



Productivity Commission
Review into the Workplace Relations Framework

Submission by the
Textile Clothing and Footwear Union of Australia
(2 October 2015)

In Response to the
Productivity Commission Draft Report
(4 August 2015)

1. INTRODUCTION

- 1.1 The Textile, Clothing and Footwear Union of Australia ('TCFUA') appreciates the opportunity to provide this submission in response to the Draft Report¹ ('PC Draft Report') released by the Productivity Commission as part of its Review into the Workplace Relations Framework ('PC Review').
- 1.2 This submission is further to the TCFUA's detailed written submission² to the Productivity Commission in March 2015, which responded to various matters raised in the Issues papers released in January 2015 ('TCFUA First Submission')
- 1.3 Additionally, the TCFUA (together with three of its members) also appeared and provided oral evidence at the subsequent Productivity Commission Hearing held in Melbourne on 8 September 2014.³
- 1.4 TCFUA also supports the submission made by Australian Council of Trade Unions ('ACTU')⁴, and the submission of the National Working Women's Centres (NWWC).⁵
- 1.5 The TCFUA's submission in response to the PC Draft Report is confined solely to issues affecting TCF industry outworkers. However, this should not be interpreted as meaning that the TCFUA otherwise supports the Recommendations of the Productivity Commission. On the contrary, the TCFUA strongly opposes the great majority of the Recommendations made by the Productivity Commission on the basis that, if implemented, they would seriously disadvantage low paid workers in the TCF Industry. This point was made expressly in the TCFUA's oral evidence to the Productivity Commission.

¹ Productivity Commission Review into the Workplace Relations System; Draft Report (4 August 2015)

² TCFUA Submission (27 March 2015) to the Productivity Commission Review into the Workplace Relations System

³ See Productivity Commission Review into the Workplace Relations System; Hearing (Melbourne 8 September 2015); Transcript at pp 103 - 122

⁴ ACTU Submission (25 September 2015) to the Productivity Commission Review into the Workplace Relations System

⁵ NWWC Submission (23 September 2015) to the Productivity Commission Review into the Workplace Relations System

2. TCF OUTWORK

- 2.1 The PC Draft Report totals 985 pages in total. Of that, the Draft Report deals expressly with the issue of TCF outworkers in 3 pages.⁶ This illustrates that the Productivity Commission has taken an extremely cursory examination of the working conditions of TCF outworkers and the legal and industrial regulation of outwork as form of engagement.
- 2.2 The PC Draft Report notes that '*Outworkers have not featured prominently in submissions to this inquiry*'⁷ yet completely ignores those parts of the TCFUA First Submission to the Productivity Commission which dealt with the position of TCF Outworkers.⁸ Further, the TCFUA Submission contained a detailed list of references to numerous reports, studies, research and legal authorities which, in combination, comprehensively demonstrate that TCF outworkers as a class of worker are particularly vulnerable to exploitation.⁹ None of this material is referenced at all in the PC Draft Report and represents a glaring omission.
- 2.3 Instead, the PC Draft Report seeks to briefly summarise various submissions made to the Post Implementation Review (2014) into the *Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012 (Cth)*. Despite the detailed and comprehensive submission made by the TCFUA to the Post Implementation Review, this submission is summarised in one paragraph in the Draft Report.¹⁰ For completeness we have attached to this submission, the TCFUA's submission to the Post Implementation Review.
- 2.4 As the PC Draft Report notes itself, the Report to the Australian government arising from the PI Implementation Review is still not publicly available.¹¹
- 2.5 Despite the above, the PC Draft Report makes a series of unsubstantiated observations and conclusions regarding the need for the TCF Industry amendments to the Fair Work Act 2009 ('FW Act') in 2012. These include that '*there is little to suggest that the FWO could not target and rectify sham contracting and exploitative behaviour in the TCF industry much in the same way it does in other industries.*' In our submission, this assertion illustrates a clear misunderstanding as to the nature and reality of outwork, the particular

⁶ Productivity Commission Review into the Workplace Relations System; Draft Report (4 August 2015); at pp 734 – 736.

⁷ Productivity Commission Review into the Workplace Relations System; Draft Report (4 August 2015); at p 734

⁸ TCFUA Submission (27 March 2015) to the Productivity Commission Review into the Workplace Relations System; see Executive Summary (p4), paragraphs 1.4, 2.1, 2.8, 3.1 – 3.9, 4.1 – 4.13, 6.4

⁹ TCFUA Submission (27 March 2015) to the Productivity Commission Review into the Workplace Relations System; see footnotes 21 – 24 (pp13-14)

¹⁰ Productivity Commission Review into the Workplace Relations System; Draft Report (4 August 2015); at p 735

¹¹ Productivity Commission Review into the Workplace Relations System; Draft Report (4 August 2015); at p 734

character of sham contracting in the TCF industry and the major compliance challenges in this area.

2.6 TCF outwork is undertaken in an outworkers' home or other non-business premises. A common feature of outwork is significant levels of social and community isolation. The wages and conditions under which outwork is performed is often hidden as it occurs at the end of long and complex clothing supply chains by a mostly female, migrant workforce. Typically, outworkers are often fearful of losing work and are reluctant to make a complaint about their working conditions. Without clear transparency at each level of a clothing supply chain, it is virtually impossible to identify the numbers of workers, the volume of work being undertaken and whether workers are receiving their correct wages and entitlements.

