The Senate
Standing Committee on Education, Employment and Workplace Relations

Inquiry into the
Fair Work Amendment Bill 2013

Submission of the
Textile, Clothing and Footwear Union of Australia

(15 April 2013)

Submission
to the
Senate Standing Committee on Education, Employment and Workplace Relations

Inquiry into the
Fair Work Amendment Bill 2013

Submitter: National Office

Organisation: Textile, Clothing and Footwear Union of Australia

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Victorian Queensland Branch State Secretary

(15 April 2013)

INTRODUCTION

1. The Textile, Clothing and Footwear Union of Australia ('TCFUA') welcomes the opportunity to make this submission to the Senate Standing Committee on Education, Employment and Workplace Relations ('the Committee') Inquiry into the Fair Work Amendment Bill 2013 ('the Bill').

2. The TCFUA is a registered organisation under the Fair Work (Registered Organisations) Act 2009 ('RO Act') with a national office in Melbourne and branches as follows:
   - TCFUA (Victorian Queensland Branch)
   - TCFUA (New South Wales, South Australian, Tasmanian Branch)
   - TCFUA (Western Australian Branch)

3. The TCFUA makes this submission on behalf of the national union and each of its branches.

4. The TCFUA is an affiliate of the Australian Council of Trade Unions ('ACTU') and support and adopt its submission made to the Inquiry in relation to the Bill. The TCFUA provides this additional submission in order to highlight a number of key provisions in the Bill in context of the textile, clothing and footwear industry ('TCF Industry'), in particular in relation to right of entry.

5. As the primary national union which represents, and advocates for the industrial interests of workers in the TCF industry, the TCFUA is in a unique position to witness and document the working conditions of these workers, including in formal factory environments, sweatshops and at home. The union has a critical and legitimate role in ensuring that the TCF industry operates on an ethical and sustainable basis, that appropriate labour standards are observed and that unfair advantage is not gained by businesses who seek to undercut their reputable competitors by exploiting the workers who make their products with their supply chains. For many decades the TCFUA (and its predecessor

organisations) have led the community campaign to highlight the widespread existence of exploitation in the TCF industry.

6. Over the last two years, the TCFUA has provided extensive written and oral submissions which outline in detail the nature of the TCF industry, in particular in the home based TCF sector, and the labour conditions under which such work is done. These include TCFUA submissions to the:

- [Jan 2012] (Senate) Education, Employment and Workplace Relations Legislation Committee Inquiry into the Fair Work (Textile, Clothing and Footwear Industry) Bill 2011;[1]
- [Feb 2012] Inquiry into the Fair Work Act 2009;[2]
- [Feb 2013] Modern Awards Review 2012 – (AM2012/93 & Ors); Review of the Textile, Clothing, Footwear and Associated Industries Award 2010 (Outwork Matters).[3]

7. Whilst the TCFUA has not attached these documents to this submission, we recommend them to the Committee regarding the TCFUA's knowledge and on the ground experience in this industry.

FAIR WORK AMENDMENT BILL 2013

Schedule 1 – Family Friendly measures (Parts 1, 2, 3 and 5)

8. The TCFUA supports the submissions of the ACTU and as follows.

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1 http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=eet_ctte/completed_inquiries/2010-13/textiles_fair_work/submissions.htm

2 http://submissions.deewr.gov.au/sites/Submissions/FairWorkActReview/Documents/TextileClothingandFootwearUnionofAustralia.pdf

3 http://www.fwc.gov.au/documents/awardmod/review/AM201293&ors_sub_TCFUA.pdf

9. In its submission to the 2012 Fair Work Review,[4] the TCFUA highlighted its concerns regarding the current right to request provisions including:

- That the provisions are little known and/or understood in the TCF industry;
- Where employees (almost uniformly women) in the sector have sought access to the provisions they have not been successful;
- A worker has no effective remedy under the Fair Work Act to contest a decision of an employer to refuse the request (unless they are covered by an enterprise agreement which specifically provides this).[5]

