

THE STRUGGLE FOR OUTWORK REFORM IN THE AUSTRALIAN CLOTHING INDUSTRY



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The Australian clothing industry is often regarded as a relic from a previous industrial age ill-suited to the demands of a more 'knowledge-intensive' nation. As the industry commentator Fraser McEwing (2001a) recently stated, 'more and more people are embracing the view that clothing factories do not fit well with Australia's tech-filled future'. However, the distinction between 'old' and 'new' economies fails to capture the complexities of the modern Australian clothing industry, which combines a world of image makers, designers, marketers and other symbolic analysts with elements of highly exploitative work practices associated with outwork. These practices have been described by the NSW government as 'one of the state's most serious labour problems' (NSW Department of Industrial Relations [NSW DIR] 1999, 10).

The first part of this paper discusses the scale and scope of outwork in the clothing industry, followed by an examination of the key participants in the clothing commodity chain. This highlights the difficulty of assigning 'responsibility' for exploitative conditions under circumstances where the employment relationship is ambiguous. This paper argues that the large retailers and manufacturers must shoulder greater responsibility due to the key organising role they perform in the clothing commodity

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chain. However, it also argues that the specific circumstances surrounding the clothing labour market make it imperative that governments accept their responsibility for regulating wages and conditions as well as ensuring greater chain transparency.

The paper also examines a variety of strategies that have addressed outwork over the past decade and argues that effective reform depends on maintaining a multifaceted approach that combines legislative reform, voluntary codes of practice, consumer pressure and international solidarity campaigns. Furthermore, the paper concludes that there is a growing recognition that effective reform will involve changes in the relationship between firms along the commodity chain as well as altering relations at the multiple sites of production that constitute clothing production chains.

Definitions and Statistics: What's at Stake?

While a small number of specialist clothing outworkers are well paid and experience high levels of job satisfaction, the reality for most outworkers is an environment pervaded by OHS problems, overwork, insecurity, intimidation, fear, physical violence, fraud, non-payment, underpayment, withholding of payment and disempowerment (Cregan 2001; Textile Clothing Footwear Union of Australia [TCFUA] 2000; TCFUA 1995; Chang 2000; Collins Report 1996). While most industry observers agree that outwork conditions need to be improved, there is more disagreement over the definition of an outworker and the scale of the problem. This opening section explains why these controversies are more than detached statistical issues. They are laden with political meaning that relate to questions concerning the urgency of reform.

The ambiguity surrounding the definition of outworking provides a useful platform to appreciate the complexities of the clothing commodity chain. On the one hand, outworkers exhibit many attributes of employees, including limited autonomy over production methods and work scheduling, an inability to sell services directly to the public and a lack of economic independence from their direct employer (Industry Commission [IC] 1997, Vol. 2, D1; Collins Report 1996, 7). This employee status places workers under the protection of State and Federal

awards. Over the past fifteen years industrial legislation has been modified to deem outworkers as employees (NSW DIR 1999; Weller 1999). On the other hand, it has been argued that clothing outwork contains attributes of self-employment, rather than employee status. For example, there is evidence that many outworkers work for a variety of contractors, that they are generally paid according to the number of garments assembled rather than hours worked and provide capital contributions usually associated with independent contractors, including machinery, energy costs and transportation.

The contested nature of this employment status has crucial implications for the chain of responsibility ensuring that outworkers receive the protection they are entitled to under Australian laws. Despite the deeming of outworkers as employees, commentators have observed that many subcontractors use a variety of ruses in order to mask this relationship as one of self-employment (TCFUA 1995; NSW DIR 1999; IC 1997; Asian Women at Work [AWatW] 2000).

These definitional controversies could be overcome if adequate information was available documenting the scale and scope of outwork. However, outworkers remain 'isolated, unseen, unorganised, non-unionised, ignorant of their employment rights and have poor English language skills' (Collins Report 1996, 6). This 'hidden' nature of outwork allows a range of claims to be made concerning the significance of the practice. While some reports have downplayed the role of outwork, interpreting it as a relic of the past and therefore of marginal concern to the industry, others have claimed it now dominates clothing production in Australia and therefore requires urgent action.

Throughout the 1990s, numerous official reports tended to support the view that outwork was of marginal significance to the evolving, more global, Australian clothing industry. The prevailing view was that the 1989-94 TCF Plan would 'shake-out' the local industry. It was predicted that lower tariffs and a more open competitive global market would drive low-quality, low unit cost garments offshore leaving the industry 'leaner but meaner' and encourage local manufacturers into high quality niche markets (Textile Clothing and Footwear Development Authority [TCFDA] 1990; Mathews & Weiss 1991). To a certain extent this occurred. The Industry Commission's 1997 report on the TCF industries

noted that clothing imports had increased and employment declined significantly since the TCF Plan was implemented. However, it also noted a less significant increase in clothing exports and listed a range of local success stories in quality upgrading and production efficiency (IC 1997, Vol. 1, Ch. 1). This local transformation is consistent with global trends, whereby a growing proportion of clothing production has shifted from the advanced capitalist countries into the 'developing world' (Dicken 1999, Ch. 9; Bonacich et al 1994). This internationalisation of the Australian clothing chain was supported by the Federal government's Import Credit Scheme, providing duty credits to value-adding export firms which can be offset against TCF imports. This scheme, designed to transform the local industry into a more capital- and knowledge-intensive sector, encouraged manufacturers to relocate their assembly plants in the Asia-Pacific region where labour costs are cheaper (Weller 2001; Grynberg 1998).