2.7 As the national union which represents the interests of workers in the TCF industry, including outworkers, the TCFUA has had a long and significant role in identifying non-compliance in the sector. Over the last 20 years, the TCFUA has prosecuted over 100 principals/fashion houses in the clothing industry for breaches of important outworker provisions in the Textile, Clothing, Footwear and Associated Award 2010 ('TCF Award 2010'), and its predecessor, the Clothing Trades Award 1999 ('Clothing Award 1999'). The Federal Court decisions in a number of these prosecutions are referenced in the TCFUA's First Submission.¹² As far as the TCFUA is aware, there have been no prosecutions initiated by the FWO or its antecedent organisations in respect to breaches of outworker terms in the TCF Award 2010, or the previous Clothing Award 1999.

2.8 The TCFUA rejects the conclusion in the PC Draft Report that it has not received *evidence* of the need for the TCF amendments to the FW Act in 2012. Again, this ignores the content of TCFUA's First Submission and the overwhelming and consistent findings of 20 years of research and inquiries into TCF outwork (which are referenced in the TCFUA's First Submission). Such a conclusion also ignores the direct outworker evidence provided to the Senate Standing Committee on Education, Employment and Workplace Relations, Inquiry into the Fair Work Amendment (Textile Clothing and Footwear Industry) Bill 2011 and the subsequent report of the Committee.

2.9 In this context, the TCFUA strongly rejects the conclusion in the PC Draft Report that there is 'little justification for the changes.'

2.10 More recently, at the Hearing of Productivity Commission in Melbourne, the TCFUA and one of its members (Ms Ha Tran) provided evidence regarding the need for, effect and impact of the 2012 TCF industry amendments in relation to

¹² TCFUA Submission (27 March 2015) to the Productivity Commission Review into the Workplace Relations System; see footnote 23 (p14)

outwork conditions.¹³ At the Hearing, Ms Tran gave evidence of her (and her husband's) working conditions prior to TCF amendments, including that they received 'on average \$6.00 per hour', that the company treated them like contractors, and that they worked seven days per week, with a minimum of 12 hours per day. ¹⁴In regard to the impact of the 2012 amendments to the FW Act, Ms Tran's evidence was that:

*'Finally, we realised that the law was there to protect our working condition and that the union would assist the workers but at the same time to have the company do the right things. So after the union assist to have [solve] the problem now we relieved to continue working in the industry that we always love[.] [T]he boss because they're with respect on money order have been fixed, timing adjusted, regular work is delivered and pick up by company. We get paid every two fortnight – and entitled to work a normal in house worker would have. Our children are very happy that we could spend time with them now. So we than you; thankyou for taking care of the outworkers like us. So it could be worse for us if these conditions are taken away. That means we have to go back 20 years.'*¹⁵ [TCFUA note: the TCFUA believes that there are a number of grammatical errors in the Transcript of the Hearing and have included in [brackets] what it believes is the correct statement]

2.11 At the Hearing, the TCFUA also tabled a copy of the most recent academic research in Australia into the working conditions of TCF Outworkers. The study by Professor Christina Cregan and Philip Johnstone titled, *'Wages and Conditions of outworker in the clothing industry in Melbourne, Victoria (Part 1)'* ¹⁶investigated the wages and working conditions of 56 clothing outworkers in Melbourne with a subsequent report was published in June 2014.

2.12 The Cregan & Johnston Report shows that the outworkers continue to suffer from very poor working conditions, including being subjected to sham contracting, long hours and low wages. However, the Report also highlights that (since the passage of the 2012 TCF Industry amendments), there had been some improvement in the level of compliance in the outwork sector.

2.13 A copy of the Cregan & Johnston Report is attached to this submission.

¹³ Productivity Commission Review into the Workplace Relations System; Hearing (Melbourne 8 September 2015); Transcript at pp 103 – 122; Evidence of Ms Michele O'Neil (pp 104-109); Evidence of Mrs Ha Tran (pp 111 – 112).

¹⁴ Productivity Commission Review into the Workplace Relations System; Hearing (Melbourne 8 September 2015); Transcript at pp 103 – 122; Evidence of Mrs Ha Tran (p 111).

¹⁵ See Productivity Commission Review into the Workplace Relations System; Hearing (Melbourne 8 September 2015); Transcript at pp 103 – 122; Evidence of Mrs Ha Tran (pp 111 – 112).

¹⁶ Cregan, C & Johnstone, P: Wages and Conditions of Outworkers in the clothing industry in Melbourne, Victoria (Part 1); University of Melbourne

AIG Submission

2.14 The AI Group in its most recent submission to the Productivity Commission, states that it opposed the 2012 TCF Industry amendments to the FW Act, and that that 'the provisions are operating against the interests of TCF businesses, TCF workers and the broader community.'¹⁷ The TCFUA strongly rejects these submissions. There is no evidence at all from the AI Group or any TCF industry employer before the Productivity Commission to this effect.

Authorised and submitted by:

Michele O'Neil
(National Secretary)
Textile Clothing and Footwear Union of Australia

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¹⁷ AI Group Submission (23 September 2015) to the Productivity Commission Review into the Workplace Relations Framework: Response to Draft Report; at pp 61