10. Whilst one of the TCFUA's issues has been addressed in the proposed amendment (the absence of a definition of what constitutes 'reasonable grounds'), in the TCFUA submission the amendment does not go far enough to achieve *"real practical effectiveness consistent with the aim of the Act in 'assisting employees to balance their work and family responsibilities by providing for flexible working arrangements'.*[6]

11. The absence of jurisdiction (absent consent of the parties to an enterprise agreement) of the FWC to determine a dispute regarding an employer's refusal on 'reasonable business grounds' remains a significant concern to the TCFUA.

Schedule 1 – Family Friendly measures

(Part 4 – Consultation about changes to rosters or working hours)

12. The TCFUA supports the submissions of the ACTU and as follows.

13. In the TCFUA's submission the proposed amendments would be enhanced by requiring the employer (as part of its consultation obligations) to provide *written* information about the change to the employees about *and their*

[4] Fair Work Act Post Implementation Review (2012); Submission of the TCFUA (17 February 2012)
[5] Ibid; [paras 33-34]
[6] Ibid; [para 35]

representative/s. This would be consistent with the current obligations in modern awards in respect to consultation regarding major workplace change.[7]

Schedule 2 – Modern Awards Objective

14. The TCFUA supports the submissions of the ACTU.

Schedule 3 – Anti Bullying measure

15. The TCFUA supports the submissions of the ACTU.

Schedule 4 – Right of Entry
Item 7 (Location of interviews and discussions)

16. The TCFUA strongly supports the proposed amendment to section 492 in respect to the location of interviews or discussions when a permit holder is exercising rights pursuant to Subdivision A, AA and B of Division 2 of Part 3-3. The Bill makes amendments to:

> *'provide for interviews and discussions to be held in rooms or areas agreed to by the occupier and permit holder, or in the absence of agreement, in any room or area in which one or more of the persons who may be interviewed or participate in the discussions ordinarily take meal or other breaks and is provided by the occupier for that purpose;'*[8]

17. In the TCFUA's submission, this amendment is long over due and addresses a critical issue relating to freedom of association. In the TCFUA's experience, the issue of what is an appropriate venue for the holding of discussions and interviews with workers has been a consistent area of conflict and disputation.

18. Over the last decade, the TCFUA has been on the public record regarding its concerns about the difficulties of exercising effective right of entry when the union is prevented from meeting, and interviewing workers in their normal meal and rest areas. The TCFUA's concerns in respect to the statutory framework for

[7] For example, see clause 9 of the Textile, Clothing, Footwear and Associated Industries Award 2010.
[8] Fair Work Amendment Bill 2013; (House of Representatives); Explanatory Memorandum [para 131]

right of entry have been expressed in various submissions to a number of previous Senate Inquiries.[9] In its submission to the Senate Inquiry into the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008*, the TCFUA outlined how the exercise of the union's right of entry powers in relation to meeting its members, and potential members was regularly frustrated by employers in the TCF industry:

> *'[26] Under the right of entry provisions of the Act, which the Transition Bill does not amend, employers can continue to determine where union members meet with the union [section 751(3) of the Act]. In our experience, this has allowed employers to obstruct union access to factories and premises and deter workers from meeting with us. On one extreme our officials have been forced to sit in temperatures of -8 in rooms 10 minutes away from workers; on the other we have had to meet with workers in offices adjacent to, and in full view of, management.*
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> *[27] For example, at Domestic Textiles, where after many years of meeting with workers in the tea rooms the TCFUA were recently directed to meet with workers in a room located next to management. The room was in clear view of management. In addition, the company only allowed the TCFUA to meet with workers during their lunch hour and the room did not have adequate facilities for workers to eat their lunch. Many workers thus did not meet with their union and for those that did, the meetings were extremely brief.*
>
> *[28] Most recently, Feltex Carpets which also for a long time provided the TCFUA with access to tea rooms has begun insisting that a corridor is an appropriate meeting place for union meetings to be held.*
>
> *[29] All of these measures inhibit the capacity of workers to meet with their representatives. In addition, the current laws encourage unsafe practices. For example, one of our members was badly injured, when under the right of entry laws of the act, his employer forced him to walk, in the dark during a nightshift to a room 10 minutes away from his work station to meet with us. He fell and broke both his hands and has not returned to work since.'*[10]

