

**Work Justice  
Supporting Outworkers  
InfoAction Sheet  
September 2005**

**HOW THEY ARE GOING TO DO IT?**

**1. *Overriding State Legislation***

The Federal Government plan will override the NSW Ethical Clothing Trades Act and other hard fought for new laws in each State that protect outworkers and the mechanisms for monitoring the clothing industry. This is part of overriding all State industrial relations legislation in the name of having one uniform industrial relations system.

**2. *Shifting outworker status to “independent contractors”***

The Government’s plan will also override the “deeming provisions” in the states. Deeming provisions mean that although outworkers have contracts to provide goods, they are recognised as employees and therefore entitled to award wages and conditions. The Minister confirmed the Federal Government has no intention of replacing these with a Federal deeming provision. This will mean that outworkers revert to being independent contractors, with no entitlement to the award.

**3. *Removing minimum rights and monitoring mechanisms***

The Government’s plan will disallow outwork as a matter to be covered in industry awards. This will mean the removal of the relevant clauses in the Clothing Trades Award that give details of outworkers’ rights and mechanisms the union can use to monitor the industry. There appears to be no appropriate place for these mechanisms within the new legislative framework.



**UnitingCare NSW.ACT**

**Work Justice – Supporting Outworkers**

**Rev. Dr. Ann Wansbrough**

UnitingCare NSW.ACT is concerned about the effects of changes to workplace relations law being proposed by the Australian Government. In our info-action sheet *Work Justice* we focused mainly on changes to the Workplace Relations Act. In this sheet we focus on changes to other laws that will also affect the pay, conditions and rights of workers.

The Uniting Church has for many years supported the Fair Wear Campaign, aimed at improving the conditions of outworkers in the garment industry. Some of the proposed changes raise particular problems for these workers. These must be addressed and we urge congregations and church members to write to the Minister for Workplace Relations and to Senators about this.

**Legalising Exploitation**

Fair Wear (including representatives of the Uniting Church) met with the Minister for Workplace Relations, Hon. Kevin Andrews, on Wednesday 24<sup>th</sup> August. The Minister outlined the Government’s plans. Having assessed the assurances given at the meeting, Fair Wear has concluded that the proposals are likely to leave outworkers in the garment industry unprotected. The changes will undermine the work Fair Wear has done in 10 years of campaigning and the work of the Textile Clothing and Footwear Union for more than 15 years, to protect outworkers from exploitation

- The Government’s plans will remove or override all existing, specific outworker protections put in place by the states. These were put in place because outworkers lack power to bargain for a fair contract.
- Without these specific protections the exploitation of outworkers will be essentially legalised, as outworkers will become independent contractors who “freely” enter into contracts to earn \$3 to \$4 an hour.
- The Government will also remove the mechanisms that allow monitoring of the clothing industry to identify and remedy the exploitation throughout supply chains.
- The Homeworkers Code of Practice, which the Federal Government promoted and funded, will be heavily undermined by the removal of these specific protections. (The Code has been established and agreed to by the industry as a mechanism for addressing the exploitation of outworkers.)

**Assurances Not Enough**

The Minister has expressed Government concern for outworkers, but has not provided evidence of real protections under the new workplace relations laws. It seems that under the proposals, there will be no industry-wide protections, only some rights for outworkers as individuals.

Current laws, which will be overturned, assure that outworkers are recognised as employees unless individually proven otherwise. The Minister said these provisions will be replaced by a “definitional mechanism”. The problem is that under this mechanism, each and every worker will have to

*cont over ...*

## URGENT CALL TO ACTION TO PROTECT OUTWORKERS!!!

- **UnitingCare NSW.ACT supports Fairwear's call to:**
- **Retain in full the existing outworker provisions in the Clothing Trades Awards**
- **Retain all provisions that deem outworkers to be employees**
- **Retain the union's right of entry to monitor the whole clothing contracting chain to stop exploitation of outworkers.**
- **Meet international obligations in regard to labour conditions and ratify the ILO Convention No. 177 on Homework.**

### PLEASE WRITE TO THE FEDERAL GOVERNMENT

Please write polite and respectful letters to Minister Andrews and to one or two of the Liberal Party Senators in your State or territory that Fair Wear have identified as potentially sympathetic. Express your concern about the proposed changes to workplace relations law. Ask the Government to reconsider its plans and to ensure that all existing industry-wide outworker provisions and protections at state and national level are retained. Insist that the Homeworker Code of Practice, a voluntary industry agreement that the Federal Government has promoted and funded, not be undermined.

Suggested NSW senators are :

Senator Fiona Nash  
79 Main St  
Young NSW 2594  
Ph 6382 3400 Fax 6382 3499  
senator.nash@aph.gov.au

Senator Marise Payne  
PO Box CC18  
Parramatta 2123  
Ph 9893 5151 Fax 9893 5150  
senator.payne@aph.gov.au

*cont ...*

argue their individual case if they want to be recognised as an employee entitled to award wages.

Although the Minister claimed it was not the government's intention, he admitted that the result will be that outworkers can be treated as independent contractors.

*The need for an industry-wide response has been recognised extensively by governments, unions, the community and even industry.* When the Outworker clauses in the Clothing Trades Award were last challenged in 1998, the Full Bench of the Australian Industrial Relations Commission ruled they should be kept "in their entirety" as essential mechanisms for protecting outworkers and monitoring the industry.

The proposed changes will replace the current protections and force outworkers to go to courts or tribunals on a case by case basis to challenge the exploitation they experience. Migrant women outworkers with limited English skills and limited financial resources have demonstrated repeatedly that they are fearful, reluctant, and often unable to take such steps.

### In Summary

What outworkers need is a systemic response to systemic exploitation, with mechanisms for monitoring the whole clothing production chain and regulating the rights of outworkers as a group. Under the proposed changes, exploited migrant women outworkers will be left to seek individual remedies. At best, outworkers will have mechanisms they can individually use to try to seek a remedy for the exploitation they experience. This is unacceptable.

### *Will other workers be affected by these changes?*

*Outworkers are by no means the only people likely to be adversely affected by the changes outlined here. The removal of deeming provisions will affect many groups of workers. Owner-drivers in the transport industry, tradespeople in the construction industry, nurses, salespersons and cleaners are among those groups who are increasingly reliant on contracts for their work, rather than permanent employment. Submissions to a Senate inquiry earlier this year reveal concerns among these groups.*

*The basic problem is that many companies are increasing their use of contractors, even though they, not the contractors, control the workplace and where, when and how work is done. Independent contractors have to take responsibility for remitting their own tax to the tax office, and get no superannuation or leave. Who is responsible for occupational health and safety becomes a major issue. "Deeming provisions" in state legislation recognise that contractors are not always "independent", and protect workers by "deeming" them to be employees and therefore covered by the relevant awards, and make their employer responsible for matters such as OHS and workers compensation insurance. Removal of deeming provisions will leave these workers to prove, through the court system and therefore at considerable expense, that they are employees.*

*There are already many sham contracts in which employers call employees "contractors" as a way of avoiding responsibility. They are likely to increase when the current protections are removed. While the Australian Government has expressed some concern about "sham" contracts, the proposals seem likely to remove the current protections and leave it up to individual workers to prove that the contract is sham. This is unjust and inefficient. "Concern" is empty if it is not matched by policy that protects workers efficiently and effectively and encourages employers to act responsibly.*

### Updates and briefings

[www.fairwear.org.au](http://www.fairwear.org.au)

Ph 03 9251 5270 or Ph 02 9793 9150

*Please also look for the Fairwear wallet card included with this mailing.*