



# **Submission to the Review of the Australian Textile, Clothing and Footwear Industries 2008**

**Textile, Clothing and Footwear Union of Australia  
May 2008**

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## Declaration of Interest

The Textile Clothing and Footwear Union of Australia is an organisation of employees registered pursuant to the *Workplace Relations Act 1996* (Cth). Our membership consists of workers employed in the textile, clothing and footwear industries, including outworkers.

The TCFUA is a founding member of the Homeworkers Code of Practice Committee ('HWCP') and continues to be represented on the HWCP Committee.

The State Secretary of the New South Wales/South Australia/Tasmania branch of the TCFUA, Mr Barry Tubner is a member of the TCF Review Reference Group.

The State Secretary of the Victoria branch of the TCFUA and Assistant National Secretary of the TCFUA, Ms Michele O'Neil is a member of the TCF Review Reference Group.

## Executive summary

The submission proposes a new TCF Industry Plan – one that repositions government policy and programs. A plan that supports jobs, innovation, skill, product and export development. A plan that has as its foundation, support for an industry which is smart, ethical in its treatment of workers and sustainable in its environmental credentials. A plan that genuinely assists workers and their communities affected by restructuring.

The TCF industry remains a vital and important Australian industry. It is a \$2.7 billion dollar industry. The TCF industry today continues to employ 48,200 manufacturing workers in the regulated sector and many thousand others as outworkers in the informal sector.

The Textile Clothing and Footwear industry has undergone massive structural changes in the past few decades as a result of global competitive pressures and a reduction of tariff levels. It has also been particularly affected in recent times by the high Australian dollar. All of these factors have seen a move to offshore production and the industry has dramatically reduced in size.

Since the last review of the Textile Clothing and Footwear industry in 2003 the industry has continued to face challenges. Tariff levels have been further reduced (2005) and since 2002 Australia has ratified three FTAs, is negotiating six others and is considering 3 more. These FTAs have negatively impacted on the manufacturing sector, an impact that has been compounded by the failure of the Government to remove non-tariff barriers in the FTA partner countries and respond to dumping of TCF products in the Australian market. The Government also recently announced that it wishes to speed up negotiations for the FTA that will most critically effect the Australian TCF industry, that of China.

Recent figures released by the Government also reveal the shameful failure of the Textile Clothing and Footwear Structural Adjustment Package (TCF-SAP) in providing assistance to retrenched TCF workers. Since its commencement in July 2005, less than \$500 was spent on each individual worker and only 822 workers were provided with this assistance. Over \$2million dollars that has gone to Job Networks has not been spent on assisting retrenched TCF workers, and it is unclear what this money has been spent on.

Government assistance to industry in the form of Strategic Investment Program (SIP) funding has aided many companies develop their businesses, however there has been no guaranteed link to ongoing Australian employment. Money from SIP has gone to companies that do not manufacture ethically and are in breach of current legal regulation.

Conditions of work for large numbers of workers in the informal sector of the industry remain notoriously bad. The largest proportion of clothing manufacturing in Australia, in fact, takes place in this sector which is characterised by the contracting out of clothing manufacturing in long contracting chains that end with an outworker performing work at home or in a sweat shop environment. Flagrant breaches of industrial laws and regulation continue and exploitation of this overwhelmingly female, migrant workforce remains a major concern as well as impacting negatively on the image of the industry.

There is a widely perceived skill shortage in the industry and a lack of appropriate training has hampered efforts to retain skills in the industry as well as match redundant workers to factories and businesses suffering from skills shortages.

Despite the major challenges faced by the industry there are however many examples of innovative products and processes developed and the emergence of a market for ethically produced goods. New initiatives have succeeded in training outworkers and moving them to the formal sector to businesses in need of their skills. Work by the TCFUA has also seen greater delivery of SAP and targeted assistance to these workers.

Government assistance to industry is crucial in maintaining and developing the current industry. The continued contraction of the industry has serious consequences not only for workers, but for their communities and for society as a whole. Regional areas are hardest hit by factory closures and the effects on these areas can be devastating.

Yet Government assistance is not only necessary it is also an investment in Australia's future and economy and the continuing capacity for this country to produce its own goods. A strong and viable manufacturing base is needed in order for Australia's TCF Industry to excel in its design capability and reputation.

Evidence suggests that Australia can develop, sustain and grow a TCF industry which relies on this country's strength as smart, ethical, clean and green. This industry would retain and attract workers and would provide a compliment to Australia's world famous designers. A realignment of Government procurement policies could also have a major positive impact on the industry. Changes need to be made however to the package of Government assistance and Government policy in the TCF sector for this potential to be realised. The TCFUA believe that the following recommendations need to be adopted as a matter of urgency to secure the future of the TCF industry in Australia.

# Recommendations

## Job and industry growth

### Jobs and tariffs

1. A new TCF Industry Plan should run to 2020 with a Review in 2013.
2. Current level of TCF tariffs should be frozen and the scheduled drop in tariffs in 2010 and 2015 should be deferred. There should be no further tariff reduction until such time as it can be proven to be in the interests of Australian workers, their families, regional Australia and the broader community, to reduce them further. If in the future Australia's trading partners have not made sufficient adjustments at all levels to bring them into line with their international obligations, or the negative social impact of further tariff reductions is too severe, tariffs should continue to be frozen until such time as those issues are addressed.
3. Bilateral and multilateral trade negotiations should enshrine TCF Tariffs at current rates. There should be no undermining of the 'freeze' by bilateral or multilateral negotiations (for example, the China Free Trade Agreement).
4. Conduct research into the relationship between the comparative effect on the industry of variations to the tariff rate to variations in the exchange rate.

### SIP and direct government assistance

5. SIP program to continue at least to 2020 as an expanded and extended program with funding levels returned to original post 2000 annual allocations and the removal of modulation.
6. Contractual obligation on companies receiving funds to:
  - specify positive ongoing local manufacturing employment impact
  - make transparent supply chain and monitoring of ethical labour standards which the TCFUA should be able to audit
  - demonstrate ethical behaviour in relation to meeting ethical labour and environmental standards throughout the contracting chain
  - show proven and on going capacity to meet workers entitlements in full
  - include the capacity to withdraw/require repayment of funding where these conditions are not met.
7. Removal of \$200,000 threshold to open up access for small-medium companies.
8. Government Policy, SIP and associated program guidelines should encourage and support:
  - the creation of quality, well-paid jobs

- greater Australian value add and industry linkages through sourcing of materials and vertical processing
- training and skill development of shop floor workers
- both product and organisational innovation
- research design and development of new products and markets.

### **Government procurement policies**

9. The introduction of Federal and State TCF ethical procurement policies that:
  - preference local suppliers
  - require transparent supply chain and monitoring which the TCFUA should be able to audit
  - requires ethical behaviour regarding labour and environment standards
  - require all clothing companies to be accredited to the Australian Homeworkers Code of Practice (HWCP)
  - ensure access for small – medium size companies to the tendering process
  - develop preferred or approved supplier system which are assessed by a tripartite industry body as ethical
  - require Australian Made quotes for tenders.

## **A smart, ethical, clean and green industry**

### **Australia's global TCF brand**

10. Research into the development of branding and marketing for the Australian industry based on an ethical, clean and green sustainable industry.
11. The government conduct or fund in depth research to establish clear and effective targeted environmental standards and strategies for TCF companies.
12. Once the above standards are common practice and systems are in place to verify that companies are meeting them, the Government can then support an industry wide collaborative promotional campaign to rebrand Australian Made TCF products as being of a high quality, ethical and green, and while also raising consumer awareness of the potential impact of their choices and practices.

### **Recognition and development of skills**

13. Tax incentive to companies to invest in the training of their workforce with one requirement being to provide accredited training of shop floor employees.
14. Expanded funded program to link redundant/unemployed workers and outworkers to skill shortages and training and job placement, involving union, community organisations, training providers and industry.

15. TCF industry wide training audit to be undertaken and the establishment of an effective training delivery and monitoring process.
16. Assistance to audit and provide effective assessment of workers in RPL, RCC and accredited training.
17. Continued funding of accredited training for outworkers and small factory workers under the Federal Workplace English Language and Literacy Program (WELL).

## **Outworkers**

18. Enactment of national legislation and parallel State legislation which regulates the giving out of work to outworkers and which is modelled on best practice State legislation and does not reduce existing entitlements and protections in current State legislation. This national legislation will:
  - deem all outworkers to be employees in Federal legislation, and where not currently in effect, in relevant States and Territories
  - provide statutory rights of recovery for unpaid wages and entitlements
  - enact a national mandatory Retailer Code of Practice for the industry
  - require the registration of all TCF factories with the relevant government authority.
19. Ratify the International Labour Organizations Convention Concerning Home Work C-177, 1996.
20. Provide Federal Government support for new initiatives designed to assist outworkers including the digital supply-chain project outlined in the submission of the Brotherhood of St Laurence.
21. Continue Federal Government support for Homeworkers Code of Practice.

## **Retrenched workers – assistance and entitlements**

### **TCF-SAP and workers assistance**

22. Immediate redesign of the Textile Clothing and Footwear Structural Adjustment Package (TCF-SAP) so that it is solely worker focused.
23. Abolish the Restructuring Initiative Grants (RIGS) under SAP and make SAP assistance solely to assist workers and communities effected by restructuring.
24. SAP/Worker assistance to:
  - delink training and job search assistance and limit the role of the Job Networks to job search/placement
  - provide training via TAFE with one-on-one identification of training needs and RPL and RCC



- provide union/community based advocates to assist workers to navigate the system and provide early intervention when redundancies are announced
  - ensure criteria for assistance is the worker's Award coverage not the company's SIP eligibility.
25. New streamlined and speedy access process for Regional assistance under SAP.
26. Provision of a non-means tested training allowance to retrenched workers and outworkers to enable them to undertake and complete accredited training courses.

### **Retrenched worker entitlements**

27. Workers must not be disadvantaged through restructuring with a guarantee of employee entitlements being paid in full:
- that in relation to the protection of entitlements the Federal Government must immediately enact a scheme which requires employers to ensure that 100% of all employee entitlements are secured and protected
  - that the Federal Government should immediately amend the Corporations Act 2001 to vary the order of priority of payment to creditors in the case of insolvency to place employees before secured creditors. Such priority to employees would apply to 100% of all employee entitlements owed, including superannuation.

### **A TCF innovation council**

28. Establishment of a TCF Innovation Council, comprising a tripartite body of Government, Industry and Union.

## Section 1: Job and industry growth

### 1. Jobs and tariffs

The TCFUA supports the establishment of a new TCF Industry Plan to run to at least 2020, with a review in 2013. We argue that current tariffs should be maintained until 2020 and kept at these levels until such time as it can be proven to be in the interests of Australian workers, their families and communities, to reduce them further.

We strongly endorse the Federal ALP's commitment that this review is:

“...required to take into account the tariff and non-tariff barriers of our trading partners and the likely social impact of further tariff reductions on TCF workers, regional Australia and the broader community...[and] if Australia's trading partners have not made sufficient adjustments at all levels to bring them into line with their international obligations, or the negative social impact of further tariff reductions is too severe, the tariff will be frozen until such time as those issues are addressed.”<sup>1</sup>

The TCF industry, including the TCFUA, is committed to developing a world class TCF sector with an emphasis on manufacturing high-value added products, underlined with high ethical employment and environmental standards, which can be exported to the global market. The TCFUA wants an industry characterised by new product development, investment in new technology and continuous innovation. Further reduction of tariffs in 2010 and 2015 will hinder the development of the industry.

While maintaining tariffs at the current levels since 2005 has enabled the industry to make some adjustments, the impact of the appreciating Australian dollar on export earnings has been more severe than anyone could have predicted. Australia's resources boom and rising terms of trade over the same period have led to a substantial appreciation of our dollar against the currencies of key producing nations in the industry, leading to cheaper imports and much more expensive Australian exports. This is especially so with the source of most TCF imports, China whose currency is closely aligned to the US dollar.

The union welcomes the Federal Government's commitment to improve market access arrangements for Australian TCF exporters. However, reducing tariffs further will mean the government relinquishes an important policy instrument at its disposal to support Australian industry during this time of transition and uncertainty.

The industry needs certainty regarding tariff levels and industry assistance through this continued period of restructuring. Continuing to maintain tariffs at current levels is particularly critical to small and medium sized business, which employ approximately 73% of all people in the sector.<sup>2</sup>

Falling tariff rates and increased imports over the past three decades have undeniably been the major cause of job loss and retrenchment in the industry, from a high of 130,000 employed in August 1986 down to 52,700 in February 2008.<sup>3</sup> The fall in

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<sup>1</sup> ALP Platform, Chapter 5, 2007

<sup>2</sup> ABS (2005-2006) 8221.0 *Manufacturing Industry, Australia 2005-2006*

<sup>3</sup> TFIA (2008) sourced from ABS Labour statistics, *TCF&L Total Employment*, Nov 1984-Feb 2008

employment for women in the industry over the same period is even more alarming; from a high of 81,400 in August 1986 to current numbers 30,800 employed.<sup>4</sup> Falling tariffs have also caused a surge of imports from low-wage countries where labour standards are often non-existent. While employment has more than halved, imports have more than doubled during this period of dramatic falls in tariff protection.<sup>5</sup>

### **The impact of a China FTA**

The vast bulk of Australia's imports are coming from China, which is increasingly dominating global TCF markets. TCF products represent one quarter of imports to Australia from China. The problems experienced by the Australian TCF industry are being repeated around the world. Unilateral reductions in Australian tariffs, especially given China's growing global dominance, will ensure continued and increased import penetration by China.

Given the huge share China has of Australia's imports in the TCF industries, any change to tariffs in respect of China will effectively amount to an industry wide reduction rather than bilateral preferential treatment.

New Zealand recently elected to freeze general TCF tariffs in light of their Free Trade Agreement (FTA) with China. The TCFUA argues that bi-lateral and multi-lateral agreements must not be allowed to undo arrangements already made for the industry, in particular the maintenance of tariff levels. The industry needs certainty about tariff levels in the coming period so it can make well informed operational and investment decisions. It is imperative that the TCF sector should be meaningfully engaged and consulted in the future about the detail of World Trade Organisation (WTO) and Free Trade Agreements trade negotiations prior to their finalisation. It is also imperative that the federal government gives a solid commitment that a China FTA will not alter existing TCF Industry arrangement.

