW Branch ("the TCFUA") and the State counterpart of that union and have held that position since March 1998. Prior to that time I was Assistant Secretary for four years. I was a TCFUA Organiser for the TCFUA from approximately 1984 until 1994. Prior to being employed by the TCFUA as a TCFUA Organiser, I worked at Amoco Jeans as a presser for 13 years.
2. I will refer to "outworkers" during the course of this affidavit. By "outworker" I mean someone who works at home in a domestic dwelling and performs work for a maker or a fashion house and who is the kind of worker contemplated by Clause 27 of the Clothing Trades Award 1982 and the deeming provisions of the Industrial Relations Act 1996 (NSW).
3. During the last 10 years of my employment at the TCFUA I have been predominantly responsible for the recovery of money on behalf of outworkers. In my experience the process of recovering proper payment for outworkers invariably results in the loss of employment for those outworkers. Those outworkers will then seek employment with another person who will often also under pay, with the result that the same outworkers may seek the assistance of the TCFUA on a recurrent basis with a view to enforcing their entitlements.

4. During my time with the TCFUA and until I became Secretary I was solely responsible for outworkers (with the assistance of an industrial officer). I had contact with outworkers during this period by:
  - interviews in the union office
  - telephone calls to the union office
  - site visits
  - meetings in conjunction with community groups as part of campaigns or rallies
  - by means of reports received from community liaison officers employed at the TCFUA over the last four years.
5. I followed the following practice in relation to interviewing outworkers:
  - making sure that they were relaxed and have them explain their circumstances (often with the help of a bilingual assistant)
  - asking them to write down what they could recall about the person who gave them work, the hours worked, the circumstances of the work, etcetera (which could be completed in their own language), and then recording the relevant information onto an "Outworker Information Sheet" (see **Attachment A**)
  - I would have their notes translated into English, and transfer the relevant information onto a "Homeworkers' Information Sheet" (see **Attachment B**)
  - I would then visit their employer and negotiate for the recovery of underpayment of monies. In most cases there was a clear underpayment under the award and these cases most often settled.
6. It is difficult to estimate the number of such workers that I personally interviewed but it would have been a very great number.
7. In addition to my TCFUA activities directly assisting outworkers, I have made a practice of attending TAFE institutions and presenting papers to the fashion and textile courses about the issues surrounding outworkers. In addition I visit community groups to give presentations about the problems suffered by outworkers and, in particular, their lack of access to proper pay and conditions.

#### Numbers and Location of Outworkers

8. I estimate that there are currently 130,000 outworkers operating in the state of NSW mostly in Sydney in the following suburbs:-
  - Cabramatta

- Liverpool
- Fairfield
- Auburn
- Bankstown
- Marrickville
- Surry Hills

9. In addition there are outworkers operating in a number of populated areas along the coastline of NSW and in some regional areas. The clothing industry in these areas tends to be fairly specialised so that along the coastal areas surfwear and T shirts will be the predominant area of production, while in rural areas, school wear and sporting wear as well as T shirts are likely to be the main area of production. In all of these areas outworkers are employed. There are few manufacturing factories located outside the metropolitan area. The closures of the Berlei Lithgow factory and the King Gee Rutherford factory is symptomatic of the disappearance of manufacturing from rural and regional areas.
10. In terms of work in factories in the clothing industry there are two distinct types. There is the legitimate clothing company which produces clothes using award paid employees. To my knowledge, there is only one such factory operating in the ladies fashion sector of the clothing industry in NSW. There are other factories operating in garment production such as Bonds and King Gee. I call these manufacturers or manufacturing companies.
11. The second class of factories are connected to outworkers and consist of smaller registered factories used to produce clothes usually also in association with outworker operations. These factories are makers and contractor factories linked to principals and fashion houses which are not manufacturing companies. I describe this group in greater detail below.

### Brief History of Clothing Industry

12. During the 1960's the employment of machinists and cutters occurred more predominantly in factories than in homes. The percentages would be roughly 90% in factories to 10% in homes. The outworkers essentially consisted of women who had left the factory because of pregnancy, childbirth or child rearing and continued to carry out work for the employer in their homes. During this period the employer provided the worker with a sewing machine and work and normally paid the award rates. During this period of time union coverage was high. Traditionally factories in the clothing industry have demonstrated high levels of union coverage. It would not be uncommon for there to be 100% union membership at clothing factories.
13. In 1974 the Federal Government decreased by 25% the tariff protection for the clothing industry. This led to a significant decline in employment of clothing workers in factories demonstrated by a drop in TCFUA membership of some 60,000 over the following years. This decline in union membership has continued.