This trust in the rationality of the market, supported by government programs, led many analysts and policy makers to consider outwork to be outmoded. For instance, the government-commissioned Werner Report reviewing the state of the industry in 1994 and the Commonwealth Government's Future Strategies Report assessing the TCF Plan largely ignored outwork (Commonwealth of Australia 1994, 16; Werner Report 1994). This reflected the assumption that 'inefficient' local outworkers would be eliminated by more efficient and cheaper imports. The Commonwealth Government's 1999 Action Agenda for the clothing industry devoted only a couple of hundred words to the issue, concluding that: 'The real issue facing homeworkers, however, is how they will fare in an industry which is facing increasing competition from low cost imports' (Department of Industry Science and Tourism [DIST], 1999, 22). According to these reports that downplay the significance of outwork, 'the real issue' lies in promoting the alleged benefits of free trade.

However, other reports suggest that outwork has been expanding, despite trade liberalisation. According to these commentators, the 'real issue' lies in addressing wage justice for outworkers, rather than assuming that they are an archaic remnant from a past industrial age. The 1996 Senate Economics Reference Committee Report (the Collins Report) warned that outworking 'is now so prevalent that it is not just a characteristic of

the industry, the entire industry is structured around it' (Collins Report 1996, xi). After initially embracing the TCF Plan, the Textile Clothing and Footwear Union of Australia (TCFUA) embarked on a national campaign to expose outwork exploitation and in 1995 released a report highlighting outwork abuses (TCFUA 1995). The report estimated that there were approximately 330,000 outworkers in Australia. This figure represented individuals whose main income is derived from assembling clothes, as well as others who take in work on an irregular basis and family members and friends assisting outworkers to meet tight deadlines. The TCFUA estimate translates into more than ten outworkers for each registered clothing factory worker. Other surveys that have highlighted the seriousness of the problem include the Evatt Foundation (1998), which estimated that there were approximately 150,000 outworkers throughout Australia and the NSW Government and Victorian Government, both of which have stated that there are at least 50,000 persons working as clothing outworkers in their states (NSW Department of Industrial Relations 1999; Victorian Government 2000). The Collins Report concluded that 'the number of outworkers has increased considerably over the last decade' (Collins Report 1996, 25). Both this report and the Industry Commission estimated that there are between 50,000 and 330,000 clothing outworkers, illustrating the extent of problem and its hidden nature (IC 1997, Vol. 1, 122).

Although it is difficult to estimate the outworker population with confidence, the evidence suggests that the practice is structurally significant to the industry. For example, even if the most conservative estimates are accepted (such as the Australian Tax Office's calculation of the equivalent of 20,000 full-time workers) this would represent a very substantial proportion of the machinists in Australia, considering that the ABS calculate that there were approximately 30,000 registered clothing workers in 1999. This conservative figure adds support to the claim that outwork, far from being an archaic practice, is central to the production of clothing in Australia, or at least certain sections of the clothing industry, such seasonal, quick-turnaround fashion items (NSW DIR 1999; Collins Report 1996, xi; IC 1997, Vol. 2, D2). However, it must be stressed that outwork is not confined to the fashion sector (Collins Report 1996, 9; TCFUA 1995).

Retail and manufacturing associations have disputed the higher estimates (IC 1997, Vol. 2, D11-2). However, they are not prepared to offer an alternative as they deny any detailed knowledge of the subcontracting system below the manufacturing level. As the following sections of this paper will argue, if outwork conditions are to improve, this will require an acknowledgement by industry participants, governments and consumers that large retailers occupy a central node of power along the clothing commodity chain.

Thus, the controversy over the scale and scope of outwork is more than a desire for statistical accuracy. It involves a series of subsidiary questions involving whether the practice is a relic from the past or a vision of the future and whether the practice is a peripheral feature of the industry or a structural pillar. The evidence from the various reports released over the past decade suggests that outwork has become a more prominent feature of the contemporary clothing commodity chain.

Factors Conducive to Outwork

The unique form that exploitation assumes within the clothing industry is associated with the techno-physical, social and economic environment surrounding the industry. These factors help explain why the growth in outwork over the past decade was a viable response to trade deregulation, intensified competition and global competition.

First, while most aspects of the clothing commodity chain have adopted capital-intensive methods of production, the assembly stage remains highly labour-intensive. The sewing machine remains the principal tool of production and within the means of an individual worker to purchase or lease. When these features are combined with the transportability of the clothing components, the ability of production to be undertaken in dispersed locations and the fluctuating demand associated with seasonal clothing, then outwork and small-scale production becomes a viable, even attractive, option (Greig 1992).

Second, a variety of social variables allow outwork to proliferate. In many societies sewing is considered a 'woman's task' and the value of the skill is often not fully acknowledged (Allen & Wolkowitz 1987).

Furthermore, as child-care responsibilities fall disproportionately on women, outwork appears for many to be a solution that allows the worker to meet the 'double burden' of domestic and paid labour responsibilities (Gannage 1986). Outwork is a manifestation of the limited options available to certain sections of the population (Webber & Weller 2001, 308; Rowbotham 1993; Thomas 2001; 7).

Third, clothing outwork in Australia has always relied on a pool of recent migrants. It has been estimated that up to 95 per cent of clothing outworkers are NESB women (IC 1997, Vol. 2, D23). The employment options of these groups are limited by a range of factors, such as: language barriers; unfamiliarity with local labour markets; lack of knowledge of local labour and tax laws, often making them prey to unscrupulous subcontractors; and the non-recognition of skills and qualifications accrued overseas. Changes made to immigration laws in 1996 that withdrew certain rights to access social security within the first two years of migration have further narrowed the options available to these groups (Collins Report 1996, 65-6; Markus 2001, 40-1). These characteristics of labour market disadvantage give force to the claim made by Asian Women at Work that outwork 'needs to be addressed as a social issue not just an industrial one' (AWatW 2000).