The lack of a level playing field as a result of the disparity in cost base between Australia and China is cited by many in the industry as a barrier to fair competition,<sup>6</sup> low labour costs, low environmental protection costs, subsidised energy inputs, subsidised infrastructure costs, subsidised freight, lower overheads (no superannuation payments, occupational health and safety costs, etc) were all cited by companies as key cost advantages for China.<sup>7</sup>

There are a range of tariff rates used by our trading partners to keep Australian goods from being competitive in export markets. Tariff barriers discourage and in some instances prevent Australian TCF companies from accessing many important international markets. The TCFL forum in a 2002 report identified China and India as potential markets for Australian textiles. However, both these countries have high tariffs on a range of products including woollen yarn, woollen garments, non-wovens and carpets.<sup>8</sup>

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<sup>4</sup> TFIA (2008) sourced from ABS Labour statistics, *TCF&L Total Employment*, Nov 1984-Feb 2008

<sup>5</sup> ABS, (2007) 5368.0 *International Trade in Goods and Services, Australia*, Dec 2007, Table 35: Merchandise Trade: Imports By Industry, Customs Value; and TCFL Forum (2002) *Strategic Plan*, July

<sup>6</sup> Australian Industry Group, 2004

<sup>7</sup> Australian Industry Group (2004) *Australia-China Free Trade Agreement Feasibility Study*, Australian Industry Group (AIG), July 2004, p. 15 and *Australian Manufacturing and China*, AIG, August 2004, pp. 32-36.

<sup>8</sup> TCFL Forum *Strategic Plan*, 2002

The use and exploitation of children as workers is common in China. There are no available statistics but independent non-government organisations believe the problem is significant, especially in some special economic zones. The use of child labour is believed to be highest in fireworks, textiles and toy manufacturing.<sup>9</sup> A recent disturbing case of child slavery was uncovered in the southern province of Guangdong, a manufacturing city known for producing and exporting toys, textiles and electronics. Thousands of children, as young as seven and nine years old, were reported to have been sold in a “bustling child labor market”, with some paid 3.5 Yuan (\$0.50 US) an hour and working at least 300 hours a month.<sup>10</sup> According to Hu Xingdou, a professor of economics and social policy at the Beijing Institute of Technology, the new child labour case “is quite typical...China’s economy is developing at a fascinating speed, but often at the expense of laws, human rights and environmental protection”.<sup>11</sup>

A recent Victorian Government study into the impacts of an Australia-China free trade (2007) agreement argued convincingly that a minimum condition for any agreement must address tariff and non-tariff barriers to trade and investment including protection of Intellectual Property rights, effective measures against dumping, the free association of labour, and the effective enforcement of environmental regulations and standards. Economic modelling shows that clothing and footwear are the industry sectors forecast to be most adversely affected, with lower outputs, employment, capital and exports<sup>12</sup> Knitting mills were also expected to be hit hard, with the anticipated higher exports not sufficient to offset the loss of market share, meaning output and employment also decline.<sup>13</sup>

Any future bi-lateral and multi-lateral trade agreements entered into by Australia should enshrine TCF tariffs at current rates. There should be no undermining of the tariff freeze by trade agreements such as in the proposed China FTA.

### **Non-tariff barriers**

The TCF industry faces a range of non-tariff barriers that impact on the capacity of Australian businesses to innovate, consolidate and expand. The very point of non-tariff measures is to create a trade barrier that is not easily recognizable, provable or obvious. What is clear about them is that they inhibit the free flow of goods between countries and make Australia’s ‘open arms’ approach to imports even more damaging for local manufacturers because they do not have the same ‘level playing field’ to export to.

### **Intellectual property rights and copyright and trademark infringement**

Infringement of intellectual property rights is another example where Australian TCF companies suffer in comparison to our major trading partners. Australia has a trademark and copyright system that allows protection for those who have invested the money into research and development.

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<sup>9</sup> www.globalmarch.org

<sup>10</sup> Reuters.com (2008) *Chinese children sold “like cabbages” into slavery*, April 29

<sup>11</sup> The New York Times, (2008), *Another child slavery scandal*, April 30

<sup>12</sup> Victorian Government (2007) ‘Study into the impacts of an Australia-China Free Trade Agreement on Victoria’ p.19

<sup>13</sup> *ibid*

Many of our trading partners pay only lip service to such intellectual property rights. It is one thing to have a patent, trademark and copyright system, it is another to have the civil court structure to deal with infringements in any serious or substantial manner.

Australian industry representatives are concerned about the prohibitive cost of IP registration for small companies and the lack of requirements for importers to verify that a similar product has not already been registered.

### **Technical barriers**

There is an increasing level of regulation, especially in developed countries' markets, that results in increased costs for exporters and is, in effect, a tariff barrier to trade.

The US and EU are increasingly requiring more stringent environmental and chemical testing that may have more to do with trade barriers than environmental concerns. The North American Carpet and Rug Institute has developed testing and labelling programs to identify chemical emissions in order to preserve indoor air quality. Whilst it is hard to argue against such a testing regime, it is also hard to argue that it is not expensive to comply, and it impedes easy access to the US market.

The US Customs is generally recognised for its stringent adherence to the most technical aspects of documentation. The US Government, at all levels, does the utmost to impose restrictions on imports.

A particularly pertinent example of this is the American Berry amendment (USC, Title 10, Section 2533a), which requires the U.S. Department of Defence to give preference in procurement to domestically produced, manufactured, or home grown products, most notably food, clothing and fabrics.

### **Corruption**

Corruption is a very real impediment to the free flow of trade. While companies from countries with a high-level of corruption can easily access the relatively corruption-free Australia markets, Australian exporters are hindered in their export attempts in these same countries. Arbitrary tariff rates, delays in clearances through customs, missing documentation, changed regulations – these are all minor examples of corruption which hinder the free trade of goods.

One of the consequences of these types of non-tariff barriers is for Australian companies to avoid exporting into these markets, whilst at the same time their share of the Australian market is under threat from companies who benefit from our corruption-free environment.

### **Dumping**

Anti-dumping action is a legitimate method of taking action against overseas companies bringing goods into Australia in an anti-competitive manner. For many reasons – whether it be excess production or cancelled orders or hidden government subsidies, many goods are brought into Australia at a cost below their real cost of production.

In China, it is reported that the government, in order to gain much needed foreign currency provides tax concessions to companies who achieve certain export quotas. This means that it is worthwhile for them to export goods at cost or below cost in order

to meet this export quota. This can mean that cheap clothing or textiles arrive here and undercut the local market price.

The US takes more action than anyone regarding anti-dumping. Not only do they vigorously pursue anti-dumping actions but through what is known as the Byrd amendment, they give the duties imposed to the companies who took the action. The US actively pursues anti-dumping actions to protect their local industries.

The TCF sector is particularly vulnerable to dumping because so many of Australia's imports come from China, a country that is particularly difficult to prove a case against, because a large proportion of the economy is still regulated and controlled by the central government. The TCF sector is also vulnerable in regard to fashion clothing because our season is at the tail end of the European season and it is a convenient place to off-load goods unsold overseas.

### **Lower tariffs don't equal lower prices**

Economic modelling undertaken by the Productivity Commission (PC) for the previous TCF Industry review in 2003 indicated that gains from removal of industry assistance would be "very small" (PC Position Paper, April, 2003, p 200). The estimated cost to consumers would be 75 cents per Australian per year. The predicted cost of a deteriorating current account deficit through an increase in imports has been borne out since. What was not encompassed by the PC's modelling was the link between lower tariff rates and continued lower rates of employment, and the significant social and economic costs associated with this.

There is clear evidence that some companies who have shifted production offshore have pocketed their gains (or others have pocketed the gains) rather than passed them on to the consumer. The TCFUA has monitored the products of a number of brand-name companies in large retail stores after they closed their local manufacturing sites and found that there are little, if any, price reductions for the consumer. It is suggested by some people within industry that these gains are not being pocketed by either the wholesaler or retailer, but rather by the owners of the large commercial shopping centres whose returns from rent have skyrocketed in recent times.

It is not unusual in Australian shops to see the same brand name products side by side with identical prices for those that were imported and those made locally. Whoever is pocketing the gains from Australians losing their jobs, it is clear that the issue of consumer prices is an area of critical importance to any discussion about future tariff levels. What is also clear is that any trend of consumers not receiving the full benefits of savings will accelerate if more manufacturing is lost to Australia.

If local manufacturing is wiped out by Government policies then what brake will there be on importers not to charge higher prices? Domestic manufacturing plays an important role in providing benchmark pricing against dominant and monopolistic international players especially in technical and niche sectors of the market. If the Australian TCF sector disappears consumers will be double losers – not only will they not receive price reductions (and perhaps suffer the reverse) but they will be required to pay for the social and economic costs of dealing with thousands of workers unable to find viable alternative employment.

## Recommendations

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The TCFUA urge the Review to recommend the following:

- A new TCF Industry Plan should run to 2020 with a Review in 2013.
- Current level of TCF tariffs should be frozen and the scheduled drop in Tariffs in 2010 and 2015 should be deferred. There should be no further tariff reduction until such time as it can be proven to be in the interests of Australian workers, their families, regional Australia and the broader community, to reduce them further. If in the future Australia's trading partners have not made sufficient adjustments at all levels to bring them into line with their international obligations, or the negative social impact of further tariff reductions is too severe, tariffs should continue to be frozen until such time as those issues are addressed.
- Bilateral and multilateral trade negotiations should enshrine TCF Tariffs at current rates. There should be no undermining of the 'freeze' by bilateral or multilateral negotiations (for example, the China Free Trade Agreement).
- Conduct research into the relationship between the comparative effect on the industry of variations to the tariff rate to variations in the exchange rate.

## 2. SIP and direct government assistance

The TCFUA supports the continuation of direct Government assistance to the TCF sector. The TCF post-2005 Strategic Investment Program (SIP) and other schemes have provided necessary and crucial support to the industry during a critical period of restructuring. It is vital that SIP and other government assistance continue to be provided.

The TCFUA strongly supports the continuation of SIP and would like to see a direct assistance scheme be extended until 2020, with an expansion in the level of funding and an expansion of the eligibility criteria.

Nevertheless, SIP still remains an elite program for a small percentage of TCF companies and in no way should be seen as something tariffs can be traded-off against.

Assistance should be directly linked to the company's transparency in the contracting chain, to meeting Australian minimum labour and environmental standards and to employment.

Assistance should also be directly linked to the capacity for companies to demonstrate that they are meeting all ethical, environmental and labour standards along the contracting chain regardless of whether outsourcing occurs within Australia or overseas.

It is in the interest of transparency that detailed and timely information on all direct government assistance to the TCF industry is made publicly available, including allocation of all funds to entities and the conditions placed on funding received.

The union argues that the SIP program should be extended, and expanded in line with the original Post-2000 program, which had been underutilised by an aggregate of \$72.5million in promised grants over the 5 years to 2005. Under the reduced Post-2005 program from 2005-2010, funding levels will now be effectively modulated to a discount rate of about 30%. In order to encourage the full impact of the schemes objectives: modulation should be scrapped for the final three years of the Post-2005 SIP program; under a new and expanded program funding levels should be returned to the original Post-2000 levels and extended to 2020; and the minimum expenditure threshold of \$200,000 should be removed.

### **Link to employment**

The TCFUA's major concern with SIP is that there is no linkage between a company receiving government funds and their commitment to maintaining, or increasing, their level of Australian employment. Companies can receive taxpayer funds to assist their business one day, and sack workers the next.

The union believes Australian taxpayers would support a linkage between Government funding and employment levels, and in fact would expect such a link to be in place.

One of the other issues that needs to be addressed by any review of SIP is to ensure that companies receiving taxpayer funds are behaving in an ethical and legal manner.

Despite changes made in the Post-2005 SIP it remains substantially biased towards larger companies. The previous Federal Government had a strong bias towards large TCF companies because they believed these were the only companies likely to survive into the future. Such reasoning is wrong in principle and fact. Many small enterprises, who have developed a particular niche and are flexible operators in an increasingly competitive environment, are likely to survive into the future.

Small to medium sized businesses make up the overriding majority of the TCF Industry, with 93% of businesses employing less than 20 workers.<sup>14</sup> TCF enterprises with under 100 employees employ approximately 73% of manufacturing employees in the industry.<sup>15</sup>

While the Post 2005 Assistance Package brought in the TCF small business competitive grants program (with 4.9million provided for 133 projects over two rounds), \$96m in grants has been paid through SIP in the 2005/06-program year.

Of the estimated 9687 Australian TCF businesses in existence at the beginning of the 2006/7 Financial year (ABS (2008), 8165.0, *Counts of Australian Businesses*), 345 entities received SIP grants ranging from \$300 to \$6.5million A total of 13.4million went to the Godfrey Hirst group of Companies, 8.3million went to the Pacific Group, and 1.5million to the Leading group.

It has again been suggested to the TCFUA that any reduction in tariffs could be used as a trade-off for continued SIP funding. Besides a range of other arguments detailed above, this would be manifestly unfair to the vast bulk of the industry.

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<sup>14</sup> ABS, 8165.0, *Counts of Australian Businesses*

<sup>15</sup> ABS 8221.0, Labour Force



## **James Nelson Textile Mill (Tasmania) Case Study**

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Tasmania has experienced a massive loss of TCF manufacturing jobs most recently, in the form of 300 retrenchments at the footwear company Blundstone Australia Pty Ltd.

Also, in 2007, the office of the Federal Industry Minister was jointly approached by the management of the James Nelson Textile Mill in Tasmania and the TCFUA, seeking assistance through the SIP program to enable a management buyout which would secure the continuation of a viable TCF manufacturing business in Tasmania as well as saving jobs in Launceston (in particular).

The Federal Industry Minister's office did not deny the strength of the case for support, however, outlined that the current legal arrangements governing the SIP program prevented access to SIP funding for this purpose.

The strong case for government support of the James Nelson management buyout was amply demonstrated when the Tasmanian State Government stepped into the breach and provided \$250,000 assistance to the James Nelson Textile Mill on condition that he buyout management maintain at least fifteen (15) full time staff for a minimum period of at least two (2) years.

Accordingly, the TCFUA recommends that an improved SIP should be able to financially assist TCF manufacturing operations in similar situation in the future – subject to the same type of conditions as were imposed by the Tasmanian Government in relation to the James Nelson Textile Mill.

One of the reasons for only such a small percentage of the industry accessing the scheme is because of the size of firms in the industry. Small businesses do not have access to the resources to put in applications. SIP requires a dedication to paperwork and form-filling beyond the resources of the average small business, many of whom are struggling in an increasingly competitive environment. Larger companies have their own employees, or consultants, (or both) focusing on obtaining SIP and associated government funding. Smaller companies will never have this luxury, so the scheme, as is currently configured, will always be out of reach.

The current SIP scheme also has an in-built bias against smaller companies. To access SIP, companies must have eligible expenditure of \$200,000 in order to qualify for assistance. Many companies, who otherwise may meet the SIPS guidelines, cannot meet this threshold and therefore are excluded from the scheme.