14. Following the introduction of the tariff reductions the industry went in one of two ways. With the exception of small tailoring outlets making made-to-measure suits (which have remained fairly constant in size and number over time), the men's fashion industry moved predominately offshore to the point that there are now (to my knowledge) two factories in NSW which make suits and each factory employs approximately 60 persons. This compares to the situation as it existed in 1974 when there were many such factories employing thousands of people. For example there was the Ernest Hillier factory at Guildford which employed over 500 machinists and cutters; Anthony Squires at St Mary's which employed over 500 machinists and cutters; and Amco (also at Guildford) which employed up to 1000 machinist and cutters.
15. The women's fashion industry to some degree moved offshore but encountered some difficulties because of the need for quick turnover of production in response to fashion demand. As a result a proportion of the industry returned to Australia but not to factory production. Instead the manufacturer moved increasingly to the use of outwork. In recent times this trend has escalated so that the current figures show a significantly higher number of outworkers than those employed in the factories.
16. After the tariff reduction, members of the industry considered a number of options to reduce costs and compete with cheaper imports. The options were as follows:
  - (i) reduce or cease Australian manufacture of ladies fashions and engage in imports
  - (ii) invest in substantial capital with technologically improved production methods;
  - (iii) lower the cost of labour.

Because of the rapidly changing nature of ladies fashion, the first of these options was not feasible as importation took too long to respond to changing fashion trends. The second option was not pursued, perhaps because ladies fashion requires frequent short production runs difficult to achieve with the technology available. I consider that the introduction of large scale non award paid outworkers was the consequence of the adoption of the third option by the industry.

17. The prospects of this change occurring was enhanced by the increase in NESB migrants in Australia. Their lack of English language skills made them vulnerable to exploitation in this country.
18. Current TCFUA membership for the New South Wales State branch of the union number is approximately 9,000. Between one third to one half of this number represents clothing industry workers generally employed in factories. **Attachment C** contains an historical break down of TCFUA membership in

NSW for members employed under the Clothing Trades Award. The proportion of members employed as outworkers is comparatively small and usually represents members seeking the TCFUA's assistance in a one off way to obtain payment for work done. The union has assisted these workers even where they are not members of the union because:

- social justice considerations mean that these workers should be helped
  - the exploitation of these workers takes jobs from union members.
19. The remainder of the membership is located in textile work and footwear factories.
20. Historically, employers in the clothing industry have been more resistant to effective and equitable industrial bargaining than their employer counterparts in the textile industry (and other industrial sectors with which our union is involved). For example, in February of this year, there were one hundred and forty six (146) current certified agreements (as certified pursuant to federal industrial relations legislation) to which our TCFUA union was a party. Out of this total, only thirty six (36) of these agreements relate to the clothing industry - a figure which represents only twenty seven (27) percent of all certified federal agreements to which our union was party at that time. By way of contrast, the textile and footwear industries account for a full seventy three (73) percent of those Federal certified agreements to which our union was party. In my opinion, these contrasting figures reveal the comparative difficulty of achieving effective and equitable industrial bargaining with many clothing industry employers. In turn, this resistance among clothing industry employers has correspondingly increased the reliance of clothing industry workers upon the relevant (Clothing Trades) Award for protection of their employee wages and conditions.
21. This reliance of clothing industry employees upon the Award for protection of their basic rights and entitlements is even more pronounced in the case of clothing industry outworkers. At least clothing factory employees have the opportunity to band together (with their workmates in the same factory) in order to resist exploitation by employers (especially with the assistance of the TCFUA). By contrast, each outworker is more or less alone in facing the entire economic power of their current employer. This situation is worsened by the clear threat to their employment which faces any outworker who dares to demand proper payment from her employer. (Indeed, in my experience, the process of recovering proper payment for outworkers is invariably followed by the loss of employment for those outworkers.) It is perfectly obvious that clothing industry outworkers generally have little or no effective bargaining power in dealing with their employers and these outworkers are therefore almost completely reliant upon the Clothing Trades Award (and - in particular- clauses 26 and 27 and 27A and other relevant clauses) for any protection against exploitation by employers. I will examine this weak bargaining position of outworkers in more detail later in this statement.