The following mental experiment helps illustrate how these features of the clothing industry are related to wider relations of inequality within Australian society. There would be a national outcry if Mitsubishi Motors announced that its operations in Australia were viable only if it reduced its wages for car assembly workers to six dollars an hour. The argument that 'this wage is better than no wage' would be drowned in a sea of voices defending the Australian ethos of a 'fair go' and the company would be attacked as exploitative and ultimately threatening the living conditions of all Australians. While a few hard-nosed economists might evoke the law of supply and demand, most Australians would look towards government to legislate against this massive reduction in wages. Yet, when it comes to clothing outworkers, governments continue to stall on reforms to address their exploitative wages and conditions. This could have something to do with the fact that these are principally women workers, recent migrants from non-English speaking backgrounds, and that their work remains hidden.

If the following Vietnamese outworker's view is representative (Statutory Declaration in TCFUA 2000, App. 7), then outworkers themselves clearly perceive the Australian industrial system to be discriminatory:

I think the shops and factories must believe outworkers eat less and can live on less than other people can. I don't want the work we do to go overseas but I don't think that we should be used to get less money than other workers we all do the same work.

These structural features of Australian inequality help explain why certain groups become outworkers and explain the lack of urgency surrounding reform. However, it is central to the argument advanced in this paper that certain agents along the clothing commodity chain increasingly have adopted outwork as part of their search for competitiveness. As the following section illustrates, key nodes along the commodity chain often rely on the exploitation of outworkers in order to increase their profit margins, lower their labour on-costs, avoid regulatory detection and achieve numerical workforce flexibility. Thus, charting the flow of clothing commodities, especially the role of retailers, manufacturers and subcontracting 'middlemen', can help target points for political intervention.

The Clothing Commodity Chain

Over the past decade, the environment created by the Commonwealth government's TCF restructuring plan, the reduction of protection levels and the growing power of key retailers encouraged manufacturers to 'downsize' through either moving offshore, converting from manufacturing to licencing or subcontracting manufacturing. Many responded by increasing their flexibility through the use of outworkers. Furthermore, the lack of transparency along the commodity chain has encouraged the evasion of responsibility for addressing the conditions that outworkers experience.

While outwork prevails within most sections of the clothing industry, few principal firms have direct contact with outworkers. A complex commodity chain unites the outworker with the principal (IC 1997, Vol.

2, D3; Collins Report 1996, 18-9). As a heuristic device, a 'commodity chain' involves more than a technical mapping of industrial inputs and outputs from conception to consumer. These chains are structured by relationships of power and dominance. For the purposes of this paper, the concept is used to reveal the key management and coordination nodes responsible for outwork.

The clothing industry can be classified as a 'buyer-driven' commodity chain, rather than a 'producer-driven' commodity chain. Within buyer-driven chains such as the clothing chain, large retailers occupy the key node and use their buying power 'to exact compliance from domestic as well as overseas apparel manufacturers'. According to Gereffi (1994, 96-9), the principal function of large retailers, trading companies and brand-name merchandisers in these types of commodity chains involves coordinating and managing production and distribution of decentralized networks rather than directly engaging in production itself.

The argument that retailers exert a high degree of influence along the Australian clothing commodity chain is supported by a variety of evidence. Despite the presence of thousands of small-scale clothing retailers, industry analysts accept that Australia's clothing retail sector is highly concentrated. According to the latest statistics, 0.5 per cent of stores employ 48.6 per cent of the workforce and account for 46.5 per cent of total sales (Australian Retailers Association 2001, 23; Baston 1996). The Coles Myer Group and the Woolworths Group dominate the sector, although each group has a range of independent clothing units. This market strength enables the largest clothing retailers to dictate terms and conditions to manufacturing suppliers (Ford 2000; Greig 1994; Greig 1990). In addition, retailers have become clothing importers and designers in their own right, directly competing with their manufacturing 'partners'. As a consequence, modern large retailers are 'price-makers' rather than 'price-takers' (Delaney 2000). A former manufacturer informed the Homeworkers Code of Practice Committee (2001, 24) that:

I had to get out of the business because the big companies kept pushing the prices down. Over the last fifteen years, the retailers have increased their profits incrementally. They make factories compete with each other, and change their suppliers constantly. It became worse in around 1988 ... I had no choice but to push

down the amount that I paid to my ladies (outworkers) because I had to find ways to meet my costs somehow.

Furthermore, more and more large retailers are adopting inventory control techniques and delivery scheduling – Quick Response and Supply Chain Management strategies - forcing suppliers to restructure their manufacturing practices in order to reduce lead times and produce smaller batch runs. It has been argued that these tight scheduling demands force local producers to rely more heavily on outworkers to fulfil orders (NSW DIR 1999, 21; TCFUA 1995).

Although the architects of the TCF Plan predicted that manufacturers would be forced to exit low unit cost sectors and enter more value-added markets, this did not exhaust the options available to local manufacturers (TCFDA nd; see also McCreddie & Booth 1991 for the TCFUA's vision). Many adopted the practice of subcontracting in order to externalise costs. Subcontracting the assembly process has numerous advantages for local manufacturers, including: lower labour costs through employing outworkers at below the award and avoiding other award conditions, such as hours of work; avoidance of labour on-costs such as workers compensation, superannuation and payroll tax; avoidance of capital costs such as machinery, energy, rental of premises, distribution and other incidental costs; assurance through low piece rates that workers will only be paid for irregular 'productive time'; and rapid turnaround for orders (NSW DIR 1999, 23). Thus, the productivity improvements envisaged in the TCF Plan did not necessarily materialise. While many large retailers and manufacturers adopted the rhetoric and the hardware of 'quick response' strategies, their 'flexible manufacturing systems' relied on more extensive exploitation of outworkers rather than opening up better relations of communication and trust along the chain.