The Victorian branch of the TCFUA states that of entities that have received SIP money in 2005/06, a total of 10 companies, (in receipt of a total of \$1.7million in grants) have been prosecuted in the Federal Court for breaches of the Outworker provisions of the Clothing Trades Award

Currently, SIP is not linked to ethical manufacturing and, in fact, has been awarded to companies that employ outworkers in breach of award conditions. It is absolutely unacceptable that taxpayers' money goes to such companies. Government funding should not be used to encourage the circumvention of the government's own industrial regulation. This is not only bad policy; it is unethical, does not accord with community expectations about the use of taxpayers' money and damages the image of the industry.

### **Ripe Maternity Wear Case Study**

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Ripe Maternity Wear was awarded \$390,000 in SIP Grants (see *Appendix 1*). This money was used by the company to move its business to purpose-built headquarters and install equipment that has aided the company in developing 'innovative products'. Ripe Maternity Wear also won the Telstra and Australian Government Small Business Award in 2005. The company notes that a factor behind its success has been 'using locally-based suppliers rather than going offshore to cut costs'.

The company has revealed in discussions with the TCFUA that it gives work out to 10 makers. It could not confirm whether these makers were working in a factory or as outworkers at residential premises. Ripe Maternity Wear is not registered pursuant to clause 48 of the *Clothing Trades Award 1999* ('CTA') with the Board of Reference. Clause 48 of the CTA requires that where a company has work performed away from its own workshop or factory it must be registered with the Board of Reference before having the work performed. The CTA applies as a Common Rule Award in Victoria, where the company is based. Ripe Maternity Wear is therefore bound by the CTA and is in breach, by its own admission, of the terms of the CTA because it is having work performed outside of its premises. This is not an insignificant or minor breach of the CTA by the company. Registration is a fundamental obligation that underpins the entire system of outworker protection because it allows for the supply chain of a company to be monitored and the award terms enforced. Moreover, breach of award terms is considered, rightly, to be a serious offence by the government. Its own laws provide that the Federal Court can impose a penalty of up to \$33,000 for each breach on the company.

The provision of SIP funding must be linked to ethical manufacturing in Australia and must not reward companies who are in breach of industrial instruments, awards and legislation. It is incongruous that a company can be awarded funding on the one hand by government and be fined by the Courts on the other for breach of the government's own laws.

### **The TCF Supply chain Opportunities Program (SOP)**

The SOP scheme aimed at supporting major capital investments to strengthen the local supply chain for the clothing and finished textile sectors, which is due to be implemented in 2010, should incorporate supply chain transparency mechanisms for

companies to be eligible for a grant. Companies should be required to demonstrate this by having HWCP accreditation, or must be required to be accredited to be eligible for this scheme. This would help ensure that companies receiving direct assistance are operating in an ethical and legal manner.

## **Recommendations**

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The TCFUA urge the Review to recommend the following:

- SIP program to continue at least to 2020 as a expanded and extended program with funding levels returned to original post 2000 annual allocations and the removal of modulation.
- Contractual obligation on companies receiving funds to:
  - specify positive ongoing local manufacturing employment impact
  - make transparent supply chain and monitoring of ethical labour standards which the TCFUA should be able to audit
  - demonstrate ethical behaviour in relation to meeting ethical labour and environment standards throughout the contracting chain
  - show proven and on going capacity to meet workers entitlements in full.
  - include the capacity to withdraw/require repayment of funding where these conditions are not met.
- Removal of \$200,000 threshold to open up access for small-medium companies.
- SIP and associated program guidelines should encourage and support
  - the creation of quality, well-paid jobs.
  - greater Australian value add and industry linkages through sourcing of materials and vertical processing
  - training and skill development of shop floor workers
  - both product and organisational innovation
  - research design and development of new products and markets.

### 3. Government procurement policies

The TCFUA welcomes the new Labor Government's strong commitment to use ethically sourced public procurement as an industry policy tool. A number of state governments have in recent years introduced ethical procurement policies for their departments. These have focussed on the need for governments to stop using companies who are exploiting home-based outworkers. It is also essential to the industry for governments to implement procurement policies that support local manufacturing. If all State and Federal Governments supported local manufacturing through the implementation of these sorts of policies it would provide a significant boost to local manufacturing. Such policies

“will ensure that that all government departments see their purchasing activities as a key element in industry development [and] that significant outlays of Commonwealth funds conform with the policy...”<sup>16</sup>

The importance of government procurement linked to local manufacturing and ethical Australian production is especially salient for small to medium companies and emerging niche areas, not just the larger firms able to be principal suppliers. The TCFUA argues that the government must avoid a 'whole of contract' procurement approach, where such an approach excludes small to medium local suppliers from the tendering process, and should award a greater share of contracts to these businesses. The Prime Minister's pre-election undertaking to order an immediate external audit of Commonwealth procurement policies to alleviate onerous terms on low to medium value public contracts is a welcome advance. We encourage the government to also honour its promise of providing

“...a price preference advantage for Australian suppliers of 20% with an additional five percent for those companies in regional Australia...”  
and “...ensuring that all goods are ethically sourced...”<sup>17</sup>

The union also strongly supports the Government's commitment to ensure that Commonwealth procurement guidelines and codes reflect government policy on ethical procurement. Such codes must ensure that all departments and agencies source TCF products from suppliers that provide to workers their minimum wages and conditions, and in addition, assists the awarding of these contracts to Australian companies. The government should acknowledge through Federal and State government procurement policies the strategic importance of maintaining inherent TCF manufacturing capabilities within Australia.

A uniform ethical local procurement policy implemented by Federal and State Governments that is meaningful for the whole sector would make a huge difference to the size and viability of the local TCF industry. There are overseas examples, in particular New York City, where support is given for the local procurement of uniforms for fire-fighters, police officers and other City employees. Similar legislation has been passed in over 30 US municipalities in the past two years. In addition, the U.S.

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<sup>16</sup> ALP Platform, Chapter 5, 2007

<sup>17</sup> ALP Platform, Chapter 5, 2007

government spends \$2billion on defence uniforms<sup>18</sup> made in the US under the Berry amendment, which requires the US Department of Defence to give preference in procurement to domestically produced, manufactured, or home grown products. Similar commitments by all Australian governments would assist in maintaining a strong manufacturing capability within Australia

Government TCF Policy should focus on an all Government approach when reviewing Government (Federal and State) purchasing decisions that takes into account not just price but also environmental compliance and regulation requirements and underlying wage levels and conditions of employment to ensure a like for like comparison between Australian industry and imported options. We argue that this should extend all the way down the supply chain and to all purchasing decisions across the TCF sector – public or private.

There should also be consistency in FTAs to open up opportunities with trade partners in relation to Government Procurement opportunities for TCF products, or where this is not available the Australian Government should close off these opportunities to manufacturing and suppliers from those countries.

The TCFUA's experience with State procurement systems has been varied and provides some salutary lessons for developing a meaningful, consistent and coherent policy framework.

### **Victoria**

The Victorian procurement scheme, Victorian Industry Participation Policy (VIPP) established in 2001, attempts to support local manufacturers but does not go far enough in terms of giving local manufacturers a real advantage in terms of winning contracts against imported products. The threshold level for triggering local content rules is high, and the various arms of government often interpret the rules differently. VIPP has from May 2007 reduced threshold for projects requiring an implementation plan from \$50m to \$10m and halving regional thresholds, following consultation with unions via the Victorian Government Suppliers Reference Group.

The Ethical Purchasing Policy established in 2004 requires companies wanting to supply budgets sector agencies with goods and services to attest that they have not been found to have breached statutory obligations as employers for the past 24 months. This policy has been found to be singularly ineffectual, struggling to have any impact or make any discernable difference.

### **Queensland**

The Queensland Government's State Purchasing Policy is a good example of a Government attempting to utilise their substantial purchasing power to assist local industry. The Queensland Government spends \$5billion each year on goods and services. Their State Purchasing Policy has three equally competing objectives, the most relevant being that purchasing should advance government priorities. This policy state that: "Each department/agency must seek to advance Government priorities. These priorities define the Government's commitment to advance, through it's purchasing, certain social, economic and environmental objectives."

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<sup>18</sup> behindthelabel.org (2006) *Conduct Unbecoming: Sweatshops and the U.S. Military Uniform Industry* Unite Here! report, <http://www.behindthelabel.org/pdf/ConductUnbecoming.pdf> [viewed 01/05/2008]

By contrast the VIPPS asserts that all decisions “will be made solely on the basis of value for money.” The union argues strongly that this should not be mirrored at a federal level.

The support and assistance provided by government procurement for small regional firms was vividly illustrated in a recent email sent to the TCFUA from the CEO of Drummond & Kindred, a company employing 60 people in Gympie Queensland:

"[W]e are really concerned about the longevity of our factory in Gympie Queensland We have struggled over the years with imports and we are relying mainly on work from Government Agencies. If things go against us in this regard and work is sent overseas it will virtually close down our factory as it will be impractical to work with just what we get locally. We are currently employing 60 +/- people and this would be devastating in our small country town." (p 19)

### **New South Wales**

New South Wales has developed a number of best practice models for government procurement of TCF supplies. One of these best practice models was implemented in the recent procurement of workplace uniforms by NSW Rail Corp, whereby each party tendering for the procurement contract was required to specify a domestic manufacturing cost for each TCF item to be supplied, as long as the particular item could still be manufactured in Australia. Accordingly, each tenderer was required to supply a domestic price as well as an overseas import price for each TCF item to be supplied. In addition, the NSW Treasury agreed to subsidise the difference between the domestic supply cost (on the one hand) and (on the other hand) the overseas supply price for any TCF items which could be produced by existing TCF domestic manufacturing capacity within Australia. In other words, this particular procurement arrangement involved the identification of still-existing TCF manufacturing jobs in Australia, coupled together with a subsidy for the procurement of TCF supplies (in the form of NSW Rail Corp Uniforms) within Australia, so as to maintain existing Australian TCF manufacturing capacity (rather than any expansion of that domestic manufacturing capacity).

Another best practice model for government procurement of TCF supplies arises from the NSW Government “Code of Practice on employment and Outwork Obligations for Textile Clothing and Footwear Suppliers”. Since 1998, businesses which supply TCF products to NSW government departments and agencies have been required to comply with the Code’s still extant “Implementation Guidelines on employment and outwork obligations for textile clothing and footwear suppliers” (in order to avoid substantial commercial sanctions for breach of these guidelines). Since that time, the relevant NSW government procurement agency developed and trialled a best practice model for auditing TCF supply chains in relation to compliance with this government code (and guidelines). This auditing model was applied to an entire procurement contract for TCF supplies and involved the procurement agency imposing certain commercial contractual conditions upon the relevant TCF suppliers. According to these contractual conditions, the government contractually authorised a third party regulatory oversight agency to audit the entire domestic supply chains for these suppliers. The supply chains were audited in regard to compliance with the NSW government code (and

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<sup>19</sup> Drummond Agnew, pers. comm. 6 May 2008

implementation guidelines) and the audit inspections were authorised to be conducted without any prior notification of inspection times (that is, without prior warning).

The nominated regulatory oversight agency was the TCFUA, which conducted the required inspections and which then reported back to the relevant procurement agency about any failures (in those supply chains) to comply with the government code. Following these audits and reports, the oversight agency (in this case, the TCFUA) and the procurement agency worked closely together with the offending TCF suppliers to bring these businesses into compliance with the government code Implementation Guidelines – and thereby helped to save these businesses from the risk of substantial commercial sanctions for breaching the government code.

The union has also been made aware of a number of recent cases where small and medium sized companies lost contracts to overseas suppliers on price alone. Companies that have been supplying TCF products to public utilities for many years miss out on contracts and are told to hang on in case preferred suppliers are unable to satisfy agreements. These companies outlined their dissatisfaction to the union over the preference given to larger companies and overseas suppliers, but wished to remain anonymous for fear of being excluded from future tenders.

The experience of the TCFUA (NSW branch) in 2000 over its dispute with the Sydney Olympic Games Organising Committee (SOCOG) and its decision to contract a portion of its workforce uniforms overseas, indicates the importance of monitoring the supply chain beyond our borders to ensure that contracted overseas companies are complying with relevant codes of conduct and that Australian companies issued with work have a good industrial record. The best practice model of supply chain auditing for TCF supplies to NSW government agencies was also adopted in relation to overseas supply chains providing workforce uniforms for the Sydney Olympic Games Organising Committee (SOCOG). In the year 2000, SOCOG and the TCFUA agreed on supply chain auditing arrangements intended to oversee the supply of these SOCOG uniforms. This agreement with SOCOG authorised the full disclosure of details about the supply chains providing these uniforms – most importantly, the full identities and locations and locations (including overseas) of all contractors and subcontractors in these supply chains. Under this agreement, Australian union auditing inspectors were authorised to obtain this supply chain information and were further authorised to access the overseas workplaces of these supply chains, in order that these union inspectors could determine the extent of compliance with the SOCOG Licensed Goods code of Conduct (*for related documents see Appendix 2*)

While the TCFUA strongly supports the Federal ALP policy on procurement, its requirements on companies manufacturing goods in Australia should also apply to companies manufacturing and sourcing overseas. Given the high proportion of Australian TCF goods produced offshore, it is important that companies sourcing overseas do not gain advantage in the tendering process through access to markets where labour standards are low. Procurement policy must include clauses to demonstrate a process for monitoring and improving conditions under which goods are produced overseas.

## Recommendations

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The TCFUA urge the Review to recommend the following:

- The introduction of Federal and State TCF ethical procurement policies that:
  - preferences local suppliers
  - requires transparent supply chain locally and offshore and monitoring which the TCFUA should be able to audit.
  - requires ethical behaviour regarding labour and environment standards
  - requires all clothing companies to be accredited to the Australian Homeworkers Code of Practice (HWCP)
  - ensures access for small – medium size companies to the tendering process
  - develops preferred or approved supplier systems which are assessed by a tripartite industry body as ethical
  - requires Australian Made quotes for tenders.



## Section 2: A smart, ethical, clean, green industry

### 1. Australia's global TCF brand

This review offers an important opportunity for the Australian TCF Industry to build on its strengths and to develop a world class sector by moving into new areas with an emphasis on manufacturing high-value added products, underlined with high ethical employment and environmental standards. We need to build the reputation of the Australian TCF Industry globally as one that is innovative and environmentally sustainable, with high ethical labour standards. We need, from the Federal Government, an industry policy that supports the Australian manufacturing industry's future and growth.

The TCF sector has many problems, many of which form part of this submission and part of the TCFUA's argument as to the changes required within the industry. Much of the public image of the industry is created by 'bad news' items – company closures, loss of entitlements, exploitation of outworkers. While the issues and problems remain, the TCFUA will continue to highlight them in order to achieve public awareness and changes to government policy.

But just because these issues are often highlighted in the media doesn't mean there isn't another side to the TCF sector – the 'good news' side. Of course the media aren't as interested in these stories – the small companies exporting their fashion designs to the world, the supplying of high-technology fabric and garments around the world and the integration of TCF companies into other manufacturing sectors like automotive.