## Structure of the Clothing Industry

22. I have prepared a diagram which indicates the connections between the various persons and organisations involved in the production and manufacture of clothing. A copy of the diagram is at **Attachment D**.
23. As indicated on the diagram, the customer is the ultimate consumer of goods manufactured by outworkers. The four categories noted next to the customer represent the kinds of issues that are likely to influence the customers' purchasing decision. That is, the customer may be seeking goods that are fashionable; goods that are Australian made; goods that are at a cheap price; and/or goods that are imported.
24. The customer purchases the goods from the retailer. A significant shift in the industry has occurred over the last ten years where there has been a monopolisation of retail outlets. For example the Coles Myer Group now includes K-mart, Target, Katies, Coles Myer and Fosseys. The second largest is Woolworths which includes Big W, Woolworths and Rockmans. One result of the increased monopoly amongst retailers is that the retailer rather than the fashion house now dictates the type of clothing, the price that will be paid for the clothing and other matters which ultimately affect payments to outworkers.
25. At the next level the retailers will obtain the services of a fashion house (also known as a principal, a manufacturer, or a supplier/wholesaler). Prior to the increased monopoly at a retail level it was the fashion houses who tended to set the rates of pay and to benefit most from suppressed wages. In recent times fashion houses have been subject to greater control by the retailers. The support usually of the major retailers determine the success or failure of a fashion house. The price charged by a fashion house for obtaining clothing is a factor taken into account when a retailer deals with a fashion house. It is my view that both retailers and fashion houses are ultimately only concerned with making a profit and have very little concern with exploitation that takes place in the course of obtaining that profit.
26. At the next level are the makers. I describe in more detail below the processes by which a maker may obtain work from a fashion house. Other descriptors of the maker include middle men or subcontractor. I have described the four possible types of makers. The category described at (2), (3) and (4) all involve the use of outworkers.
27. The final category is the person who actually makes up the garment, that is, the outworker (also known as homeworker or individual contractor).
28. It is important to understand the link between each of the areas described on **Attachment D**. For many years my activities were directed at assisting the outworkers to obtain payment of proper wages and other employment related matters. In assisting them I dealt mainly with the makers who were responsible for paying the outworkers. Over time, makers complained to me

that they were unable to pay outworkers the proper rate because the makers were forced to accept low piece rates in order to obtain work from the fashion houses. Almost without exception makers state that if they do not accept the work, someone else will.

29. In about 1992 the TCFUA started communicating more often with the fashion houses. This was around the time that the retail industry was becoming more monopolised. While some fashion houses would disclaim responsibility for the ultimate wage paid to outworkers on the basis that the makers were free to take up the work or not at the prices paid to them by the fashion houses, others stated that they were unable to pay the makers a better piece rate because of the pressures put on them by the retailers. Unless a fashion house could provide garments at a low enough cost to the main retail groups, that fashion house would not survive as there was insufficient competition between the retailers to which they sell their goods.
30. When the issue of depressed piece rates was raised with the retailers, they explained that they were constrained by the demands of consumers who required certain levels of quality and price, and those demands could only be met by keeping piece rate payments to a minimum.
31. What is probably not understood by the consumers is that the persistence of underpayment of outworkers is indirectly subsidised by consumers through the avoidance of payment of taxation at a number of different levels in the clothing industry, and by payment of government benefits to outworkers who receive low income. If the clothing industry was regulated to the point where makers paid proper wages, deducted tax and maintained records, the consumer would benefit by increased revenue and decreased reliance on government benefits.

### Production Procedure

32. I will now describe the most common structure whereby work is ultimately done by outworkers.
33. In the first place there are the fashion houses. During the Senate Economics Reference Committee Inquiry into Outwork in 1996, TCFUA took steps to identify fashion houses that were producing their own goods for the purposes of the committee members visiting such factories. During the course of the hearings the TCFUA was only able to identify one fashion house which was still producing its own goods at its own factory using employed labour paid in accordance with the award.
34. Other fashion houses without a manufacturing or production area are set up with four separate areas as follows:
  - Design
  - Sample making up

- Cutting room
- Warehousing

35. It should be noted that the sampling and cutting are now commonly sub contracted out and may not be performed by employees of the fashion house.
36. In order to have their designs made up, a fashion house will commonly hold a "dutch auction" on a regular basis. This "dutch auction" will be attended by makers. This category of people are generally male. The fashion house will employ a co-ordinator who will operate the "dutch auction". The fashion house will require that a certain number of a particular garment is to be made up. The co-ordinator will ask whether any of the makers are able to make that item for a certain specified price and will then reduce the price until one maker is prepared to make it at a base line price.
37. Makers almost invariably will be from a non English speaking background and will either take an interpreter with them to the "dutch auction" of the fashion house or alternatively the coordinator employed by a fashion house will be of a particular ethnic origin and will deal with makers of the same ethnic origin.
38. There is a variation to the "dutch auction" process whereby the coordinator may favour a particular maker and give work to that particular maker without going through the process of the "dutch auction". In order to do this, the coordinator must satisfy his fashion house employer that a good price is being obtained from that maker.
39. The makers are essential to the fashion houses as they carry the responsibility of holding a Factory registration and a Workers Compensation certificate (required under the state legislation). Commonly, makers lease a small area of space and then obtain factory registration from the Factory, Shops and Industries section of the Department of Industrial Relations. The maker may be a sole operator or a husband and wife team operating under a corporation. Thus the fashion houses (which are generally also registered corporations) may be dealing not with individuals but with other registered corporations. In addition to having factory registration, the makers will hold a workers compensation certificate. The registration and the certificate break the nexus between the fashion house and the outworkers. Commonly, however, the makers will register only themselves as employees of the company and hence workers' compensation will not extend to other workers engaged as outworkers.
40. The makers bear the risk of investigation by agencies such as the Department of Industrial Relations, the union, and the WorkCover Authority. In reality, however, these risks are small given the great extent of the problem and the few resources available to deal with it.