Given their key nodal position along the clothing commodity chain, it is hard to avoid the conclusion that retailers are centrally implicated in the structure of outwork exploitation. As the following section on reform strategies will highlight, many other commentators, ranging from government departments, unions, manufacturers to consumer groups, have also argued that retailers must shoulder more responsibility for ensuring wage justice for outworkers. However, retailers reject any direct responsibility for outwork, asserting that they maintain an 'arms-length'

relationship with the supply chain (see comments from the Retailers Council of Australia in Collins 1996). The Australian Retailers Association (ARA), responding to a recent TCFUA claim that retailers must assume greater responsibility for the supply chain, stated that 'the fact of the matter is the problem is in the manufacturing sector' (*The Australian* 18/1/01). In a November 2000 news release, the Association maintained that retailers 'are in the business of selling to consumers and have no wish to exploit outworkers' (ARA 2000).

Manufacturers have also attempted to evade responsibility through drawing attention to the role of retailers, arguing that 'the demands made on suppliers by retailers, plus the competition of imports, creates the need to work with outworkers' (see comments by the Australian Chamber of Manufacturers in IC 1997, Vol. 2, D6). They have also defended themselves by arguing that the more liberalised global environment has left them with no local alternative but to subcontract to outworkers. Other manufacturers and retailers claim to incorporate outwork costs into their prices using the appropriate award. By implication, such firms claim that the failure to comply with awards occurs at the subcontracting stage, either through subcontracting assemblers or the 'middlemen' who organise and employ outworkers. These subcontracting arrangements also ensure that principal manufacturers and retailers retain a safe degree of legal distance between their operations and any acts contravening industrial legislation, effectively shielding 'retailers and manufacturers from responsibility (and legal liability) for working conditions' (Appelbaum & Gereffi, 1994, 48 & 56). Thus, it can be argued that the length of the clothing commodity chain acts as a convenient means of evading responsibility through ignorance, feigned or otherwise.

Retailers and manufacturers will often state that they are not in a position to verify whether their subcontractors are employing outworkers 'off the books' (Australian Expert Group in Industry Studies [AEGIS] 1999; AWatW 2000). However, as the final section of this paper argues, there is good reason to doubt that these key nodes in the commodity chain do not or cannot possess the information on their production and distribution networks. The final section will show that pressures to improve supply chain logistics and pressure from outwork support groups have helped to

expose the illusion of corporate ignorance surrounding the issue of outwork.

Thus far it has been argued that the engagement of outworkers in the Australian clothing industry has increased during the past decade, undermining the sentiment that outwork is a historical relic. This growth was the result of a number of factors, including the existence of a large pool of potential labour and the buying practices of large retailers. Furthermore, it has been argued that the expansion of clothing outwork was a strategic option adopted by some manufacturers as a means to remain competitive in the more open international trading environment created by government deregulation and liberalisation. However, key participants in the commodity chain were able to evade responsibility for outworkers' conditions through subcontracting and appearing to withdraw from direct production. The following section addresses this evasion of responsibility through examining a variety of strategies directed at outwork reform. It argues that the multifaceted campaign to achieve wage justice for outworkers over the past decade has slowly but effectively discredited the claims of large retailers and manufacturers that they should not be held responsible for outwork abuses. Furthermore, it argues that effective reform will still require political intervention at legislative, consumer and industrial levels.

Responses to Outwork

This final part of the paper examines five responses to outwork exploitation, including compliance, voluntary codes of industry practice, state-based registration schemes, consumer action and changing work practices. The conclusion drawn is that these responses are complementary rather than mutually exclusive and that the struggle for outwork reform must rely on a multifaceted strategy. This also means that while large retailers might be primarily responsible for managing the commodity chains that result in the exploitation of outworkers, the responsibility for reform must rely on a broader range of action, ranging from legislative reform, tougher award compliance, support for the rights of overseas workers, consumer action and changes at the point of production.

Compliance

All industry participants demand that governments exact award compliance. However, clothing inspectorates remain under-resourced, and even a significant increase in resources would simply attack the symptoms rather than the causes of outwork exploitation. In addition, premise inspections and raids are often ineffective due to the mobility of the offending operations (see Scruby in Collins 1996, 86; NSW DIR 1999, 2 & 50).

Regulatory authorities face a range of other problems dealing with compliance, including the widespread practice of dealing with outworkers as independent small-business entities, the absence of written contracts of service, the absence of work and time records held by workers due to the irregular nature of their work, the complex community networks in which outwork predominates, lack of access to residential dwellings and the failure of middlemen to comply with taxation and industrial legislation. These circumstances led the NSW Pay Equity Inquiry to speak of 'the veil of secrecy, intimidation and fear that covers the industry of outworkers' (NSW DIR 1999, 48).