#### A smart industry

The union supports a strategy of developing an innovative industry focussing on research and development, penetrating niche markets and exporting to gain a viable base to survive and thrive. In reorienting the industry a common language must be developed with consistent and mutually agreed understanding between Government and the TCF industry as to the meaning of concepts such as 'innovation', 'state of the art' and 'brand support'

But we also recognise that this is an ongoing process and that the Government must continue to support the industry while this reorientation occurs. It must enable the industry to take advantage of research and development, new technologies and innovation in TCF and design, to build on its existing strengths and move into new areas where the sector can be competitive.

To that end we strongly concur with the Federal Labor Party's commitment to:

“...establish an effective and resourced Australian TCF Industry Council to focus on creating employment and development in the TCF sector focusing on high-value exports” (ALP Platform, Chapter 5, 2007)

However, the encouragement and promotion of innovation, research and design must be one that is linked to a vibrant, high skill, high wage local manufacturing base. It is imperative for the industry to recognise that to remain viable it must attract new

employees with the appropriate skills, and one of the key elements of this is to ensure that wages of TCF employees increase and their conditions of work improve. TCF workers are already at the low end of the wages scale compared to the rest of manufacturing, and in recent decades this disparity has increased even further, particularly in view of the growth in outwork. An industry wide minimum rate for work means that employers are competing on the basis of quality and innovation and not on continual lowering of wages. The future of the industry lies in a higher wage, high skill, and innovation-focussed industry. Strategies based on short term cost cutting and low wages are as doomed as the companies that employ them. The TCFUA urges employers in the industry to also recognise the benefits of increased wages and improved conditions to the industry. Design and innovation must be backed up by the critical mass of a robust manufacturing base. The best design is grounded in a deep understanding of the construction of products – a strong growing local industry supports and enables innovative thinking, linkages and solutions.

### **Australian Defence Apparel – Case Study**

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ADA manufactures specialist defence and security apparel in Melbourne and the regional Victorian town of Bendigo. ADA recently secured a five-year \$80.7 million contract with the Australian Defence Force after an extensive and highly competitive tender process. The company is reflective of the leading-edge technology available in Australia.

ADA is a significant local employer – the 80 workers added for this contract to produce the ‘Modular Combat Body Armour System’, will increase its Bendigo factory in regional Victoria to 250 workers. In addition another 10 workers will also be added to their headquarters in Coburg. ADA has a unionised workforce and it has demonstrated its commitment to ethical manufacturing through its involvement with the ‘No Sweat Shop’ label accreditation system.

This type of contract highlights the positive and significant impact government procurement can have on Australia’s TCF industry. Collectively, government procurement amounts to a massive volume of work for the TCF industry and it is important to direct this work to local ethical companies that can feed into Australia’s economy rather than send the work offshore.

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### **Manufacturing matters**

Manufacturing is the main source of growth of productivity and living standards in the global economy. Despite significant decline locally in recent years, it still contributes to a large proportion of our productivity growth and is an important driver of new technology in Australia.

John Langmore (2007)<sup>20</sup> argues that manufacturing matters, not only because it provides employment for those hit by years of economic restructuring, but:

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<sup>20</sup> Langmore, J (2007) *To Firmer Ground: Restoring Hope in Australia*. UNSW Press, Sydney

“...because Australia simply cannot improve and diversify its export performance in the world unless it restores, adapts and builds on some of its remaining manufacturing industries...The Irish, Finnish, Danish and Swedish experiences, among others, show the importance of manufacturing in small economies. Manufacturing succeeds in these countries because they gave it the assistance needed to innovate, expand and export” (p 101)

Manufacturing is also closely integrated with other parts of the economy through producer-user linkages. It not only supplies products directly to consumers but it also provides inputs to the production process of other industries, like the automotive sector.

The significance of these linkages is that every dollar of manufacturing output generates more activity and jobs than the output of other industries. As a result, manufacturing has multiplier effects 20-25 per cent larger than agriculture and mining respectively.<sup>21</sup>

As argued by Bell, Green and Burgess (2000)<sup>22</sup>, no modern economy stays wealthy without a strong manufacturing base:

“This is partly a matter of linkage within the economy. A strong manufacturing sector typically fosters a range of high value-added sectors in the service sector economy...A capable manufacturing sector is also typically linked to a robust indigenous research and development and technology capacity. Manufacturing is also typically associated with strong input linkages from other parts of the economy” (p 45).

When TCF factories close, all these linkages affect other companies. This is especially the case in regional areas where the size of the local firm is often a very significant proportion of the local economy. Reductions in tariffs and a phase-out of assistance to the TCF sector will result in the closure of more Australian factories and will continue the reduction in Australian manufacturing with all of the associated costs.

Government policy should promote the ongoing TCF Industry within Australia and actively encourage, promote and reward:

- creating quality well-paid jobs
- greater Australian value adding and using other Australian companies for vertical processing
- training and skill development of shop floor workers
- both product and organisational innovation
- developing new products and new markets.

### **An ethical clean industry**

There is now an opportunity for the industry to market itself as ethical, clean and green with fair labour standards.

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<sup>21</sup> ABS, Australian National Accounts, 5246.0

<sup>22</sup> Bell, Green and Burgess (2000), *Speed Limits to Growth and the Quality of Jobs*, chapter in S. Bell, *The Unemployment Crisis in Australia, Which Way Out?*, Cambridge University Press, Cambridge.

Outsourcing occurs both locally and overseas. Complex supply chains now exist within the sector and manufacturing processes are commonly outsourced to wholesalers and home based workers. The presence of outworkers in the supply chain is typically unacknowledged. For this reason outwork is often referred to as the 'hidden' or 'invisible' part of Australia's TCF sector. The union estimates that 70% of all TCF workers are outside the regulated workforce, weakening the capacity to monitor labour rights, both locally and overseas.

The Brotherhood of St Laurence (BSL) report *Ethical Threads Corporate Social Responsibility in the Australian Garment Sector*, found that companies had little awareness and understanding of either local laws or international mechanisms for monitoring labour rights. Companies lacked awareness of, and in some cases a feeling of responsibility for, the difficult working conditions faced by many garment workers in Australia and overseas.

### **The Homeworkers Code of Practice and the 'No Sweat Shop' label**

The TCFUA is a founding member of the Homeworkers Code of Practice (HWCP) Committee – a joint union-industry initiative aimed at: ending the exploitation of home-based workers in Australia's TCF industry; and promoting ethical Australian-made TCF products that display the 'No Sweat Shop' label.

The HWCP provides manufacturers and retailers with a mechanism to make their supply chain transparent to the TCFUA so exploitation can be easily identified and addressed. The HWCP encourages manufacturers to take an ethical approach and be responsible for staying informed of all the steps involved in the production of their garments.

The 'Accreditation' process that manufacturers undergo assists them to meet and document their legal obligations, such as providing Award rates and entitlements and ensuring homeworkers have a set minimum and maximum amount of hours per week. Accredited manufacturers are licensed to display the trademarked, 'No Sweat Shop' label, on their Australian-made garments – providing consumers with an identifiable mark to distinguish ethical manufacturers.

As well as providing governance through its membership of the HWCP Committee, the TCFUA also support the initiative by playing the important compliance role for the HWCP.

The TCFUA congratulates Federal Government on its decision to fund the HWCP Committee with \$4million over four years. The support for this valuable and collaborative initiative is greatly appreciated.

This HWCP is a fantastic example of what can be done when an industry acknowledges a problem and takes practical and tangible steps to improve its practices.

### **A green industry**

As climate change and issues of environmental sustainability begin to take a more central position in the public consciousness, the Australian TCF industry needs to assess what role it can play in reducing our nation's environmental footprint. Although challenging, this task presents many valuable opportunities for the industry.

On both a local and international level, there is a rapidly swelling base of consumers actively seeking 'environmentally sound' TCF products and the industry is clearly starting to address this demand with a number of companies clamoring to highlight their environmental credentials – some real, some questionable, to increasingly discerning consumers.

The TCFUA recognizes that environmental sustainability in regards to the TCF industry is a very complex topic. From the growing and processing of fibres to their transportation and assembly into products, from the retail distribution to the potential years of washing and care provided to products by consumers after purchase, there are various elements that contribute to the significant life-span environmental impact of TCF products.

Whilst acknowledging the difficulties of assessing what measures are the most effective in minimizing the environmental impact of TCF products and operations, the TCFUA believes that regulatory and labelling systems are urgently needed to assist consumers distinguish the meaningful environmental practices of companies from the spurious claims.

If high ethical and environmental standards were realised, the Australian industry would be well placed to capitalise on the growing 'fair trade', 'organic', 'ethical', and 'eco' market trends on the global stage. Australian-made TCF industry should commit to generating a justified reputation of being one that has high labour standards, adheres to stringent environmental standards, and produces quality products.

In addition to taking into account the energy and water consumption involved in TCF manufacturing and distribution, consumers can also play a part in reducing the industry's environmental footprint by being better informed of the consequences of their own practices relating to the purchase and usage of TCF products.

Poor environmental practices and substances that are environmentally damaging also pose serious threats to workers. Combine the immediate dangers faced by workers with the predicted wider negative consequences of climate change on the viability of the whole industry, and reasons to lift the industry's game are undeniable. In addition to the motivation of playing our part to prevent catastrophic consequences of climate change, the TCF industry also stands to benefit by being an 'early adopter' of higher environmentally sound standards and practices by getting ahead of the pack. Being 'Ethical, Clean and Green' can and should be the Australian TCF industry's competitive edge on the global market.

## **Recommendations**

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The TCFUA urge the Review to recommend the following:

- Research into the development of branding and marketing for the Australian industry based on an ethical, clean and green sustainable industry.
- The government conduct or fund in depth research to establish clear and effective targeted environmental standards and strategies for TCF companies.
- Once the above standards are common practice and systems are in place to verify that companies are meeting them, the Government can then support an industry wide collaborative promotional campaign to rebrand

Australian Made TCF products as being of a high quality, ethical and green, and while also raising consumer awareness of the potential impact of their choices and practices.

## 2. Recognition and development of skills

There is almost universal acknowledgement from all those in the TCF industry of the importance of skills in ensuring the industry's long-term viability and competitiveness. A key factor in industry success is the capacity of workplaces to adapt to a changing work environment through the introduction of new technology, skill development and work organization. Education plays an integral role in workplace change and innovation by both empowering workers with the acquisition of skills and by building broader skill bases in areas such as language, literacy and numeracy, and generic skills.

There has been, in recent times, a drift away from building the capacity to formally recognise workers skills and to up-skill workers and manufacturing and production workers, in particular, have been largely left out of the picture. At the same time Australia faces a national skills shortage in many industries, including niche areas within TCF and manufacturing. Many retrenched TCF workers continue to leave their long-term stable employment with a range of unrecognised and unaccredited technical generic and generic skills. Retrenchment is a pivotal moment at which such skills are either lost or capitalised upon.

### Incentives for companies to invest in training

An overriding issue is the need for incentives to get companies to invest in skills and formal training along with formal recognition processes that will capitalise on the existing skills of their workforces. Recognition of Prior Learning (RPL) and Recognition of Current Competencies (RCC) are formal recognition processes in the VET system that can be accessed if adequate funds to cover their costs are available. A range of strategies can be developed to support the implementation of the both RPL and RCC. These strategies include the dissemination of information to employers and employees on the availability of RPL and RCC; plain-English resources for the use of workplace trainers and assessors and a funding model which supports the implementation of RPL and RCC.

### Meeting potential skills shortages

According to a recent report<sup>23</sup>:

“[i]t is important to note that skill shortages are further brought about by underutilisation of the current skills and knowledge of the existing workers as well as those who have been retrenched. This is due to a lack of fair and equitable formal recognition process and training opportunities” (p.4)

The vast majority of workers in the industry are still inaccurately viewed as largely unskilled, with little recognition of the depth and range of skills learnt on the job which should be utilized and upon which further skills could be built.

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<sup>23</sup> Victorian TCF&L Industry Advisory Body [IAB] (2008) Industry Change Drivers Report to the Office of Training and Tertiary Education [OTTE] (February 2008)

There is a need within the industry for developing the *depth of skills* as well as the *breadth of skills* – upskilling, multi-skilling and recognition of in-depth knowledge about skill are a requirement for TCF companies and their employees.

### **Working collaboratively through tripartite processes**

An adaptable and sophisticated skills base can only be built through a tripartite arrangement, which sees the employers and the union developing and implementing training, and governments supporting it through appropriate programs.

The education and training system must meet both industry needs and those of the individual learner. Consequently, for the recommendations made in this submission to have an impact, there needs to be a high level of collaboration between employers, the Union, Registered Training Organisations (RTOs), TAFE institutes and government training authorities. Success also depends on the ability of the industry to embrace change and grapple with difficult issues such as the industry's image and the changes in work practices resulting from the impact of economic internationalisation and transition into a knowledge-based economy.

### **The Workplace English Language and Literacy program**

It is especially important for outworkers, sweatshop workers, workers from non-English speaking backgrounds (NESB) and those with low English language, literacy and numeracy skills, that the continued expansion and promotion of the Workplace English Language and Literacy (WELL) program is carried out by DEEWR with a particular emphasis on continuing to promote integrated delivery of language, literacy and numeracy skills with vocational education and training.

The unique situation of outworkers, whose employers deny their obligations, and their particular education and training needs must continue to be acknowledged and addressed by WELL.

The delivery of training to outworkers and the language, literacy and numeracy needs of the rest of the TCF workforce are high priorities, and underscore the need for further promotion of integrated training and professional development of trainers and assessors. Through the WELL program the TCFUA has had significant success in delivering programs which integrate language, literacy and numeracy (LLN) with vocational outcomes.

### **The Patternmaking Project Model**

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The TCFUA in Victoria is currently working in collaboration with RMIT University, the TFIA, the TCF Industry Advisory Body and Industrial Relations Victoria to upskill and to formally acknowledge the current skills of a group of outworkers in Patternmaking, IT, CAD, new technologies, product knowledge and in other units from the TCF Certificate IV in Clothing Production.

This project is based on the TCFUA 'best practice' model<sup>24</sup> of integrating LLN education with technical and vocational training. Integrated education and training is based on elements fundamental

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<sup>24</sup> ALMITAB (1998) No Sweat: A guide to best practice outworker training delivery

to a supportive training context such as acknowledgment of existing and potential skills of the employees, and of organisational and technical systems, technical language, the language of the workplace and generic skills. It also acknowledges crucial issues of cultural inclusiveness and of access and equity.

The course also offers outworkers mentoring and work experience in the industry. WELL has funded the LLN and generic skills component of the course both in 2006-2007 and 2007-2008).