### Employees at Makers' Factory

41. The makers will often have a workforce operating at their registered factory. However, the workforce will usually be small in number and will be performing in one of two ways:
- finishers who trim cotton, hang garments and attach swing labels.
  - cutters and machinists engaged in manufacture of wholesale garments, or in a production line of garments. This may involve the use of specialty machinery that outworkers generally do not own.
42. In addition, a majority of makers will engage outworkers, either to process the bulk of the maker's garment production, or to do overflow work.

### Outworkers and Makers

43. The relationship between makers and outworkers generally falls into one of two categories. In the first category the outworkers only know the maker by their first name, do not know the whereabouts of the maker's factory, have the cut garments delivered to them and may only know the name of the labels for whom the work is being done because part of their task involves the sewing on of those labels.
44. The second category are those outworkers who know their maker relatively well. The maker will make himself known to the outworker through community links. Often the maker will assist the outworker in other aspects of their lives and accordingly the outworker may feel some sense of obligation towards the maker. The outworker may be introduced to the maker's accountant who in turn will assist the outworker in establishing a business name or some other process which will then be used to identify the outworker as a "sub contractor" rather than an employee. The maker will then "assist" the outworker further by obtaining outwork for the outworker. The outworkers' opportunity to query or object to low payment is seriously compromised by the relationship between the outworker and the maker.

### Relationship Between Employers and Outworkers

45. One key technique by which makers have attempted to avoid their obligations under the Award involves the claim (by makers) that their outworkers are not employees. (Indeed, the widespread use of this avoidance technique has led to the introduction in New South Wales of statutory provisions which deem outworkers to be employees, as in the N.S.W. Industrial Relations Act 1996.) Makers routinely take the following steps to obscure the employment relationship between themselves and their outworkers:
- instruct their outworkers to obtain a business name (and withhold work until they do);

- advise their outworkers that, because the outworker's spouse assists in some small way, then the outworker and their spouse are a partnership;
- instruct their outworkers to tell anyone who may inquire that they (the outworkers) are either a small business or contractors or sole traders;
- characterise their outworkers as "fabric converters";
- "sell" the outworkers the materials for a price, say 0.50c, and "buy" the completed material back for a higher price, say \$2.00.

### **Enforcement of the Award for Outworkers**

46. During my years as a TCFUA organiser and as Assistant Secretary, I have been extensively involved in attempts to enforce different award provisions, both for factory workers and outworkers. Currently the Award contains Clause 26, Clause 27 and Clause 27A which deal in some detail with the procedures to be followed by makers in relation to record keeping of details of outwork. In general, these three clauses of the Award have related to each other (and the other provisions of the Award) in the following manner, since their introduction into the Award in 1987 and 1988.
47. Clause 27A of the Award requires any clothing industry employer who proposes to give out clothing work (to be performed outside that employer's premises) to register (as such an employer) with a Board of reference. Thus clause 27A is the fundamental prerequisite for identifying exactly which employers intend to use outworkers (either directly or indirectly).
48. Boards of Reference are tripartite bodies (consisting of representatives of employer and employee organisations) whose deliberations are chaired by representatives of the Federal Industrial Registry. Such boards of Reference have been constituted successively pursuant to the provisions of the Conciliation and Arbitration Act and then the Federal Industrial Relations Act and now the Federal Workplace Relations Act. These boards have operated for a long period of time to deal with matters in the clothing industry (among others) in Australia.
49. These tripartite Boards of Reference have a long successful record of increasingly effective registration of clothing industry employers who give out clothing work (to be performed outside those employers' premises). The increasingly successful record of these Boards has resulted from the TCFUA's vigorous pursuit of those employers who fail to register (in contravention of their obligations pursuant to clause 27A) and the union's simultaneous willingness to work with reputable employers (and their representative organisations) as well as with the Federal Industrial Registry (and the related industrial inspectorate) in order to attack the blight of outworker exploitation.