The main dilemma facing compliance agencies is their focus on the least detectable and most elusive links in the chain. As the Collins Report (1996, 81) argued: 'When considering methods of reducing outworker exploitation ... any system devised must have a top down rather than a bottom up approach. That is, it must move from the visible to the invisible and incorporate a greater level of accountability among retailers and manufacturers. For any system to work it must rely on the agreement and proper compliance of the 'visible' participants in the process ... the retailers and usually the designers/suppliers who own the labels'. A corollary to this is that compliance mechanisms tend to target the victims rather than the beneficiaries of the structure of outwork exploitation. For this reason, 'the coercive approach has generally not been successful' (Collins Report 1996, 81). This call to centrally involve retailers in the compliance process was supported more recently by the NSW government's proposal for a more proactive approach to eliminating outworker exploitation through a scheme run by a dedicated agency to enhance chain transparency and firm responsibility. As the following discussion shows, the most innovative aspect of the NSW government's

initiative is its recognition that effective outwork reform rested upon developing a multifaceted approach that goes beyond compliance.

NSW Government Initiatives

As part of its 1999 election campaign, the NSW Labor government announced that it would introduce legislation to address the exploitation of outworkers. After extensive consultation with industry participants, the NSW DIR released the details of its proposed 'Ethical Clothing Trades Act' in December 1999 (for a table summarizing the strategy, see NSW DIR 1999, 71-3). The key initiatives involved:

- a retailers' registration scheme, recognising the importance of retailers in the management and control of the clothing chain;
- a manufacturer/supplier accreditation scheme, which would monitor not only the contractor's direct employees but also other parties contracted to supply outworker services;
- a system of records production obligations that would enhance transparency;
- an Advisory Board representing industry participants, responsible to the Minister;
- and a consumer awareness campaign to promote ethical production.

The key to the acceptance of the proposal by community groups and the union movement was their recognition that it transcended existing legislation targeting individual responsibility in the 'hidden' sector and directly addressed the issue of retailer and manufacturer responsibility. Asian Women at Work observed that: 'If fully and carefully implemented this strategy will see the end of "it's impossible to comply" in the clothing industry and "low payments are an unfortunate reality", and a move to responsibility for stopping the exploitation being appropriately shared by all the players in the industry' (AWatW 2000).

The NSW DIR (1999, 58) proposals placed direct responsibility upon the principals who initiate orders:

Where a firm contracts with another entity to supply the clothing goods, the contract will be required to contain a standard clause which obliges each succeeding party in the contract chain to inform the original firm about the number and type of articles (and the price per article) given out to each succeeding party ... It will be an offence for retailers and suppliers operating in NSW not to comply with these provisions.

The NSW proposals were an admission that the free market could not deliver wage justice for outworkers. Furthermore, it was a recognition that the specific labour characteristics of the clothing industry required industry-specific legislation. Furthermore, as will be demonstrated below, the proposals sought to strengthen the reform process through linking it with consumer action and industrial change. Finally, by focusing on the issue of transparency, the proposals threatened to expose the bad faith behind the claims made by firms that dominate the clothing commodity chain.

The response to the legislation by large retailers further illustrates how they exploit the lack of chain transparency in order to deny responsibility for reform. Some retailers have questioned the proposal's feasibility by continuing to deny responsibility for supply chain management and have challenged the practicality of the recording process. They also deny that further legislation is necessary, stating that the problem remains enforcing existing legislation. Certain manufacturers and retailers have argued that they cannot guarantee conditions further along the supply chain and that if they were held legally responsible, they would exit the NSW market. This threat of capital flight merely reinforces the importance of the claim made by the NSW government that the effectiveness of their 'ethical clothing act' depends on other States implementing similar legislation.

However, if the NSW government had caved in to this threat of capital flight, it would have been forced to abandon any possibility of addressing the exploitation of outworkers. As this paper has demonstrated, it is this lack of responsibility and accountability that the proposed Strategy attempted to overcome. The excuse of organisational complexity along the commodity chain has always been the last refuge for companies intent on maintaining the *status quo* and avoiding the ethical dilemmas that the NSW government is now addressing. It can be concluded that the

criticisms of the NSW legislation from retailers merely illustrates the problems to be addressed and demonstrates where the opposition to reform is centred. Following on from the proposal, in December 2001 the Industrial Relations (Ethical Clothing Trades) Bill 2001 passed through the NSW Legislative Assembly and the Legislative Council. However, before the contents of the Bill are described, it is important to review other concurrent initiatives for outwork reform.

Homeworkers Code of Practice

While legislation is a necessary component of any effective process for outwork reform, the lessons of the 1990s suggest that, by itself, legislation is insufficient (Weller 1999). Another criticism levelled at the NSW proposals by some retailers and manufacturers is that the scheme would add to the regulatory burden facing clothing firms already suffering from greater global exposure and increase their financial burden through additional auditing costs associated with registration, accreditation and preparation of records for inspection. However, by 1998 70 per cent of Australia's clothing retailers and manufacturers had signed a voluntary Homeworkers Code of Practice that stipulated a preparedness to have their supply chain records examined by the TCFUA (Tubner 1998). This voluntary code established much of the groundwork for the NSW strategy. The commitment by retailers and manufacturers to this Code demonstrates that the complexity of the clothing commodity chain can be rendered more transparent. In other words, this 'complexity' should not be used as an excuse to abandon tighter monitoring schemes such as that initiated by the NSW government.

The Homeworkers Code of Practice had its origins in 1994 when the TCFUA launched its National Outwork Information Campaign. The campaign was followed up in 1995 with a number of voluntary 'deeds of cooperation' involving a number of influential retailers and manufacturers, committing companies to take responsibility for the conditions under which their suppliers operated.

Following this, the union, with the assistance the FairWear campaign – a coalition of church groups and unionists founded in 1996 to draw community attention to the plight of outworkers - began collecting

industry signatories for the creation of a broader Homeworkers Code of Practice which would:

- accredit retailers and manufacturers;
- open up signatories records to union inspection;
- provide a list of all contractors used by firms;
- undertake that no work be undertaken by outworkers for less than stipulated by the award;
- accept that outworkers be defined as employees rather than independent subcontractors (see FairWear 2000).