The project is continuing to result in some very successful education and employment outcomes for outworkers. The success of the Project confirms the importance of collaboration in the generation of innovative programs to identify and support niche areas in the industry and their requirements for particular skills. These partnerships must be continued to be promoted and adequately resourced

The Patternmaking course in Victoria provides a good model for using WELL funds to support LLN integrated with technical training. The Patternmaking Project also provides an excellent model for developing beneficial partnerships between Unions, employer bodies, TAFE colleges and Government departments in order to maximise opportunities for outworkers to have their current skills recognised and to upskill in order to get better paid work and conditions.

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### **Providing retraining opportunities to retrenched workers**

The TCFUA has a long history of developing successful and innovative strategies and training approaches to assist retrenched Textile Clothing and Footwear (TCF) outworkers and factory workers. Structural adjustment in the TCF industry has, for over fifteen years, continued to have devastating, long-term effects on huge numbers of workers within the industry. Those workers retrenched from the TCF industry generally experience great difficulty in slotting back into regular work in this or other industries. Age discrimination and language and literacy issues are most commonly cited as the manifest barriers faced by workers wishing to return to stable employment. Given this retrenched workers and outworkers will need to be provided with a training allowance in order to encourage them to undertake retraining opportunities (for a proposed model for retrenched workers and outworkers, see section 3 on retrenched workers, below)

The TCFUA has developed useful and tried and tested models for working with retrenched workers and outworkers that could well be utilised by other RTO's in the system.

### **A formal audit of training for the industry**

Through these programs the TCFUA has identified skills gaps and the importance of setting up properly resourced and functioning training models. It is vital to assess exactly what training is going on, who is doing the training and what funding is being used.

A formal audit of training taking place is needed for the entire TCF industry in order to provide a basis for formal recognition and transferability of competencies and/or



qualifications within TCF industries, and across other industry sectors. This audit would be undertaken in each state by the Industry Advisory Body or Manufacturing Skills Australia. It would identify who is being trained, what training they are receiving, who is delivering this training, how this training is being delivered, and whether workers are then given opportunities to effectively utilise and maintain existing and new knowledge gained.

An audit of training across the industry is urgently required and must investigate if the training includes:

- integration of language, literacy and numeracy skills with vocational training
- a process of formal recognition of prior learning and competencies
- generic skills and career paths
- flexible group or one-on-one training delivery
- formal assessment of the training
- accredited training of shop-floor workers not just at AQF levels I-II but also at III-IV and higher.
- current and relevant Information Technology, new technologies and product knowledge training

It is essential that the quality of the training that is taking place across the industry is appropriately monitored and audited to ensure quality of training delivery, equity of access and transferability of skills acquired by the participants. There is scope for undertaking research into potential areas for training in response to industry's needs for specific skills via the role of the Federal Manufacturing Industry Skills Council (Manufacturing Skills Australia) and the State TCF Industry Advisory Bodies in the context of the Federal Government's new policies under Skilling Australia 2008. The Government has outlined proposals for an "industry-driven" training system, a crucial component of which is "workforce participation".

### **Skilling for the future**

Potential areas for training of workers in the industry, retrenched workers and outworkers to meet the needs of the TCF industries via up-skilling, multi-skilling, trade apprenticeship training, and other forms of vocational training at all levels are numerous. Some of these are those that will support aspects of existing manufacture such as pre-production (eg pattern making) in the clothing and fashion sectors; supply chain areas such as warehousing, distribution and small business skills; generic and transferable skills such as communications, OH&S compliance, ethical and sustainable business practices and corporate responsibility; high level technical operations and design skills incorporating computer programming and systems skills.

All of these areas of training must be underpinned by LLN programs, generic competencies and complemented with formal recognition processes. They will need to reflect the changing demands of the industry as it adjusts to the effects of technological change, globalisation, tariff reductions and consequent skills shortages and they will need to provide trainees with career pathways and transportable and viable skills.

Small business take-up of vocational training is fairly low due to the costs associated with developing training resources and infrastructure under the new Training Package. Larger companies have more capacity to adapt the Training Package to their needs.

Other factors influencing the take-up of training include the time required for off-the-job training and a general scepticism towards the ability of RTOs to deliver relevant and flexible training.

Over the years there has been too much concentration of training for workers at AQF I-II levels, and the current federal government's provision of training places at higher levels for shop floor workers is welcomed, as long as barriers to these provisions do not exclude shop floor workers with specific needs such as L&LN and lack of opportunity to have their current competencies formally recognised.

Funding of Australian traineeships has been based on the numbers of participants signed up, with little monitoring and examination of what training has been provided, its benefits and for whom. Training has been at times regarded as a subsidy to industry for cheap labour supply and had little training value to those participating in it. The new Federal Government's arrangements for funding of training places in areas of skills shortages has the potential to benefit workers in the TCF industry, but it remains to be seen whether the skills shortages identified by the TCF industry will be acknowledged at the Government level.

The means by which young people can be encouraged to enter the industry via training places and apprenticeships/traineeships will depend on improved information about career pathways and employment prospects, as well as a more supportive training system including LLN and RPL.

The professional development of workplace trainers and assessors in particular is crucial to effective industry training.

There is an inherent tension over the ability of a Training Package to be customised to a particular workplace, an aspect that many employers applaud, and whether the skills attained for workers under that customised training are transferable to other areas of work. The teaching of generic skills, or the underpinning skills and knowledge as they are referred to under the Training Package, is crucial to the portability of the qualifications attained. Many employers, having trained their own employees under the system, expressed concern about hiring staff trained in another workplace as in their opinion there is no uniformity of skills standards and standards of workplace assessment. These concerns mandate that for the Training Packages to be implemented with the full confidence of the industry, the professional development of workplace trainers and assessors must be ongoing and concentrate on equipping them adequately in workplace assessment and training in both technical and generic skills.

Skills shortages experienced by the TCF industry are those of mechanics, sewing machinists, cutters and textile technicians and technologists. The shrinking of the clothing sector has resulted in the departure of a number of experienced sewing machine operators and cutters and this had left skill gaps in this sector. Alongside this the need for TCF mechanics remains high, while the need for textile technicians and technologists has increased as many companies look to innovation in order to remain competitive. Other trade areas such as electricians and fitters will be required to service the burgeoning number of small enterprises. Due to the current unpopularity of the TCF industries as a career choice for young people (with the exception of clothing design), the exit of experienced human resources presents a challenge for the industry.

Work needs to be done to promote these careers in the industry, in particular to young people entering the workforce, vocational training or starting school-based

apprenticeships. More broadly, we need to change community perceptions about the TCF industry.

## Recommendations

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The TCFUA urge the Review to recommend the following:

- Tax incentive to companies to invest in the training of their workforce with one requirement being, to provide accredited training of shop floor employees
- Expanded program to link redundant/unemployed workers and outworkers to skill shortages and training and job placement, involving union, community organisations, training providers and industry.
- TCF industry wide training audit to be undertaken and the establishment of an effective training delivery and monitoring process
- Assistance to audit and provide effective assessment of workers in RPL, RCC and accredited training
- Provision of a training allowance to retrenched workers and outworkers to enable them to undertake and complete accredited training courses
- Continued funding of accredited training for outworkers and small factory workers under the Federal Workplace English Language and Literacy Program (WELL)

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## 3. Outworkers

The textile, clothing and footwear industry comprises both a formal and an informal sector. The largest proportion of clothing manufacturing in Australia takes place in the informal sector. This sector is characterised by the contracting out of clothing manufacturing in long contracting chains often involving numerous participants and ending in within a sweat shop environment or with an outworker performing work at home.

As a 1996 Senate Economics Committee report, *Outworkers in the Garment Industry* noted:

‘The production of a garment involves a number of stages: designing, cutting, sewing, finishing, pressing, packaging and distribution...there are now very few garment companies [in Australia] which complete every stage from beginning to end in their own factories. Most companies now contract out at least the sewing stage, while some contract out all stages...Thus there may be as many as ten parties involved in the manufacture and retailing of one single garment.’<sup>25</sup>

Contracting chains in the TCF industry are often complex and involve intermediaries who coordinate the process of contracting out the various tasks from the manufacturer. The presence of outworkers in the supply chain is typically unacknowledged. For this

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<sup>25</sup> Senate Economics Reference Committee, *Report on Outworkers in the Garment Industry* (1996) 1.50

reason outwork is often referred to as the 'hidden' or 'invisible' part of Australia's TCF sector. The invisibility of outworkers is compounded by the fact that many outworkers work from suburban residences, either their own homes, or sweatshops set up in another person's garage or house. Their work is thus often never seen by the wider community.

Given the invisible nature of the work, it is notoriously difficult to determine the number of outworkers. A report produced by the TCFUA in 1995 put this figure at 330,000.<sup>26</sup> This was reflected in a Senate Committee Inquiry in 1996.<sup>27</sup> Since the mid-1990s however, the impact of free trade policies, reduction on tariffs and quotas and the flooding of the domestic market with imported garments has radically changed the face of the TCF sector in Australia. The formal sector has dramatically reduced in size with many factories closing as local businesses have moved to offshore production or the importing of TCF goods. The move to offshore production has impacted upon the informal sector with an increased demand for a local workforce that can respond quickly to consumer demand and the needs of the local market, particularly in respect of women's wear which changes frequently in style and has a high variability in seasonal demand. There is thus a strategic advantage in having these garments produced onshore and new production models that allow for short response times have become a feature of the local TCF industry leading to a growth in the informal sector.<sup>28</sup>

The TCFUA estimates that that the proportion of outworkers in the industry now accounts for approximately 70% of employment across the whole textile, clothing and footwear sector. Even based on the most conservative estimate (from 2003) outwork accounts for approximately 40% of employment across the whole textile, clothing and footwear sector.<sup>29</sup> More fundamentally, as the Senate Economics Committee noted in 1996:

'...regardless of the absolute number of people involved in home-based garment manufacture in Australia, it is highly likely that the number of outworkers has increased considerably over the last decade. **More importantly, the Committee believes that there are sufficient people involved in the industry for concern about them to be warranted.**<sup>30</sup>

Outworkers represent some of the most exploited workers in Australia and their working conditions are notoriously bad. A 2001 study of outworkers found, for example, that:

- the average hourly rate of pay was \$3.60 per hour
- the largest group worked 10 hours per day (21%) and the second largest worked 14-15 hours a day (18%)

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<sup>26</sup> Textile, Clothing & Footwear Union of Australia, *The Hidden Cost of Fashion*, Report on the National Outwork Information Campaign, March 1995, at 5.

<sup>27</sup> Senate Economic Reference Committee, *Report on Outworkers in the Garment Industry* (1996) executive summary.

<sup>28</sup> Ethical Clothing Trades Council of Victoria, *12 Month Report* (2004) 1, Senate Economics Reference Committee, *Report on Outworkers in the Garment Industry* (1996) 1.5; Brotherhood of St Laurence, *Ethical Threads* (2007)

<sup>29</sup> Productivity Commission, *Review of TCF Assistance Inquiry Report*, Report no 26, 31 July 2003, at 182.

<sup>30</sup> Senate Economics Reference Committee, *Report on Outworkers in the Garment Industry* (1996), executive summary (emphasis not added)

- 62% spent 7 days a week sewing, and an additional 26% spent 6 days
- 83% were not usually paid wages on time and 52% often did not receive wages at all
- only 3% received holiday pay and 2% received public holiday pay.

97% of the outworkers surveyed were women and 92% of these were born overseas.<sup>31</sup> Outworkers often face physical and verbal harassment, including blackmail, threats, coercion and bribes. Their workplaces, which are often their homes, are not safe work environments and outworkers often suffer from OHS injuries. Most outworkers are from non-English speaking backgrounds with poor English language skills and the stresses of their working conditions are compounded by their lack of English language skills.<sup>32</sup>

A more recent study by the Brotherhood of St Laurence has found that conditions for outworkers have worsened in the last five years, with outworkers reporting being paid an average of \$2-\$3 per hour.<sup>33</sup> Internal surveying by the TCFUA in 2008 has also found that although wages are marginally higher, these are still well below award rates (\$5-\$7 per hour) and that outworkers continue to work excessive hours (10-12 hours) 6 days per week without receiving any entitlements.

As Deputy President Riordan noted in 1987, the situation of outworkers is 'scandalous', a 'serious affront to the moral and social conscience of the community'<sup>34</sup> and has 'no place in a society which embraces the concepts of social justice.'<sup>35</sup>

The majority of the work undertaken by outworkers in Australia takes place in Victoria, New South Wales South Australia<sup>36</sup> and Queensland<sup>37</sup>. The Victorian Government estimates that 40% of all outwork occurs in this State.<sup>38</sup> The TCFUA estimate that a similar proportion of outwork occurs in New South Wales.

### Engagement of outworkers

Outworkers are engaged in a variety of ways and it is very common for outworkers to be told that it is a pre-condition for receiving work that they are compelled to organise their work arrangements in the form of a business. Many outworkers are thus compelled to register businesses or set up companies. These artificial arrangements result in outworkers being viewed not only as employees or as contractors but also as employers or as sole proprietors. In many cases the arrangement will never be specified or the outworker informed of his or her status.

A very typical arrangement, for example, is where a husband and wife team work as outworkers. One partner is told to register a business and is then told to 'employ' his or

<sup>31</sup> Cregan, C, *Home Sweat Home: Preliminary Findings of the first stage of a two-part study of outworkers in the textile industry in Melbourne, Victoria*, Department of Management, University of Melbourne, November 2001. See also Ethical Clothing Trades Council, *Outworkers Lawful Entitlements Compliance Report (November 2004)*.

<sup>32</sup> Senate Economics Reference Committee, *Report on Outworkers in the Garment Industry* (1996)

<sup>33</sup> Brotherhood of St Laurence, *Ethical Threads* (2007), 4.

<sup>34</sup> *Re Clothing Trades Award 1982* [1987] 19 IR 416; 421

<sup>35</sup> *Re Clothing Trades Award 1982* [1987] 19 IR 416; 419

<sup>36</sup> Senate Economics Reference Committee, *Review of the Inquiry into Outworkers in the Garment Industry* (1997) 1.31

<sup>37</sup> *Vietnamese Outworkers in Queensland: Exploring the Issues*, report by UQ Boilerhouse, Community Service and Research Centre, The University of Queensland, August (2004)

<sup>38</sup> [https://www.business.vic.gov.au/BUSVIC/STANDARD//pc=PC\\_50607.html](https://www.business.vic.gov.au/BUSVIC/STANDARD//pc=PC_50607.html)

her spouse but he or she also completes the work. He or she is therefore in legal terms an employer but the indicia of an employer- employee relationship actually exist with respect to both partners vis-à-vis the person providing the work to the 'business'. It is also very common for outworkers who work on their own, to be required to set up a business as a pre-condition for receiving work. These workers, in strict legal terms are notionally sole proprietors, however again the indicia of an employer-employee relationship are present.