50. This willingness by the union to work with reputable employer representatives and the Federal Industrial Registry is simply one example of the TCFUA's general willingness to deal with clothing industry employers in a fair and reasonable manner, whether the matter concerned factory or outdoor workers. This general approach by the TCFUA explains the ability of clothing industry employers to obtain all reasonable necessary flexibility for their business of clothing manufacture within the framework of the current Clothing Trades Award. In particular, this generally facilitative approach by the TCFUA underscores the workability and reasonableness of the existing Award's facilitative provisions. Indeed, to my knowledge, the TCFUA has never rejected an employer request for facilitation after having ensured full consultation with the clothing workers affected.
51. This same facilitative approach by the TCFUA is also illustrated in the history of the Award's protective provisions relating to casual employees. These provisions were introduced following considerable negotiation with employer organisations. The Award's protective provisions relating to casual employees in the clothing industry have proven most significant in protecting full time clothing workers against the erosion of their job security and employment conditions. Most importantly, the Award's protective provisions relating to casual employees have significantly strengthened all outworkers' legal rights to job security.
52. While the Award's protective provisions relating to work in the clothing industry generally clearly strengthen the legal rights of outworkers, those legal rights are fundamentally dependent upon the interacting operation of clause 26, 27 and 27A of the Clothing trades Awards. As noted above, clause 27A is the essential prerequisite for identifying which clothing industry employers give out orders for clothing work. In turn clause 27 defines the legal rights of the individual outworkers who ultimately perform that clothing work in their own homes. In general, clause 27 requires the immediate employer (of those individual outworkers) to provide (to those outworkers) wages and conditions equivalent to the wages and conditions prescribed (by the Award) for clothing factory workers. Most importantly, clause 27 also requires the immediate employer (of those individual outworkers) to provide to each outworker a documentary, easily comprehensible explanation of the legal rights and entitlements of that outworker. (The content of that explanatory document is prescribed by Schedule M of the Award.) Finally, clause 27 (and related provisions) accept a statutory declaration made by the outworker as proof of work done, unless the employer can prove that the work was not in fact done by that outworker.
53. While clause 27 defines the legal entitlements of outworkers and clause 27A required employers (who give out clothing work) to officially identify themselves (by means of registration), clause 26 renders transparent the entire process taking place between the initial giving out of clothing work (by employers) and the ultimate performance of that work (in the home of the individual outworker). In particular, clause 26 requires that every employer giving out clothing work keep records about specified details of each order (of

clothing work) given out. In addition, every employer giving out clothing work must clearly identify exactly to whom the work is given and must inform the Industrial Registry about these destinations (of clothing work given out) on a regular basis. In this way, clause 26 is the essential prerequisite for tracking an order (for the production of a particular garment) from the employer who originally gave out the order (for production of that garment) through all the intervening stages of contractors and makers all the way down to the outworker who sews that garment at home, since each of these intervening contractors and makers is individually obliged to register their subsequent giving out of the same order (pursuant to clause 27A) and is also individually obliged to notify the Industrial Registry about the exact identity and address of the party to whom that same order is subsequently given out (pursuant to clauses 26 and 27). The amendment of clause 26 in the Award (which occurred approximately two and a half years ago) has permitted the TCFUA to more effectively identify individual outworkers, at potential risk of exploitation.

54. Although a clause in similar terms has existed since 1987 it did not operate as effectively as possible. One of the reasons for its less effective operation was that, when makers were asked for details of the outworkers they used, the makers simply stated that they did not use any outworkers and the TCFUA could not prove otherwise. Prior to the 1995 amendment, fashion houses refused to release information about the volume of work given out to particular makers (citing such information as "confidential") even though such information was crucial to determining whether the makers concerned must have have been using outworkers (in particular, where the volume of work accepted by a particular maker exceeded the factory capacity of that maker).
55. The 1995 changes to Clause 26 (which followed extensive negotiation with the employer organisations in each State and which were ultimately made by consent) placed an obligation on the fashion house to disclose information about orders that were being filled by makers and the names of the makers filling those orders. Clause 26 also requires the fashion houses to provide a high level of detail including the number of garments made in any single order, the style of those garments, the stitch type of those garments, the time taken for production of each garment, the price paid for each garment and a rough drawing of the garment. Through these 1995 amendments, clause 26 now makes it possible to track an order (for production of an individual garment) all the way from the employer (who originally gave it out) to the outworker who sews it at home.
56. The 1995 changes to the clauses have improved the TCFUA's capacity to enforce the award provisions with respect to outworkers
57. Any move to reduce the protections contained in clauses 26, 27, 27A and related provisions would also undermine the competitive position of those honest clothing industry employers who resist the trend towards exploitation and insist on proper payment and treatment of all their employees (both inside and outside factories). The battle for survival by such honest

employers will surely be lost if the Commission rewards the exploiters by removal of outworker protections.