A national Code of Practice Committee representing a broad range of industry participants was formed to work on the details of the Code, including a technical manual detailing appropriate remuneration for different types of garments and a 'No Sweatshop' label for complying firms (see Homeworkers Code of Practice Committee 2001, 5,9). The Collins Report (1996, xv), the Industry Commission (1997, Vol. 1, 127) and the NSW government registration and accreditation scheme (NSW DIR 1999, 43) have all commended the Code.

However, on its own it is doubtful that the voluntary Code would be either effective or appropriate. The union movement and its sympathisers regard the Code as a necessary but not sufficient mechanism to improve the conditions of outworkers. A voluntary code can only be effective if it receives universal support. Without such support, participating firms are vulnerable to unfair competition from less scrupulous companies prepared to continue exploiting outworkers. For example, early on the Australian Retailers Association withdrew from negotiations and released its own 'Statement of Principles Regarding Supplier Compliance in the Clothing Industry' (see IC 1997, Vol. 2, D30). It re-entered negotiations over the development of a standards manual, but in late 2000 withdrew its support for the document as well as its support for a 'No Sweatshop' label sewn into garments manufactured by Code signatories, arguing that retailers should not be held responsible for the conditions under which garments are manufactured and has repeated its calls for greater policing of existing legislation. On 8 March 2001, the national Code of Practice Committee released its technical manual and its 'No Sweatshop' label. However, by the end of the year only four of

the 140 firms that had signed the Code had sought accreditation from the Homeworkers Code of Practice, although five other wholesalers were beginning the process. In addition, Coles Myer was the only retailer that acted upon the Code Committee's request to write to its suppliers indicating their support for the accreditation process (Homeworkers Code of Practice Committee 2001, 10-11). Other retailers, including some that had initially signed their preparedness to open their books, such as Sussans, have fallen back on the argument that they are powerless to improve outworkers' conditions.

Furthermore, by its very nature, a voluntary code, like self-regulation, requires trust that firms report their practices accurately to a monitoring agency. Under the highly competitive circumstances that prevail in the clothing industry, there would be a temptation for firms to reap the public benefits of being associated with the scheme while privately contravening the spirit and the letter of the Code (Evatt Foundation 1998, 19). The TCFUA also reminded the Collins Review that 'the code by itself is a piece of paper' and that it requires 'mechanisms' to ensure its success. A voluntary code could not cover issues such as award conditions, occupational health and safety standards and other industrial matters. Given this, a combination of industrial legislation, government-supported registration and accreditation schemes and voluntary codes would be necessary to achieve wage justice for outworkers.

This relationship between voluntary codes and legislation was clarified during 2001. On March 25, 2001, NSW Premier Bob Carr announced his intention to introduce the Ethical Clothing Act during the Spring 2001 Parliament sitting (NSW Government 2001a). In late November 2001, the Industrial Relations (Ethical Clothing Trades) Bill 2001 was introduced in the NSW Legislative Assembly and passed through the Legislative Council on 11 December. The overview of the Bill states its objective as providing 'various measures for ensuring that outworkers in the clothing trades receive the entitlements conferred on them by law'. The Bill:

- constitutes an Ethical Clothing Trades Council consisting of members representing various sectors of the clothing industry ...;
- confers on the Council a broad range of functions, including the giving of advice and making of recommendations concerning the

clothing industry and outwork practices in the clothing trades, the making of quarterly reports on relevant matters and the monitoring and fostering of the development within the industry of voluntary self-regulatory mechanisms ... and other mechanisms as means of ensuring that outworkers receive their entitlements;

- requires the Council to advise on the efficacy, during the 12 month period after the constitution of the Council, of industry compliance with voluntary self-regulatory mechanisms for ensuring outworkers receive their entitlements and to make recommendations as to whether a mandatory code of practice should be made ...;
- enables the Minister administering the proposed Act to make a mandatory code of practice requiring specified employers and other persons in the clothing industry to adopt the standards of conduct and practice with respect to outworkers in the clothing trades set out in the code if voluntary self-regulatory mechanisms prove inadequate or ineffective in ensuring that outworkers receive those entitlements;
- provides for the enforcement of obligations imposed by the mandatory code, and;
- amends the Industrial Relations Act 1996 to facilitate the recovery of unpaid remuneration by outworkers in the clothing trades by providing a method of recovery that enables an outworker to serve a claim for unpaid remuneration ... in the first instance on an apparent employer and provides for the liability to be transferred if necessary to another actual employer (NSW Government 2001b).

In addition, the government announced a strengthening of the compliance process, increasing the number of bilingual inspectors from 2 to 4 persons. Thus, clothing firms will be given one year to seek accreditation with the Homeworkers Code of Practice before a mandatory code is considered by the Government. Speaking for the Government, Mr Stewart (Bankstown) stated that while provision for a mandatory code had been provided for, it was not 'the Government's preferred option'. Furthermore, noting that retailers 'frequently dictate time and financial constraints that affect the whole supply chain down to the outworkers', he pointed out that the amendments to the Industrial Relations Act 1996 'may entitle the outworker to validly serve a claim

upon the principal manufacturer or fashion house which ultimately receives the finished work'. Overall, he argued, the Bill would 'encourage more transparent relationships and an overall reduction in inefficient subcontractor chains, particularly where those chains have been used primarily for avoidance purposes' (NSW Legislative Assembly Hansard 30/11/2001). The Hon. Helen Sham-Ho predicted that the mandatory code would eventually 'come to fruition' due to the fact that thus far companies had not responded to voluntary mechanisms (NSW Legislative Council Hansard 11/12/2001).