As Ms Lee, an outworker for over 20 years, noted during an inquiry of the Senate Employment, Workplace Relations and Education Committee in 2006:

'I had to give the boss at the factory an ABN otherwise he would not give us any work. About five years ago I worked for a different boss. He told me I could not have any work unless I had proof that I paid my own workers compensation. I got my children to help me to get the paperwork and paid \$150. When I showed proof of the payment, the boss gave me work.'<sup>39</sup>

Such sham arrangements, which result in companies and "middlemen" escaping their legal obligations, are a feature of the industry. As the Victorian Government has recognised, these sham arrangements are utilized by unscrupulous employers in order to deny outworkers their lawful entitlements.<sup>40</sup>

### Regulation and protection of outworkers

Industrial instruments and legislation designed to protect outworkers exist at both the State and Federal level. However due both to constitutional limitations as well as the complexity of contracting chains and the numerous ways in which outworkers are engaged in the industry, these protections do not exhaustively cover the field.

#### Federal

There is no federal Act governing outwork. However, the award system has sought to provide protection for outworkers since 1919, when the attempted regulation of outworkers first featured in an award covering the clothing industry. The current federal regime for the protection of outworkers includes Part 9 "Outwork and related provisions" of the *Clothing Trades Award 1999* ('CTA'). Amendments to the *Workplace Relations Act 1996* (Cth) ('the Act'), have attempted to ensure that Part 9 of the CTA continues in force, and that the protections for outworkers in the CTA will continue in any modernized award regulating the industry.<sup>41</sup>

Part 9 of the CTA applies to outworkers in the Federal system, that is those engaged by a respondent to the CTA, those performing work in Victoria within the terms of the *Clothing Trades Victorian Common Rule Award 2005* and workers in the territories. Since the commencement of WorkChoices reforms in 2006, several state awards have also become the basis for parallel Federal instruments. The *Clothing Trades (State) Award* (NSW); *Clothing Trades Award* (SA); *Clothing Trades Award (South and Central Divisions) 2003* (Qld); *Clothing Trades Award (excluding South-East Queensland) 2003* (Qld); *Clothing Industry Award* (Tas) and the *Clothing Trades Award 1973* (WA) now

<sup>39</sup> Hansard, Senate Employment, Workplace Relations and Education Legislation Committee, 4 August 2006, EWRE 56

<sup>40</sup> Legislative Assembly, Second Reading Speech, 23 May 2007, 1603 (Hulls)

<sup>41</sup> Section 576K, Hansard, *Senate*, 18 March 2008, 62-64

exist alongside parallel Notional Agreements Preserving State Awards ('NAPSAs'), which exist within the Federal system. These various industrial instruments contain provisions which seek to provide protections for outworkers.

A number of outworkers do not come within the Federal system and rely on the protection of State laws. In addition, a number of State laws apply in conjunction with Federal or NAPSA coverage.

A number of State governments have enacted laws specifically designed to protect outworkers. For example, the *Outworkers (Improved Protection) Act 2003* (Vic); the *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW); and the *Fair Work Act 1994* (SA). In five states - New South Wales, South Australia, Tasmania, Victoria and Queensland outworkers, within the respective State jurisdictions, are deemed to be employees and are thus awarded the protections and entitlements of all workers, although in the case of Victoria this is limited to certain entitlements. South Australia and New South Wales have mandatory retailer codes of practice for the clothing industry. Queensland and Victoria have committed to introducing such codes in the near future.

The Homeworkers' Code of Practice ('HWCP') is another important form of regulation in the industry. The HWCP is a voluntary code that encourages ethical manufacturing by requiring manufacturers to be responsible for all the steps involved in the production of their garments. Manufacturers must be accredited to the HWCP which requires that they verify and ensure that workers all along their supply chain are receiving their legal entitlements. Retailers and companies that use sports and corporate wear can also participate in the HWCP, to ensure ethical behaviour along their respective supply chains.

The CTA, the relevant NAPSA's and remaining State Awards are broadly similar but are not identical. Similarly, there are differences between the various State Acts, not least of which is the definition of outworker, which differs in each of the five States that have enacted legislation to protect outworkers. In New South Wales and South Australia, where Retailer Codes of Practice apply, further regulation is present. Yet again, the respective Codes, although broadly similar, are not uniform.

The area of outworker regulation is beset by constitutional limitations and by the complexity of employment arrangements which means that not all outworkers have access to effective protection. Indeed, the industry is characterised by a great number of participants which actively seek to circumvent their legal obligations and exploit outworkers. This exploitation is encouraged by virtue of the fact that outworkers are typically unaware of their legal rights, or are too intimidated to enforce them. The TCFUA has over a long period prosecuted numerous companies across Australia, however there remain a great number who continue to violate the law without sanction.

### National legislation

For the reasons outlined above, outworkers are not exhaustively protected Australia-wide by existing awards and/or legislation. The lack of uniform national legislation also compounds the complexity and confusion for industry participants which undermines efforts to enforce legal obligations in the industry. The Senate Economics Committee recommended in 1996 and in its follow up report in 1997 that 'most outworkers should

be considered to be employees'<sup>42</sup> and that the Commonwealth examine ways to deem all outworkers employees. It noted that the lack of action on this issue seemed to be a problem of 'political will.'<sup>43</sup>

The current Federal Government has committed to introducing federal legislation that deems all outworkers employees.<sup>44</sup>

In addition to Federal legislation that deems all outworkers to be employees the TCFUA believe that a national system of outworker regulation with a Federal Act and parallel legislation in each State would vastly improve enforcement of award and legal entitlements for outworkers. The TCFUA seek national legislation that reflects the best practice model of the States with current relevant laws, and that represents no backward step for outworkers in any jurisdiction. A fundamental feature of this legislation must be a statutory right of recovery of unpaid wages and entitlements which currently exists in the State legislation, the CTA, NAPSAs and the remaining State Awards. A national code of practice for retailers and manufacturers in the industry is also crucial as a means of ensuring transparency in contracting chains and ensuring compliance with legislation and/or award obligations.

The TCFUA also urge the government to accede to the International Labor Organization's *Convention concerning Home Work- C-177, 1996* ('the Home Work Convention'). The Home Work Convention requires parties to implement a national policy on home work aimed at improving conditions for homeworkers and promoting equality of treatment between homeworkers and other workers. The government has committed to accede to the Home Work Convention.<sup>45</sup>

### **Outworkers and skills shortages**

Outworkers represent a highly skilled workforce able to meet the demands of the local industry. Despite this, outworkers receive no training from companies in the industry and their skills remain unrecognized and their services underutilized. Vocational training, utilising the TCF Training Package integrated with English language literacy and numeracy, is provided to outworkers by the TCFUA and Asian Women at Work in units from the Certificate III in Clothing Production and by the TCFUA in partnership with Industrial Relations Victoria, RMIT, the TCF IAB and the TFIA in Patternmaking, Quality, CAD and English as part of the Certificate IV in Clothing Production. All outworkers surveyed by the TCFUA in 2008 said that they wanted to undertake further training.

Outworkers not only indicate that they are prepared to gain new skills through further training, they also have existing skills which are in demand in the industry. It is the TCFUA's submission that the industry does not face a skills shortage, so much as a lack of recognition of the existing workforce, including outworkers. This is supported by the work of Asian Women at Work and FairWear NSW.<sup>46</sup>

<sup>42</sup> Senate Economics Reference Committee, *Review of the Inquiry into Outworkers in the Garment Industry* (1997) 1.26, Senate Economics Reference Committee, *Report on Outworkers in the Garment Industry* (1996), executive summary

<sup>43</sup> Senate Economics Reference Committee, *Review of the Inquiry into Outworkers in the Garment Industry* (1997) 1.30

<sup>44</sup> Resolution 133R, ALP National Conference, May 2007, 32

<sup>45</sup> Resolution 133R, ALP National Conference, May 2007, 33

<sup>46</sup> Asian Women at Work/Vietnamese Women's Association of NSW, "Daring to Act: A Report on the Establishment of a Vietnamese Women Outworkers Network, March 2000 to March 2001"



Current delivery of training for workers in the industry through the Job Networks is inadequate particularly with respect to outworkers. As noted above the failure of the SAP program has meant that outworkers have been denied SAP assistance through Job Networks and therefore also denied further training opportunities.

## **Recommendations**

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The TCFUA urge the Review to recommend the following:

- Enactment of national legislation and parallel State legislation which regulates the giving out of work to outworkers and which is modelled on best practice State legislation and does not reduce existing entitlements and protections in current State legislation. This national legislation will:
    - deem all outworkers to be employees in Federal legislation, and where not currently in effect, in relevant States and Territories
    - provide statutory rights of recovery for unpaid wages and entitlements
    - enact a national mandatory Retailer Code of Practice for the industry
    - require the registration of all TCF factories with the relevant government authority.
  - Ratify the International Labour Organizations Convention Concerning Home Work C-177, 1996.
  - Provide Federal Government support for new initiatives designed to assist outworkers including the digital supply-chain project outlined in the submission of the Brotherhood of St Laurence.
  - Continue Federal Government support for Homeworkers Code of Practice.
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## Section 3: Retrenched workers – assistance and entitlements

### 1. The TCF Structural Adjustment Package and worker assistance

#### Summary

The TCFUA welcomes the new Federal Labor Government's commitment to reform the Structural Adjustment Package (SAP) for retrenched Textile Clothing and Footwear (TCF) workers along the lines of the previous TCF Labor Adjustment Program (LAP) ensuring that:

“[T]his non means-tested program has an appropriate level of funding and better assists TCF workers to improve their English language skills, engage in vocational training and find new employment in secure jobs.”<sup>47</sup>

The former Federal Government's \$50 million TCF-SAP (2005-2015) has so far failed to deliver on its core objective to assist retrenched TCF workers.

The current review offers an opportunity to correct the SAP's poor performance.

This submission outlines a proposed new model for the structure and delivery of the SAP funding.

#### How the TCF-SAP has failed retrenched workers

An examination of TCF-SAP spending reported in figures that were released for the first time for this review demonstrate how little of the SAP allocated funds has been spent on retrenched workers.

#### The beneficiaries of the TCF-SAP

Spending so far has overwhelmingly benefited employers and Job Networks rather than retrenched workers. Employers have received 72% (\$6.2million) of TCF-SAP funding allocated by the Federal Government to 18 February 2008. These funds were given out to TCF companies in grants approved directly by the Minister. Job Networks have been reimbursed approximately \$2.4million in that period, with few outcomes. Only \$155,019 has been expended from the Job Seeker Account, by Job Network members, on training for TCF workers – an average expenditure of \$491.77 per person despite the fact that the nominal allocated amount per person is \$1300.<sup>48</sup> No figures have been released yet to indicate what portion of this money was spent on paying for retraining. That means \$404,234.94 was spent on 822 workers, but the total cost of the program was \$2,417,731. The difference of \$2,013,496.06 has gone directly to the Job Networks.

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<sup>47</sup> Australian Labor Party 44<sup>th</sup> National Conference: National Platform and Constitution 2007

<sup>48</sup> The latest figures from the department show that 822 ex-TCF employees had registered with the Job Network, with 607 individuals placed into employment. A total of \$155,019 has been expended from the Job Seeker Account by Job Network members on training for TCF workers, making an average expenditure of \$491.77 on retrenched TCF workers through the Job Seeker Account.

### The problem with the RIGS Scheme

Whilst it has been reported that TCF employers in the 1 July 2005 – 30 July 2006 period have been able to successfully access commitments of millions of dollars through the RIGS Scheme under SAP, retrenched workers have received negligible support through the program. In fact, \$6.1million, that is 72% of TCF-SAP funding was allocated to 4 companies through part 2 of the RIGS grants as at 18 February 2008<sup>49</sup>.

### **ATC case study**

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Synthetic Dyeing Company Pty Ltd trading as Australian Dyeing Company (“ADC”) operated a commission dyeing operation from 1974 to late 2006 in Clifton Hill, in inner city Melbourne. The employees were entitled to a range of enhanced redundancy/severance benefits under a union collective agreement. In early 2006, ADC employed approximately 50 textile production workers and in February 2006 announced to employees its intentions to cease manufacturing at the Clifton Hill site and consolidate and move the operations to Sunshine, in the mid western suburbs of Melbourne.

ADC advised employees that all would be required at the St Albans site despite this imposing increased travel distance, time and cost for many of the employees concerned. ADC further advised employees that if they did not agree to the transfer, they could cease their employment at the Clifton Hill site (and not transfer). However, they would lose all redundancy/severance entitlements, despite the fact that their positions had been made redundant at the Clifton Hill site. A significant number of employees had extensive periods of service with ADC, with many having worked for the company for between 15 and 25 years. The majority was from Non English Speaking Backgrounds and many had worked in the TCF or general manufacturing industries for the bulk of their adult lives.

In discussions between the TCFUA and the ADC it became apparent that ADC’s proposed consolidation at the Sunshine site was dependant on receiving \$2.8million from the former Commonwealth government under the SAP Restructuring Initiative Grants Scheme (RIGS). Additionally, a new corporate entity, Australian Textile Company Pty Ltd (“ATC”) had been established in January 2006 with business premises at the Sunshine site. In effect, ATC was the vehicle through which the business operations and assets of ADC would be transferred. The two directors of ADC and ATC were the same.

Throughout 2006 the TCFUA and a large number of employees remained in dispute about the relocation in relation to the proposed transfer of employees from Clifton Hill to Sunshine. A formal dispute was taken by the TCFUA to the Australian Industrial Relations Commission on a number of occasions. In addition to the issue of increased distance/travel/cost on employees, a key matter raised was the apparent vulnerability of accrued and contingent employee

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<sup>49</sup> DIISR (2008) *The Australian Textile, Clothing and Footwear (TCF) Industry*, background report

entitlements for those workers transferring to the new employer and site. Even prior to the relocation of the ADC operations to the Sunshine site, the TCFUA and affected employees held great concerns as to ATC's immediate financial viability (given its dependence on the Commonwealth government grant of \$2.8 million) and its capacity to meet employee entitlements should it become insolvent in the future. The Directors of ADC and ATC denied that ATC was a shelf company. Whilst the ADC/ATC directors gave inadequate guarantees in relation to this capacity, the lack of assurances held little if any legal weight as to whether the offer of employment with ATC constituted acceptable alternative employment.

ADC employees were placed under extreme pressure by ADC to relocate to ATC, and the majority did so between September and December 2006, despite their concerns. Many of the employees were in their 50's or 60's and had few alternative employment options. Just over 15-16 months later Administrators (BDO Kendalls) were appointed to ATC on 4 February 2008. On 22 February 2008 the Administrators ceased trading the operations of ATC and all employees were terminated as a result without payment of their entitlements. The Administrators were unsuccessful in their attempts to sell the business of ATC to a third party, and the company was placed into liquidation on 28 February 2008, BDO Kendalls were appointed as liquidators.