### Codes of Conduct/Deeds of Co-operation

58. During the period leading up to the abovementioned amendment of Clause 26, the TCFUA was concurrently negotiating an agreement with Target entitled "The Deed of Co-operation" ("the Target Agreement"). A copy of the Target Agreement is **Attachment E** to this statement.
59. With the Target Agreement, it was possible to visit each fashion house and present the fashion house with a breakdown of each unit of clothing (and the price paid for it by Target) which has been supplied by that fashion house over the past six months. The fashion house was thus forced to disclose the names of the workers used to produce the garments (supplied to the retailer) as well as the names of the makers.
60. As Target is a large retailer, they were able to provide the TCFUA with the names of approximately 300 fashion houses nationwide, a significant proportion of which were in NSW.
61. As a result of visiting one fashion house that dealt with Target, the TCFUA became involved in negotiations for a code covering retailers, homeworkers and manufacturers on one agreement.
62. Deeds of cooperation in similar terms were also entered into with Witchery Fashions Pty Ltd; Just Jeans Pty Ltd; Country Road Pty Ltd; Ken Done and Associates; Australia Postal Corporation. Copies of these form **Attachment F** to my statement.
63. Of all these codes the one entered into with Ken Done and Associates Pty Ltd is probably the most comprehensive in terms of the legal sanctions extending down to the protection of outworkers.
64. The Deeds of Co-operation were important in that they contained "social clauses" which expressed the signatories' commitment to avoid exploitation of outworkers. The Deeds also enabled the TCFUA to obtain information from fashion houses which could then be used to force makers to disclose the true position in relation to their use of outworkers.
65. I have recently used the Target Agreement to obtain compliance with the Award where a fashion house (which I knew to be using outworkers) was refusing to register as a user of outworkers as required by Clause 27A of the Award. I called Target and informed them that one of their suppliers was refusing to register. Target agreed that this was a breach of the Award which brought into operation the Target Agreement, whereby Target would contact the fashion house and inform the fashion house that Target would cease purchasing from that supplier unless the supplier registered in accordance with Clause 27A. The TCFUA will take further steps against that fashion

house for its non-compliance with the Award, although (from previous experience) I anticipate that the fashion house will register after being contacted by Target.

66. In sum, the Deeds enable us to inform retailers about the specific fashion houses which supply those retailers yet do not comply with the outworker provisions in the Award. Thus, these Deeds would have no value in the absence of the protective provisions in the Award. Such Deeds are not a substitute for the Award - they only build upon the protective provisions for outworkers currently contained in the Award.
67. Even these Deeds are partly deficient in that they do not provide a transparent procedure whereby the production of garments can be tracked from the retailers down to the level of the individual outworker and back up the chain of production. It has been the TCFUA's experience that, unless concurrent agreements could be entered into with each of the main players in the clothing industry, it would be correspondingly more difficult to enforce award conditions.
68. This is why the (recently agreed) comprehensive Code of Practice is so important. The Code is **Attachment G** to this statement. It is divided into two parts. The first part has been executed by the Australian Retailers' Association ("the ARA"). Retailers who are members of the ARA have also executed the Code, their names appear under the signing clause containing the ARA's signature. The TCFUA believes that approximately 70% of all retailers are now signatories to the Code.
69. Those retailers who are not members of the ARA can sign to the Statement of Principles that appears in the first section of the Code's second part.
70. The second part of the Code is entitled "Homeworkers Code of Practice" and applies to the fashion houses. This has been signed by the major parties including Australian Chamber of Manufacturers, Australian Business Chamber, and the Council of Textile and Fashion Industries of Australia Ltd. A number of fashion houses have individually signed the Code. A list of their names appears at the fifth page of the Code, Appendix 2 to the Code discloses the most recent signatory, Rumours Clothing Company, Newcastle, which signed on 11 May 1998. A list of fashion houses, retailers and companies that have entered in to the Code of Practice or other agreements aimed at the elimination of the exploitation of outworkers is at **Attachment H**.
71. The TCFUA estimates that approximately 70% of fashion houses have signed the Code. The first meeting of the Code of Practice Compliance Committee met on 11 May 1998.
72. At this stage the Code is essentially only a statement of principles. The Code, however, is only one part of the process of obtaining proper rates of pay and conditions for outworkers. The next step of the process involved obtaining federal funding with a view to establishing a manual which is based

on realistic time and motion studies undertaken by Method Engineers who will visit fashion houses and determine a proper time and price structure for the making of various garments. Once that process has been completed, there will be a proper basis for calculating reasonable hours of work and an overall transparency of the process for the manufacture of garments (from the fashion houses to the outworker and back). Once this model is established, it will be tested against both work undertaken by factory workers and work undertaken by outworkers.

73. The final product of this review will be a comprehensive manual which sets out the number of minutes that will apply to the production of classes of garments. All signatories to the Code will be required to ensure that the proper rate of pay applies to the production of those garments, from the retailer, through to the fashion house, through to the maker, and through to the outworker. There will be no opportunity for any of these to deny that a particular garment takes less time to make than that claimed by the outworker.
74. When the manual has been established, the parties to the Code will enter into a certified agreement which will specify appropriate piece rates (as derived from the Manual). The certified agreement will co-exist with the Award. It will be a means of simultaneously binding the retailers, fashion houses and makers into paying a proper rate of pay to outworkers, in accordance with the relevant Award provisions.
75. The effective establishment of the Code, the consequent enforcement of the Code provisions, and the enforcement of the related certified agreements will be impossible unless the protective provisions for outworkers remain in the Award.
76. The benefits of the Code to retailers is that they can sell garments (in their outlets) which can truthfully be promoted to consumers as being both Australian made and made free from sweated labour. Retailers are also currently benefiting to some degree by being publicly aligned against the exploitation of outworkers through the Fair Wear campaign which has been promoted by the TCFUA and the ACTU (during the course of producing the Code of Practice).
77. There are also benefits in the Code for fashion houses which can thereby obtain a fair price from retailers, and pass those benefits to makers and outworkers. Consumers will also benefit as the proper payment of outworkers will reduce the burden on consumers who are currently indirectly subsidising the wages of outworkers.
78. The two most critical steps for the completion of the Code process are (i) obtaining Federal Government funding to produce the manual; and (ii) preserving Clauses 26,27 and 27A in the Award.