Regardless of the effectiveness of the voluntary codes, one important consequence of the campaign has been to heighten the awareness of governments, citizens and consumers that retailers have already acknowledged – through signing the Homeworkers Code – that they can make the commodity chain more transparent and that what is lacking is their will to assist the reform process. A recent survey of 118 outworkers also provides evidence that most outworkers are aware of the need for greater retail accountability. Over two-thirds stated that it was 'very important' that retailers sign the outworker code if their life as an outworker was to be improved, even though few if any of these outworkers have direct contact with retailers (Cregan 2001, 14).

Consumer Action

The measures discussed thus far address legislative, administrative and regulatory reform. However, there is also scope for consumers to apply pressure for 'ethical production' (Sutor 2000, 54; Weller 1999). Community groups such as FairWear have brought more public attention to the plight of outworkers through a series of ever-more innovative boycott campaigns, storefront demonstrations and other public awareness campaigns (FairWear 1999). These campaigns have been directed against firms that have thus far refused to sign the Homeworkers Code of Practice. However, they also list firms on their website that have entered the agreement and distributed wallet-sized shopping cards, thus linking 'negative' consumer campaigns with 'positive' initiatives.

There is growing awareness that any regulatory and legislative changes need to be combined with positive incentives for compliance. In response

to the NSW government's outwork strategy proposal, Asian Women at Work (2000) argued that:

If accreditation is to be voluntary the government must make the accreditation so attractive that everyone wants to get it. It is necessary to create an environment where it is good to get accreditation. The strategy must provide strong incentives for suppliers to seek accreditation.

Modifying consumer behaviour through product labelling has been an important part of the Code of Practice campaign and the NSW government initiatives. Over the past decade, a range of consumer items have been linked to related social issues and labelling has become an accepted part of the choice that consumers can make when purchasing goods (Collins Report 1996, 83-4).

The feasibility of an ethical goods market promoted through labelling was tested in a NSW government-commissioned report on consumer attitudes towards outwork exploitation. It found that once women were informed of the issue, 90 per cent 'would prefer to purchase a garment labelled as ethically produced if all other factors are equal' (Dangar Research Group 1999, 25). However, 'all other factors' are not likely to be equal given that non-labelled garments would be more competitive due to the higher level of outworker exploitation. Thus, one outstanding question remains the extent to which consumers are prepared to pay an ethical premium on garments manufactured under award conditions (for conflicting claims about the effectiveness of consumer clothing campaigns see Emerson 2001; Ross 1997, 41; Silverstone in Lewis 2001, 13). Critics of legislative and regulatory change have emphasised that retailers and manufacturers would not absorb the costs of ethical sourcing and that these would be passed on to the consumer in the form of higher rack prices. The result would be a reduction in demand for local 'ethical' garments and a tendency for local producers to relocate interstate or offshore. These consequences would leave outworkers with fewer employment options than they currently have (McEwing 2001b).

While this remains a possibility, it also serves to emphasise that ethical campaigns must look beyond state and national boundaries. The threat of capital flight highlights the importance of international solidarity and the

need to support workers' rights worldwide. It also emphasizes the point that local outwork networks are part of the linkages that ensure the profitable functioning of global commodity chains. As a consequence, local outwork campaigns have a high stake in fighting for a fairer global trading system that incorporates global workers' rights, in particular campaigns to 'press for ILO labour rights to be incorporated into World Trade Organisation agreements' (Ranald 2001, 137). The 1996 International Labour Organization Convention 177 on Home Work charted the rights of outworkers and Recommendation 184 called for a registration system similar to that adopted by the NSW government. Although the 1996 Collins Report recommended that the Commonwealth government ratify the ILO Convention, the Howard government has stated that this remains 'premature' (Parliament of Australia 1998; see also NSW Government 1999, 25-8).

However, as Ranald (2001, 132-5) observes, this pressure on 'globalisation from above' cannot substitute for pressure 'from below' and, under the impact of globalisation, unions are increasingly exploring moves away from the forms of business unionism that characterized the movement for most of the previous century and are experimenting with 'social movement unionism'. While international pressure is maintained by anti-corporate globalisation movements on governments to ensure that the global economy operates on the principles of fair trade, in Australia community organizations such as Oxfam Community Aid Abroad's NikeWatch campaign, FairWear and Asian Women at Work monitor the practices of global brands and there are numerous international solidarity campaigns linking concerns with clothing exploitation to consumer behaviour. These emerging strategies 'are based on recognizing the identities and situations of specific groups of workers and their communities, which enables more effective organization of these workers and the formation of alliances with other social movements' (Ranald, 2001, 134). While these coalitions of unions and community groups are embedded within local milieux, the transnational nature of commodity chains encourages their participation in international networks of solidarity (Ross ed 1997; Klein 2000; Waterman 2001).

Supply Chain Management and Workplace Reform

If these campaigns for effective (self-)regulation succeed, manufacturers and retailers will be forced to re-engineer the supply chain to accommodate wage justice for outworkers. Outwork reform will not leave the structure of the clothing chain undisturbed and the issues of competitiveness and efficiency will have to be addressed. Ultimately, outwork reform will transform relations between firms along the clothing chain and alter relations at sites of production.

