

# **PRODUCTIVITY COMMISSION INQUIRY INTO POST 2005 TEXTILE, CLOTHING AND FOOTWEAR ASSISTANCE ARRANGEMENTS**

## **DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS' SUPPLEMENTARY SUBMISSION IN RESPONSE TO POSITION PAPER, *REVIEW OF TCF ASSISTANCE***

The Department of Employment and Workplace Relations made a full submission in March 2003 to the Productivity Commission's Inquiry into Post 2005 Textile, Clothing and Footwear (TCF) Assistance Arrangements.

This is a further submission in response to two issues raised by the Commission's position paper, *Review of TCF Assistance*, relating to the proposal for a review of employee entitlements and comments regarding regulation to protect outworkers.

### **Independent review of employee entitlements**

The Commission's paper suggests an independent review of the issue of employee entitlements in the industry. The Department does not support such a review. An inquiry into Australia's insolvency laws is currently being conducted by the Parliamentary Joint Statutory Committee on Corporations and Financial Services. The treatment of employee entitlements is included in the terms of reference for that inquiry.

We note the criticisms of the General Employee Entitlements and Redundancy Scheme (GEERS) reported in the position paper, namely that the level of assistance in relation to redundancy payments is insufficient to cover substantial accrued redundancy entitlements.

We reiterate, however, that it is a policy of the Government that the primary responsibility for funding for employee entitlements must remain with employers. GEERS along with the *Corporations Act 2001* represents a safety net, and operates after the responsibility of employers to meet employee entitlements. As stated in our initial submission, employers and employees need to refrain from developing overly generous redundancy arrangements. We recommend that the final report of the Commission contain recommendations for implementation at the workplace level that would reduce the incidence of abnormally high levels of redundancy entitlements in this industry, which have been identified as an impediment to restructuring.

### **Regulation to protect outworkers**

The Commission warns against overly prescriptive approaches to protection of outworkers, as heavy handed regulation in this area could drive more production offshore. It proposes deferring introduction of any further legislation to allow time for implementation and assessment of the voluntary Homeworkers Code of Practice.

The Department agrees that excessive regulation of outworkers may reduce economic opportunities for people who prefer outwork in the TCF industry, or for whom it represents one of a limited range of opportunities. We agree with the Commission that balance is required in

regulating protection of outworkers. There must be clear and important reasons to justify any such regulation.

It is generally accepted that TCF industry outworkers often receive payment and work under conditions which are inferior to those applicable to factory workers doing comparable work. Contract outworkers are often particularly disadvantaged due to a lack of clarity concerning their rights and entitlements.

As stated in our initial submission, the intention of the Government's Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2002 is to limit statutory protection to ensuring minimum rates of pay for contract outworkers in the TCF industry in Victoria, while maintaining the flexibility of contract working arrangements. The Commonwealth has introduced legislation to protect Victorian TCF outworkers because of the special role of the Commonwealth in Victoria, following Victoria's referral of a broad range of industrial relations powers to the Commonwealth in 1996.

Implementation of the voluntary Homeworkers Code of Practice does not of itself provide a sufficient basis for the Commonwealth to resile from its commitment to ensure minimum pay rates for outworkers in Victoria.

Given that a number of States have deemed contract outworkers to be employees, the Commonwealth's regulation of Victorian outworkers is considerably less onerous than regulation that deems outworkers as employees. Deeming provisions limit the freedom of outworkers to determine their own working arrangements, and could result in reduction in business opportunities.

Accordingly, the Department supports the Commission's call for deferral of regulation, in so far as it may relate to State Government proposals for deeming provisions. However, the Commonwealth would maintain that its proposed legislation to provide minimum rates of pay for contract outworkers in Victoria represents a legitimate attempt to improve the working lives of outworkers in the TCF industry. It is an example of appropriate regulation in this area.