79. Once this process has been completed, the TCFUA is considering establishing an outworker co-operative that will employ outworkers with proper wages and conditions. It is expected that the co-op will compete with makers to obtain work from fashion houses. Such a co-op would accord greater respectability and visibility to the clothing industry. It would also address the needs of outworkers who express to the TCFUA a desire to work in accordance with proper award conditions.
80. Such a co-op could not viably operate at present as it could not compete in a market where underpayment of outworkers suppresses the price of garments offered by exploitative makers.
81. The TCFUA has also recently negotiated a code of agreement with the NSW State Government. This agreement is to my knowledge, the only one of its kind in Australia. The effect of the N.S.W. Government code is to ensure that one particular body is responsible for the proper payment of wages regardless of any further process of subcontracting that may occur. If the N.S.W. Government enters into an agreement with supplier X to provide garments to the NSW Government, supplier X is ultimately responsible for the proper payment of all persons engaged in the manufacture of those garments. The supplier cannot escape their responsibility by trying to shift responsibility down the line to subcontractors, middle men or other parts of the manufacturing chain. **Attachment I** to my statement is a full copy of the NSW Government Code of Agreement:
1. Code of Practice on Employment and Outwork Obligations. TCF Suppliers;
  2. Code of Practice at A Glance;
  3. Implementation Guidelines on Employment and Outwork Obligations;
  4. Model Tender Documentation and Contract Clauses.

This is the only government code existing in Australia and is an advance on other codes because it makes the principal contractor responsible for any exploitation by the principal or his sub-contractors.

### Enforcement Agencies

82. In more recent times the TCFUA has engaged Vietnamese speaking and Chinese speaking industrial officers who are available not only to service members working in factories but also to assist outworkers (who commonly are not TCFUA members). This practice stands in contrast to the lack of effort undertaken by the Federal Government's staff in enforcing the Award's protective provisions for outworkers. This lack of effort by Departmental staff is hardly surprising given the huge task, which would absorb a large portion of the resources and budgets assigned to the industrial inspectorate of the Federal Government.



83. It has been the TCFUA (and not Federal Government Staff) which has progressed the Code process to the current stage of implementation.

### Outworkers' Conditions

84. I have observed that outworkers commonly have significant variations in their hours of work. An outworker may have no work for some weeks on end causing significant financial hardship. A secondary effect of the maker deliberately withholding work from an outworker over a period of time is to increase that outworker's vulnerability to the maker's demands that the outworker complete work at a reduced price and/or within an unreasonably short time frame. It is common for a maker to demand that an outworker must complete manufacture of a batch of garments within a number of days and the outworker may be in sufficient need of the money offered to accept such work notwithstanding that it may involve working very long hours and necessitate using the services of other members of the family including spouses, parents and children in order to complete the order. It is also common for the maker to threaten the outworker. For example, if the outworker refuses to accept the order, the maker may threaten not to provide that outworker with any work in the future.
85. Although the Award provides for a 38 hour working week and further provides for penalty payments to apply to overtime work, and further provides for part-time work, it is the situation for many outworkers that their hours of work will vary from zero through to part-time to full-time with an excessive amount of overtime. The hours worked will invariably be irregular and that very irregularity is a source of exploitation of the outworkers. In addition, overtime payments are never made for work in excess of 38 hours worked. It is not uncommon for outworkers to work from early morning until midnight, seven days a week, in order to complete what their employers describe as "rush orders".

### Type of Work

86. In my experience outworkers working on ladies fashion garments almost invariably will make up a whole garment. It is my view that the work of outworkers undertaking such work could be classified at a Skill Level 4 under the Award. When I undertake claims for underpayment on behalf of outworkers I frequently calculate the payment at a Skill Level 3 or 4. The employers have not tried to assess the outworkers' skills, to my knowledge. Rather, it has only been our union which has repeatedly and systematically evaluated the appropriate Award skill levels for those thousands of outworkers who have sought the TCFUA's assistance throughout Australia.
87. Outworkers may be required to perform work on evening wear which involves sewing materials of a different kind and in particular materials of a delicate nature. They also may sew stretch material which is of a higher level of

difficulty than other material. They may also sew men's suits or other heavy material.