In their report to creditors on 19 February 2008, the then Administrators advised creditors that approximately \$2,320,240 was owed by ATC for accrued and contingent entitlements including notice, annual leave, long service leave, redundancy and sick leave for approximately 60 former ATC employees. A further amount of \$23,938 was owed by ATC in relation to outstanding superannuation contributions on behalf of employees. The Report to Creditors also advised that its insolvency analysis of ATC, applying a Cashflow Test showed that:

'The primary reason for a working capital surplus as at 30 June 2006 was the receipt of the government subsidy totaling \$2.8 million. ATC maintained a negative working capital position throughout the 2007 financial year....

The above factors would, prima facie, indicate that the ATC may have been unable to pay its debts as and when they became due and payable'.

Additionally, the Report further advised that, applying on a Balance Sheet Test:

'ATC has an increasing net deficiency position. This suggests that ATC was not able to pay its debts as and when they fell due.

...My preliminary investigation into the solvency of ATC has concluded that ATC was arguably insolvent from some point between 1 July 2006 and 4 February 2008. Should

the Company be wound up in Liquidation, further investigations will be undertaken to determine the applicable date of insolvency.’

On 6 March 2008, the TCFUA, on behalf of its members at ATC, lodged claims for financial assistance to the Department of Education, Employment and Workplace Relations (DEEWR) under the General Employee Entitlements Redundancy Scheme (GEERS). As at the date of this submission, former employees of ATC have yet to receive any payments of financial assistance under GEERS relating to their unpaid entitlements owed by ATC.

The ADC/ATC case-study is an illustration of a not uncommon feature of the TCF industry, whereby corporate restructuring can leave vulnerable workers without employment and their accrued and contingent entitlements.

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### **How Job Networks have failed to deliver appropriate support**

The TCFUA’s 2006 *‘Empty Promises’*<sup>50</sup> report presents a disturbing picture of an extremely ineffective system. The TCFUA tracked over 700 retrenchments in Victoria in the first 13 months of the SAP and the report reveals that the majority of retrenched workers received little or no support and that the SAP has failed to address the long-term negative impact of retrenchment on TCF workers. Delivery of the package solely through the Job Network system has meant that only a trickle of assistance has found its way to retrenched TCF workers. Empty Promises concludes that TCF-SAP should not be delivered through the Job Network alone.

The key areas where the Job Network has failed are:

- dissemination of information to workers
- clarification of eligibility criteria
- provision of support for registered retrenched TCF workers
- accountability of funds.

Despite the promises of the \$50 million TCF-SAP:

- retrenched TCF workers have no way of finding out about the TCF SAP unless the Union tells them before they leave the workplace
- Job Network staff responsible for delivering the package have remained unaware of the package or the details of its implementation unless the Union has notified them
- retrenched TCF workers who sign up for SAP assistance through the Job Networks, experience a disappointingly low level of support. They largely access no training or reimbursement funds, very little case management and no active assistance in looking for a job.

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<sup>50</sup> TCFUA, 2006: ‘Empty Promises’ A report on the Textile Clothing & Footwear Structural Adjustment Package, Oct 2006

TCF-SAP is a national program. Since 2005, only 822 workers have been assisted under the program. This is only a small portion of the total number of TCF workers who have been retrenched nationally. The TCFUA in Victoria alone provided advocacy for over 930 retrenched workers during this period. The TCFUA in NSW is aware of approximately 930 retrenchments from Feb 2005 to Feb 2008. The TCFUA also provided advocacy for 234 workers in Tasmania in 2007. A state by state breakdown of figures has not been released but it is likely that these figures will suggest a strong correlation between TCFUA advocacy and access to the TCF-SAP.

### **Providing relevant and well resourced training**

The TCFUA recommends LLN programs that provide integrated language literacy numeracy with vocational skills.

The TCFUA also recommends that courses be tailored to the needs of the target group, and that necessary supports can be built around the course to ensure retention of workers. Education is aided by the group support of workers from the same or similar workplace sharing a classroom. Referral to existing mainstream courses would occur at a later stage in the vocational training pathway for each worker once increased confidence and language and literacy skills have been achieved.

### **Supporting informed decision making**

TAFEs should have a role to advise retrenched workers about the different vocational pathways they can pursue to alternative employment within the TCF industry or to move on to other employment (eg: warehousing and retail). This would include information sessions about the nature of work in other identified industries to ensure workers do not start courses only to find that the nature of the work is difficult for them

### **Timelines for access to training**

Retrenched workers should have two years after they are retrenched to take up the option of training. The best way to deliver Language and literacy training is an integrated approach that combines language and vocational training however language training is predominantly offered separately at present. Many TCF workers would have to complete language training before they can begin vocational training. This time frame will also ensure that workers who are ill or who have family commitments (caring for sick and aging spouses and parents is common) are able to delay accessing training without missing out.

### **A Proposed New Model for TCF-SAP**

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In contrast to the current TCF-SAP, the Proposed New Model would ensure that the majority of available funding is used to train, re skill, advise, and assist retrenched TCF workers, to provide income support and optimise their chances of gaining full time ongoing work.

When compared with the current TCF-SAP the new model seeks to properly integrate skills building with active labour market programs. A recent Brotherhood of St Laurence report to the Federal Government also advocates this approach. In this report the Brotherhood of St Laurence argues that:

“A critical element of an integrated employment assistance system to achieve effective pathways for disadvantaged job seekers is the building of vocational skills and capabilities that match emerging labour market industries and job opportunities. Overseas policy directions have emphasised the integration of employment assistance and skills development as the key to sustainable employment. New approaches in the UK include skills audits of job seekers and both pre and in-work training. These reforms followed a pivotal review of skills which concluded that productivity, growth and social justice were being held back.”<sup>51</sup>(p 24)

The new Rudd Government has rightly committed to strengthen the education and vocational skills of those both in and out of the workforce. In the absence of appropriate skills building through training and education, the emphasis of the current employment assistance system on rapid job entry for short-term outcomes puts at risk job retention and limits productivity.<sup>52</sup> (p 25)

If retrenched TCF workers are to secure ongoing employment it is clear that they need access to specifically designed training that provides literacy, language, numeracy, communication skills and computer training integrated alongside vocational training. The proposed new model for the TCF-SAP focuses on delivering this training and the support required to overcome barriers to upskilling.

### **Key elements of the proposed model**

The TCFUA proposes the following model for delivery of the Structural Adjustment Program 2005 – 2015, with a strong emphasis on training for positive, long term outcomes for retrenched TCF workers. This Proposed Model of delivery requires:

#### **1. Partnership Building and Advocacy**

The new model involves funding an union and community based TCF SAP project team. The project officers would provide information, support, advice, advocacy and targeted assistance for retrenched TCF workers and outworkers outside the RTO and Job Network membership (JNM) systems. This team would ensure that appropriate support is provided to all TCF factory workers in the workplace as soon as retrenchment is announced, immediately after their retrenchment and for a sustained period afterwards.

The project officers would be responsible for building relevant partnerships nationwide between: Registered Training Organisations (RTOs); retrenched workers; TCF employers; JNMs and Centrelink; and career advice service providers.

The model that the TCFUA recommends includes the funding of independent TCF-SAP project officers based at the TCFUA and in

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<sup>51</sup> Leitch, Review of Skills 2006 in Brotherhood of St Laurence (2007) Ethical Threads

<sup>52</sup> Brotherhood of St Laurence (2007) Ethical Threads

community based organisations in NSW and Victoria. Some of these project officers would focus specifically on issues facing outworkers.

Roles the project officers would undertake would include:

- Identifying retrenchments early and co-ordinating a timely response.
- Meeting with workers to identify training needs and interests, and other support issues as they face retrenchment. For factory workers, identifying the pending retrenchment and liaising with retrenched workers and employers before they leave the workplace. For outworkers, this also involves a process of locating retrenched outworkers in the community.
- Recruiting retrenched workers for training programs. For factory workers, setting up classes prior to retrenched workers leaving the factory. For outworkers, some will require a great deal of support and encouragement before they will move from the isolation of home to participation in training programs.
- Providing ongoing support. This would take the form of both individual support for retrenched workers to build confidence, and community building and provision of information on broader issues.
- Co-ordinating access to a wholistic RPL process that recognises and certifies the workers skills both from the workplace and life skills,
- Supporting retrenched workers by addressing barriers to retraining by ensuring that course counselling has been provided, that childcare is accessible, that the closest appropriate training provider is identified to cut travel time and cost.

## 2. A training allowance - Income support for the period of training

The TCFUA strongly advocates that any future retraining program follows the LAP program and incorporates a non-means tested training allowance as well as a relocation allowance where necessary, paid to the trainee by Centrelink for the duration of the pre vocational and vocational training (at least 24 months).

The training allowance should be the equivalent of the Newstart payment.

This allowance will maximise the chances for workers to complete the vocational training necessary to finding long term employment commensurate with their current full time status. A similar model of effective income support is the Worker Assistance Program for forest workers.<sup>53</sup>

Workers who face retrenchment often are highly motivated to access retraining but driven by economic need must concentrate their

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<sup>53</sup> Worker Assistance Program Guidelines, Forest Worker and Contractor Assistance Programs Unit, Employment Programs Division Department of Victorian Communities. email: forestry@employment.vic.gov.au



resources on finding another job rather than exploring training options despite the fact that retraining will produce better paid, more reliable employment options.

Retraining that is accompanied by a non-means tested special allowance has the effect of increasing access and equity. The fact that NESB women, who represent the most marginalised part of the labour market, were the predominant group to take up the assistance under the LAP model provides testament to this claim.

Finally, many retrenched TCF workers refuse to turn to Centrelink or the Job Network for support after retrenchment because government agencies of this nature are often viewed with suspicion by people who have never been unemployed, and do not want the stigma of unemployment. The majority do not understand the system or feel the system is unsympathetic to them. Many retrenched workers receive messages from Centrelink staff that older workers, particularly those with injuries, low levels of formal education, or English language and literacy barriers are unlikely to find work. They are therefore unlikely to turn to government services for customised assistance at a time when their confidence is shattered.

### 3. Access to re-training

Under this model the approval of funding for training for re-skilling retrenched TCF workers should be immediate and directly funded via the TAFE system.

The TCFUA recommends that funding be provided to TAFE colleges that is adequate to deliver the following to retrenched TCF workers:

- 12 months vocational retraining
- An additional 12 months of English language and literacy and numeracy training for workers who are disadvantaged by their non-English speaking background and/or their poor literacy
- Funding which would recognise the need for TAFEs to provide targeted assistance, tailored training and LLN
- Individual course and career counselling including help identifying the most appropriate course from any RTO including neighbourhood houses which provide LLN and computer courses in a supportive environment
- Early intervention: information sessions (and as many other services as possible where time permits) in the workplace before the workers leave the workplace
- Access to training via Productivity Places
- TAFEs would be expected to facilitate Workplace assessment to be carried out by skilled assessors able to issue certificates of attainment or competencies. This documentation would then enable retrenched workers to access the RLP process.
- The ability to respond with at least a group information session in situations where retrenchments are announced with a short notification period

- The ability to provide intervention at the earliest opportunity in the form of extensive pre-retrenchment support (including all of the above) before the workers leave the workplace where the notification period is long.

Staff based in access units in TAFEs are most likely to have the skills and qualifications necessary to give course and career advice to retrenched TCF workers, design tailored pre-vocational training and training that links LLN training with vocational training.

The Skill up program funded by the Victorian State Government department OTTE provides a good model for delivery of training through the TAFE system to retrenched workers.

#### 4. Employment guidance and job matching

The role of the Job Networks should be to provide retrenched TCF workers with immediate, intensive and ongoing employment advice and opportunities for a twelve to twenty four month period following retrenchment.

The JNMs performance should be recorded, monitored and funded separately from their work with other Customised Assistance Job Seekers. This is important to ensure that the emphasis of the JNW 's work with retrenched workers is not affected by the reporting and funding incentives that structure JNM's work with other categories of Job Seekers.

The TCF workers should be able to register with a Job Network as soon as there is proof of the retrenchment. Registration should occur before the worker has left the workplace. Registration should entitle retrenched TCF workers to immediate access to Customised Assistance.

Resumes should be provided by the Job Networks before retrenched workers leave the workplace where a long notification period is in place.

Job Network 'reverse marketing' staff are in a perfect position to take resumes of retrenched TCF workers and intensively focus on finding them ongoing work. The Job Seeker Account money that is available to all Customised Assistance registrants enables the purchase of interview clothes, safety equipment, the cost of licences and anything else that will help retrenched workers to find work. Job Networks are well placed to give retrenched workers information about the local job market, provide job interview skills training, update resumés, help find jobs that can be combined with training and advice on the kinds of jobs that will result from retraining.

Activity tests should not be applied to TCF-SAP recipients for the duration of the 24 month period.

#### **Reporting and Accountability**

To avoid the unaccountability that has characterised spending on the TCF-SAP program to date, the TCFUA recommends that DEEWR provide regular public updates on expenditure of SAP funds on TCF workers and a formal evaluation process to assess the success of the TCF SAP for retrenched TCF workers in terms of reskilling and stable employment outcomes.

### **Ability to provide a quick appropriate response**

The new model must enable the TAFEs and Job Networks to provide a quick and comprehensive service before workers leave the workplace. It is not unusual for TCF employers to provide a notification that is as short as two weeks, however in some instances companies notify workers and the union that there will be retrenchments many months in advance. The emphasis needs to be on early intervention and providing access to as many of the services of the Job Network and TAFE as early as possible before the worker leaves the workplace.

### **Outcomes expected from the Proposed Model**

High retention rates: Retention rates in courses will be high. In the Victorian Patternmaking Course in 2006-2007 all 12 outworkers completed the course they commenced. In 2007-2008 it is expected that 13 out of 15 outworkers will complete the 12 month course they commence. In the Kennon pilot program for retrenched factory workers, 100% of workers completed the preparatory training on site prior to their retrenchment, and most have identified further study courses and career pathways and will soon begin retraining. Some have already found employment commensurate with their current full-time status. Company support in offering this training in work time, TCFUA liaison and experienced trainers were the key to these high retention rates.

Choices for the future: Retrenched workers will become aware of realistic, accessible Vocational Pathways to alternative employment and be able to make good choices for their long term future.

Employment Outcomes: Language and literacy education; skills recognition and the transferability of those skills into other industries; vocational and IT training will all assist retrenched workers in finding alternative employment commensurate to their current job (i.e.: full-time rather than short term casual).

Building of alternative social networks to the work environment: The group environment of training with other retrenched TCF workers will allow workers to establish new social networks. For factory workers this replaces the "laid on" social support of daily meeting colleagues at work. For outworkers this is new found support and breaks down isolation.

Confidence and engagement in Australian society: Training, tailored support and the group experience will broaden retrenched workers

experience of Australian society and build the confidence necessary to engage with Australian society in new ways.

### **Eligibility criteria for SAP assistance**

In 2008 a large group of TCF workers were denied eligibility to the TCF-SAP because they work for a company that is not eligible for TCF-SIP.