Ironically, over the past decade many retailers and manufacturers have loudly proclaimed that they are using new production systems to work smarter, network better, improve quality and reduce prices for consumers. These processes are associated with the concepts of Quick Response (QR) and Supply Chain Management, designed to shorten lead times, reduce inventories and improve communications between participants along the supply chain (Kurt Salmons Associates 1989; Costley 1999). This rhetoric of QR abounds with concepts such as quality assurance, measurement, accountability and reliability. These are precisely the standards demanded by community groups and workers organisations attempting to secure wage justice for outworkers. Yet, although retailers and manufacturers are content to use the rhetoric of Quick Response for publicity purposes, they fall back upon the underlying complexity of the chain when it comes to their accountability for outworkers.

For example, while they often publicise their tight quality assurance measures that involve checking garments at each stage of the production chain, they often deny knowledge about the extent to which outworkers produce these same garments. These apparent contradictions can be explained by the dominance of a technologically-determinist understanding of QR. Over the past decade, many major retailers and manufacturers have adopted much of the hardware and information technology associated with QR, such as Electronic Data Interchange (EDI), but have failed to reform the inter- and intra-firm work practices associated with international best practice. This failure has been the principal cause of the discrepancy between the original vision of the TCF Plan and the current reality (McCreadie & Booth 1991). The drivers of the commodity chain sought a quick fix rather than Quick Response,

believing that information technology could speed up their commands along the supply chain. However, the effectiveness of QR and Supply Chain Management depends on opening up channels of trust and understanding between chain participants. As the Federal Government Action Agenda Supply Chain Working Group stressed, reform depends on 'the development of a business culture built on mutually beneficial partnerships. The basis of these partnerships is trust and the sharing of common visions, strategies and goals' (Costley 1999). This was supported in the TCFL Action Agenda Advisory Board's Towards 2010 Report (2000, 39), which stated that success 'in maximizing our utilization of efficient supply chains can only be achieved through mutually cooperative partnerships and by establishing new levels of trust among members of the chain'. The Victorian Government's TCFL Strategic Audit (2000, 7) came to a similar conclusion, stating that 'indications are that success in the future will depend on an understanding that the supply chain should be about collaboration, a shared supply chain that values speed and flexibility over traditional competitive practices'.

The NSW reform initiatives explicitly recognised that re-engineering the supply chain remains a key challenge for the future of the clothing industry and that the role of outworkers in the communication network needs to be democratised. The Industrial Relations (Ethical Clothing Trades) Bill 2001 will push key retailers and manufacturers beyond technologically-determinist assumptions behind QR and Supply Chain Management and pressure them to experiment with the practices discussed above. In mid-2000, NSW DIR began an Outworker Supply Chain Management Project that brought together all participants of a specific clothing chain to consider intra- and inter-firm work practice changes. The Department has committed itself to sponsoring 'at least one more supply chain management project to identify management savings and efficiency improvements that can be achieved' (NSW Legislative Assembly Hansard 30/11/2001). Asian Women at Work has already pointed to a number of potential scenarios that could develop to improve the role of outworkers along the supply chain: the removal of the middleman and closer relations between fashion houses and outworkers; restructuring the role of the middleman as a distributor; better utilisation of outworkers' skills and efficiency; better communications channels

leading to better quality control and better scheduling of orders; greater interaction and community building among outworkers; better opportunities to train outworkers to run cooperatives with the assistance of local councils; greater opportunities to assist outworkers to comply with legislation; and labour adjustment programs targetted at the specific needs of outworkers (AWatW 2000).

Asian Women at Work along with the TCFUA acknowledge that a more efficient Australian clothing industry will require fewer outworkers; hence their concern with labour adjustment programs. However, there is no reason why a restructured industry cannot accommodate innovative outwork practices once relations between the links of the chain have become more transparent. Ultimately, these positive transformations at points of production and distribution are unlikely to occur unless they are reinforced with legislative reform and consumer action, again highlighting the multidimensional nature of the struggle.

Conclusion

Every major study into the clothing industry over the past decade has devoted attention to the 'complexity' of the commodity chain. As this paper has demonstrated, different conclusions can be drawn from this observation, ranging from claims that it undermines any possible reform to calls for greater transparency. This paper has argued that outwork reform is not only desirable - it is possible. 'Complexity' has been used as an excuse to evade responsibility for improving outworkers' conditions. Ignorance remains the last refuge for clothing stakeholders evading ethical questions.

Using the conceptual framework of commodity chains, this paper has drawn evidence from over the last decade in Australia to show that large retailers perform a central role in coordinating clothing production and distribution. The process of outwork reform requires them to acknowledge their responsibility along the commodity chain. However, while these retailers are located at key nodes on the clothing commodity chain, the process of outwork reform must be more multifaceted. The Federal Government's TCF Plan, greater trade liberalisation and the deregulation of industrial relations have encouraged the growth of

outwork, creating the conditions under which certain manufacturers and subcontractors were able to exploit the disadvantaged position of certain segments of the Australian labour market. As a consequence, governments must also face their responsibility for ensuring wage justice and improved conditions through ensuring tighter regulation and greater chain transparency.

The final part of this paper highlighted the multidimensional nature of the campaign for outwork reform over the past decade and argued that each component has been a necessary but not sufficient part of the struggle for wage justice and better conditions for outworkers. One important lesson from the struggle for outwork reform over the past decade is that the effectiveness of reform depends upon complementing legislative changes with voluntary industry codes, consumer pressure and international solidarity. This multifaceted approach was adopted by the NSW government leading to the passing of the Industrial Relations (Ethical Clothing Trades) Bill 2001. However, its effectiveness requires that other states and/or the Commonwealth adopt complementary legislation. Finally, the paper pointed out that, ultimately, wage justice for outworkers depends on altering relations at the point of production. Not only is this embedded in the rationale for reform - it is also necessary to improve industry efficiency.

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