88. The difficulty in undertaking a proper evaluation of outworkers' work including the following:
- having access to the outworker at the time when they are actually performing the work (claims for underpayment are often made long after the work is completed)
  - overcoming language and other difficulties in approaching outworkers and arranging to value their work at their home (it is often big step for an outworker to contact the TCFUA in the first place and they often express reluctance and even fear of any further involvement by way of home visits to examine their work that they do or the conditions under which they perform it) By way of illustration, if a homemaker performing work in ladies fashion could be transported from her home to a factory which is paying proper award rates then there is no doubt that that particular worker's work would be assessed at a skill level 3 and possibly at a skill level 4. In particular an outworker transported to a factory in this way would be well experienced in working alone and without supervision. This factor is part of the reason why an outworker doing ladies fashion work may well be properly classified at a skill level 4 as the outworker must solve all problems herself without recourse to other assistance or persons with greater experience. In addition the outworker will often be skilled in repairing their own machinery. This is imperative for outworkers as without their machine they are unable to earn income at all.
89. The increasing effectiveness of the TCFUA in tracking down the movement of clothing work given out has opened the door to locating substantial numbers of outworkers and thereby offering those outworkers the prospect of appropriate skill level assessment in accordance with the skill level translation procedure of the Clothing Trades Award. This prospect will disappear if the TCFUA loses the ability to track the flow of production orders - an ability entirely dependent on the existence of Clause 26 (as amended in 1995) and further assistance through the mechanisms of the Code of Practice (whose implementation is itself entirely dependent on the interacting operation of Clauses 26,27 and 27A). The union has already demonstrated its ability to ensure such appropriate large scale skill level assessment throughout the clothing industry factory sector.

### Bargaining Power

90. Outworkers have little or no bargaining power in their dealings with their employers. These outworkers are frequently socially isolated by their language background in a society based on English language fluency. They are overwhelmingly female. Their families depend on the income from outwork for economic survival. They know that, if they do not accept clothing work (even subject to low pay, long hours and the possibility of being ripped

off), then others (equally desperate) will be willing to take the work under such appalling conditions. They know that they will be subject to victimisation by the suppliers of work if they attempt to secure proper pay and conditions for their skilled work at home. Their only recourse is to seek the help of the TCFUA - and our union can only help them if the Award provisions related to clauses 26,27 and 27A are retained in their current form.

### Recovery of Wage

91. The TCFUA handles at least 100 claims each year by outworkers seeking proper payment. The number of claims increases where the TCFUA or other organisation is involved in publicising issues related to outworkers; entitlements. It is not unusual for an outworker to come to the TCFUA claiming that they are owed a certain amount of money. On reviewing that case and applying award conditions, the actual amount owed is likely to be significantly in excess of the amount originally claimed by the outworker.
92. Providing that the TCFUA can identify the person responsible for paying the money to the outworker, the TCFUA will take steps to obtain the underpayment. In the large proportion of cases, the maker will settle the claim without the need of proceeding to the Court. In my experience, makers settle these claims because they do not wish to appear in Court and be subject to broader examination of their dealings with other outworkers.
93. However, there remains in my experience a very high level of underpayment of outworkers in the industry. To my knowledge, outworkers have been paid as little as two dollars for an hour's work.

### Conclusion

94. The TCFUA is concerned to ensure that the Award and statutory provisions relating to outworkers provide proper wages commensurate to the skills and experience of outworkers. Accordingly the TCFUA supports the retention and improvement of current Award provisions by the Industrial Relations Commission with the particular objective of ensuring that employers cannot avoid their obligations to treat outworkers as employees and pay the Award rate.
95. Any examination of these current Award provisions will reveal their necessity given the extent of the problems faced by outworkers in obtaining wages and conditions, and will reinforce the need for all parties connected to this industry, and indeed the community at large, to face up to their responsibilities in ensuring that outworkers obtain the benefits accorded to workers under the industrial relations system. The "invisibility" of outworkers' work has not only made enforcement of award and statutory conditions more difficult, it has also prevented proper consideration and analysis of the work done by outworkers and of the true value of the skills used to do that work. Accordingly the TCFUA supports any process that brings those issues out

into the open as this will assist the TCFUA in obtaining award entitlements for outworkers.

96. Any diminution of the Award's current protections for outworkers would make it impossible to enforce the legal entitlements of outworkers as defined by Clause 27. In particular, removal or restriction of Clause 27A would make it for more difficult to identify the employers who gave the work to those outworkers - and, without such identification, there can be no such enforcement. Similarly, any diminution of Clause 26 would also make it impossible to track the movement in the flow of clothing work orders given out and would thereby make it impossible to locate the ultimate outworkers (in order to determine whether those outworkers were receiving Award entitlements in accordance with clause 27). In addition, the removal of the statutory declaration provisions of clauses 26 and 27 would prevent effective enforcement of any remaining legal entitlements for outworkers, given their overwhelming lack of English language fluency and their social isolation (and the corresponding lack of witness evidence available to assist these outworkers).

Sworn by the deponent )

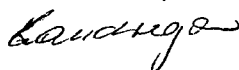


Barry Tubner

at Sydney )

before me )

Justice of the Peace )



**C. LANDRIGAN**  
JP 9602652