### **Voa-Webco Case Study**

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The Voa-Webco site at Thomastown made textile webbing seatbelts. It closed down in February 2008 as a result of a decision to move manufacturing to China. As a result, 48 people were retrenched in the period 2005 to 2008.

All but six of these people were denied access to TCF-SAP. They were denied access to TCF-SAP on the basis that they were employed by a company listed as an automotive manufacturer by the Department of Industry and Innovation.

This decision was made despite that fact that Voa-Webco was a respondent to the Textile Industry Award and workers terms and conditions of employment were covered by that Award. At Voa-Webco TCFUA members were engaged in spinning, weaving, dyeing, cutting and inspection as part of the manufacture of textile seatbelt webbing.

Without targeted intervention the job prospects for the retrenched Voa-Webco workers are not good. These workers skills are not transferable to non-textile industry jobs in the Automotive Manufacturing sector.

The Job Network, Sarina Russo signed up six retrenched Voa-Webco workers to access the TCF-SAP in 2006 and were consequently penalised for providing support to retrenched TCF workers

Of the six, three were placed in full-time employment, two commenced casual employment and one requested to exit due to a medical condition. In the context of the TCF-SAP program the cost to the Federal government was minimal - spending on Job Search costs and training for each of these TCF-SAP recipients ranged from \$140 to \$660 each. Yet, in December 2007 DEERW requested that Sarina Russo repay this expenditure to DEEWR.

Then in 2007, four retrenched Voa-Webco workers were signed up to access TCF-SAP at the end of 2007. Their eligibility was then cancelled before they could access support.

One of these retrenched workers, a 60 year old single woman who is not able to access unemployment benefits until June 2008, has been forced to put her house in Westmeadows on the market because she cannot afford the mortgage repayments. She will need to withdraw her super to pay for her living costs. She does not want to retire but has not been successful in getting a job. She has 2 grown children and

has worked full time in the Textile industry since she was 16. She has registered with a Job Network but they are unable to offer her 'Customised Assistance' (a similar level of support to that offered via TCF-SAP) until she has been unemployed for 18 months. They have directed her to use their computers to look for jobs on the internet but she has never had the chance to learn to use computers or the internet. She has been denied access to TCF-SAP.

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### **The TCF-SAP Regional Partnerships Program**

Since the introduction in July 2005 of the \$50 million TCF SAP package (\$5 million each year till 2015) only one proposal was submitted to the Regional Partnerships Program (RPP) element of the TCF-SAP. The unsuccessful Blundstone Advocacy and Support Project proposal to the RPP clearly highlights that it is not possible for any TCF worker to access this element of support in the TCF SAP.

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### **The Blundstone Retrenched Workers Support Proposal Case Study**

This detailed and well coordinated proposal for an Advocacy and Support project for 224 workers TCF workers retrenched from Blundstone Australia Pty Ltd in Hobart, Tasmania, was lodged in March 2007 by the TCFUA in partnership with Blundstone, the Liquor, Hospitality and Miscellaneous Union (LHMU), the Tasmanian State government and Colony 47.

The then Australian Government rejected the proposal, claiming that it did not demonstrate that it does not "substantially duplicate" Department of Employment and Workplace Relations (DEWR) services which administer the TFC-SAP. DEWR in Tasmania were actively involved in consultations with partners regarding this proposal since the retrenchments were announced, and was repeatedly asked to raise any concerns about potential duplication, both by the project sponsor and by DOTARS in Tasmania, at joint forums. The senior DEWR representative in Tasmania was fully aware of the project model employed in this project and did not raise concerns about overlap in that time. The partners provided several detailed explanations regarding the specific and unique elements of this project in relation to Job Network service capability to Len Dowling, during the course of the DOTARS assessment in April.

The TCFUA believes, however, that the rejection of this project proposal was based on unreasonable grounds. The TCF SAP package had its first opportunity in this project to provide a genuine level of targeted and effective pre- and post-retrenchment support to TCF workers, through a tried and tested project model, which has been demonstrated to yield significant results after other large TCF retrenchments, when run alongside TCF-SAP funded services available through Job Networks. The project would have actually assisted retrenched TCF workers to make timely and informed decisions which research strongly suggests will be difficult or impossible for them to make without support separate to that provided

through Job Network. The TCFUA strongly believe that this project would have resulted in many more Blundstone workers undertaking a process of serious re-skilling and re-training in areas which are likely to yield long-term employment results in the six to twelve month period after retrenchment. It would have enhanced existing job Network services in multiple ways.

To date, neither DEWR (now Department of Education, Employment and Workplace Relations [DEEWR]), nor the Job Networks have been able to, without the assistance of the TCFUA, provide substantive, accessible, or effective support to retrenched workers after retrenchment, to assist them to develop the skills for entry into ongoing employment in other industries.

## Recommendations

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The TCFUA urge the Review to recommend the following:

- Immediate redesign of the Textile Clothing and Footwear Structural Adjustment Package (TCF-SAP) so that it is solely worker focused.
- Abolish the Restructuring Initiative Grants (RIGS) under SAP and make SAP assistance solely to assist workers and communities effected by restructuring.
- SAP/Worker assistance to:
  - delink training and job search assistance and limit the role of the Job Networks to job search/placement
  - provide training via TAFE with one-on-one identification of training needs and RPL and RCC
  - provide union/community based advocates to assist workers to navigate the system and provide early intervention when redundancies are announced
  - ensure criteria for assistance is the worker's Award coverage not the company's SIP eligibility
- New streamlined and speedy access process for Regional assistance under SAP
- Provision of a non-means tested training allowance to retrenched workers and outworkers to enable them to undertake and complete accredited training courses.

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## 2. Retrenched worker entitlements

### Insolvency and employee entitlements

Over the last 10 years to 15 years, the TCF industry has been particularly subjected to widespread company insolvencies with consequent loss of jobs and employee entitlements. Most commonly, when a TCF company collapses, there are few if any assets remaining in the insolvent company to pay out employee entitlements. These circumstances result in many workers often having no income until Centrelink benefits are payable and with the worker having few prospects for alternative employment and

recovery of their redundancy and other entitlements. The combination of often sudden unemployment with little or no financial support to tide employees over, can be critical in condemning redundant TCF workers to extended periods of unemployment and severe financial and emotional stress. It is also not uncommon for TCF workers to have carried long-term injuries throughout their employment, which also impacts on their capacity to find new employment quickly and regain financial stability. The confluence of these and other factors invariably leads to workers reluctantly leaving the TCF industry with a consequent diminution of a critically important skills base.

### Employment Entitlements Schemes

The traditional responses of Federal Governments have been woefully inadequate. It is worth recalling that the Howard Government in 2000 only introduced the minimalist EES (Employee Entitlements Scheme) after the collapse of National Textiles in NSW of which the former Prime Minister's brother, Stan Howard was a Director. The EES scheme provided minimal financial assistance in circumstances of insolvency, and included monetary caps at low levels in relation to particular entitlements i.e. severance at 8 weeks. Its replacement, the General Employee Entitlements Redundancy Scheme (GEERS) was introduced in November 2005. Whilst GEERS increased the cap on certain types of entitlements, that is, increase to 16 weeks severance, the GEERS guidelines were tightened further to restrict payments to when a company is formally placed into liquidation.

GEERS remains a problematic and inadequate scheme for the protection of employee entitlements for reasons which include the following:

- It is an administrative scheme only operated through the Department of Education, Employment and Workplace Relations i.e. it has no legislative basis. Further there is no statutory right of appeal as such.
- There is little transparency in regard to the basis of decision making under the Scheme.
- The payments made under the Scheme have the status of 'advances' only to employees and are recoverable as a priority (for the amount advanced) under the Corporations Act 2001 i.e. the GEERS money advanced is recoverable before any dividend can be made by a Liquidator to employees. This means that even where a Liquidator has money available from floating assets of the insolvent company, they will need to pay back DEEWRS first even where employees are still owed entitlements over and above what GEERS has advanced.
- Monetary/weekly caps remain on a number of key entitlements e.g. redundancy at 16 weeks. As a result, long serving employees who are entitled to enhanced redundancy/severance entitlements receive inferior entitlements far below what is owed to them, amounting in many cases, to tens of thousands of dollars for each employee.
- Some categories of entitlements are not included at all under GEERS e.g. unpaid employer superannuation contributions, paid sick leave, RDO's.
- Restrictions on eligibility i.e. employer must be in liquidation (as distinct from being in administration or otherwise insolvent); or where there are funds available from the employee's former employer or another source to pay the outstanding entitlements within 16 weeks of DEEWR receiving the employee's claim;

- The onus rests of individual employees to prove the legal basis of entitlements owed even where Directors of insolvent companies have breached industrial law and instruments by failing to keep proper employee wages and conditions records;
- The unacceptable time delay in DEERS processing and finalizing GEERS claims. In the TCFUA's experience over the last 5 years, the average wait for advances ranges between 4 and 6 months. Longer periods are not uncommon particularly if the books and records of the insolvent employer are incomplete and entitlements need to be verified. This can balloon out to over 12 months where all, or aspects of an employee's claim have been rejected and the employee is forced to seek a review or appeal of the decision (or both).
- The program is grossly under resourced (both in numbers of people and level of specialist IR/legal knowledge) to deal with the level of claims and inquiries about the status of claims.

It remains the TCFUA's strong view that any government employee entitlements scheme to have real accepted industry credibility must be underpinned by statute, be open and transparent, be subject to formal processes of review and fully cover 100% of employee entitlements lost through corporate insolvency.

### Corporations Law

Despite promises by the former Howard government to reform the Corporations Act 2001 and strengthen provisions to protect employees, the Corporations Law remains clearly inadequate in its protection of employee entitlements in circumstances of insolvency. The priority payment rules continue to privilege the insolvency practitioner firstly, and secured creditors (in a TCF industry context usually a bank, although not exclusively) in relation to priority over fixed assets of the insolvent company.

Further, provisions designed to deter directors from unconscionable and/or negligent behaviour appear ineffective in decreasing the widespread avoidance of corporate responsibility for employee entitlements. For example, whilst there is a general prohibition on Directors to trade whilst insolvent, a number of legal defences are available. Further, in a practical sense, even where there is clear evidence of Directors knowingly trading whilst insolvent, the resources required to prosecute such a case are significantly beyond the reach of employee creditors and/or their union. In the TCFUA's experience, the preparedness of Liquidators to embark on such litigation is minimal unless there is guaranteed litigation funding via creditors or a litigation fund. Whilst Liquidators have a legal obligations to report to ASIC in relation to any potential breaches of the Corporations Act 2001, despite the widespread occurrence of company collapses with significant loss of employee entitlements, there have been but a handful of ASIC prosecutions in the TCF industry over the last 10 years.

The issues of corporate responsibility, insolvency and the security and protection of employee entitlements unfortunately remain critical issues for the TCF industry. The piecemeal and inadequate approach from governments to these issues in the past has contributed to a lack of confidence of the industry having a sure and ethical footing into the future. More fundamentally, it has resulted in significant numbers of TCF workers losing their employment and facing a future without either their job or their employee entitlements.



Recent announcements by the Finance Minister (Lindsay Tanner) and Minister for Small Business (Craig Emerson)<sup>54</sup> indicate that the current federal government is considering relaxing the law regarding personal liability of company directors. Such a direction is extremely concerning for the TCFUA. For the reasons outlined above, the Corporations Act 2001 currently provides minimal protection for employees and their entitlements in circumstances of insolvency. Any relaxation of laws which seek to prevent reckless, negligent (or in some cases criminal) behaviour of company employers should be rejected. Such diminution of laws will only realistically lead to further mismanagement of companies with the consequent loss of employee entitlements.

## Recommendations

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The TCFUA urge the Review to recommend the following:

- Workers to not be disadvantaged through restructuring with a guarantee of employee entitlements being paid in full.
    - that in relation to the protection of entitlements the Federal Government must immediately enact a scheme which requires employers to ensure that 100% of all employee entitlements must be secured and protected.
    - that the Federal Government should immediately amend the Corporations Act 2001 to vary the order of priority of payment to creditors in the case of insolvency to place employees before secured creditors. Such priority to employees would apply to 100% of all employee entitlements owed, including superannuation.
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<sup>54</sup> The Australian newspaper (2008) *Rudd Government to ease company directors' liability*, 19 May 2008

## Section 4: Establishing a TCF innovation council

In order to seize the opportunity presented by this review and to capitalise on the goodwill and intentions of those who want to see a strong and vital Australian TCF industry, the TCFUA is in accord with the Federal Government's commitment to set up a tripartite body made up of Government, Industry and Union.

Together with a new TCF Industry Plan, an effective and properly resourced TCF Innovation Council should be established to support and guide the sector in this new phase, to grow and revitalise the industry's substantial base and support and develop new and emerging parts of the industry. It would, through collaboration and social partnership, provide a vision for the future of the industry, which encourages smart design linked to a solid manufacturing base also underscored by high ethical employment and environmental standards. It would enable the continued growth of small and medium sized companies, ensuring capabilities for linkages and innovation continue to be enhanced and developed in niche markets.

An Australian TCF Innovation Council would provide the security and intellectual basis for the sector to thrive and present itself to the world as a smart, ethical and clean industry. It should acknowledge, work with and build on the vast stores of knowledge and capacity that already exist in the sector. It should seek to include and encompass the depth and breadth of the industry, in terms of both the people in the industry and where they live and work, in forging a way forward. In this submission we have argued that the future of the industry lies along the high road route of quality, high skill, well paid jobs with improved conditions.

The potential to enable a reorientation of the Australian TCF Industry towards a smart, ethical and clean path is already present. We have argued for an expanded program to recognise and develop skills in order to link redundant/unemployed workers and outworkers to skill shortages, training and job placement, involving union community organisations, training providers and industry. The TCFUA's own initiatives with redundant workers and outworkers, detailed in this submission, provide innovative models, which we believe should be further developed, supported and expanded. The Federal Government's own commitment to use ethically sourced public procurement as an industry policy tool, backed up by significant Commonwealth funds, is a particularly welcome initiative that will prove to be vital for social and regional support and development.

A TCF Innovation Council would provide a leadership role in transforming the industry by drawing on, developing and communicating innovative ideas and strategies supported by robust research, across the TCF sector. It would enable the industry to gain competitive advantage by linking Australian innovation into ethical global supply chains and local regional clusters. The TCFUA welcomes this opportunity to work together with the Industry and the Federal Government in a 'social partnership' to support and guide the sector in its transition to a world class, smart, ethical and clean industry.

### Recommendations

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The TCFUA urge the Review to recommend the following:

- ♦ Establishment of a TCF Innovation Council, comprising of a tripartite body of Government, Industry and Union.

## **Appendices**

### **Appendix 1**

AusIndustry (2006) Funding helps expand maternity clothes business, Case Study, June.

### **Appendix 2**

SOCOG 1999 Material from SOGOG case.