[9] See for example, TCFUA submission to the Senate Committee Inquiry into the *Workplace Relations (Right of Entry) Bill 200*4; TCFUA Submission to the Senate Education, Employment and Workplace Relations Committee Inquiry into the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008*; TCFUA Submission to the Senate Education, Employment and Workplace Relations Committee Inquiry into the *Fair Work Bill 2008*.

[10] TCFUA Submission to the Senate Education, Employment and Workplace Relations Committee Inquiry into the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008*; [paras 26 – 28]

19. Under the Workplace Act 1996 ('Work Choices')('the WR Act') the relevant test was whether the request by an affected employer or the occupier for the permit holder 'to hold discussions in a particular room or area of the premises' or 'to take a particular route to reach a particular room or area of the premises' was a reasonable request.[11] Further, the WR Act expressly provided that 'the request is not unreasonable only because it is not the room, area or route that the permit holder would have chosen'.[12]

20. Under the Work Choices formulation, disputes brought by unions to the Australian Industrial Relations Commission ('AIRC') regarding what was a reasonable request of an employer or occupiers were rarely successful. For example, in mid 2008 a Melbourne carpet manufacturer (Feltex Carpets Pty Ltd) directed a TCFUA organiser to meet and hold discussions with workers in a women's toilet area.[13] The organiser made clear to the company that the venue was not suitable, however the employer insisted that if she wished to continue to hold the discussions they needed to take place in that location. In order to facilitate the discussions, the organiser was forced to stand in the doorway to the toilet area, with female workers inside and the male workers outside attempting to listen to what was being said.[14]

21. The TCFUA subsequently disputed the venue as being reasonable in an application to the AIRC.[15] Prior to the matter being arbitrated the employer withdrew the venue as a place for employee discussions, however offered a number of alternatives (rooms in the company's HR/Administration building and a portable on another site)[16], which the TCFUA also disputed as being

[11] *Workplace Relations Act 1996*; section 765
[12] Ibid; ss765(4)
[13] The area was identified by a 'Women' sign on the door and marked with a figure representing a woman. Inside the room was a changing area, employee lockers and several toilets. Also see Transcript of RE2008/2494 (3 July 2008) referred to at footnote 11below.
[14] This case study formed part of the TCFUA's submission to the Senate Standing Committee on Education , Employment and Workplace Relations Inquiry into the Fair Work Bill 2008 and was subsequently quoted in the Senate Report [para 7.2].
[15] RE2008/2494; (s7771(4))Application for order by Commission (unreasonable request); TCFUA v Feltex Carpets Pty Ltd
[16] Ibid; TCFUA Outline of written submissions (4 August 2008)

unreasonable. The TCFUA's concerns regarding the alternative venues included inter alia, the distance from the employees' actual factory work area, OH&S issues, the short period of the employees' meal/crib breaks (20 minutes), the lack of appropriate and meal and other facilities, the proximity to the offices of company management, including privacy, confidentiality and identification concerns (i.e. lack of sound proofing).[17] Despite these concerns, Senior Deputy President Kaufman of the AIRC found that the request for the union to meet in the venues was reasonable. As submitted by the TCFUA to the Senate Inquiry into the Fair Work Bill 2008, the AIRC held that:

> *'it was a reasonable request of the employer to direct employees to meet with their union in another building. This involves a 10 minutes round trip for workers from their work stations in circumstances where some workers only have a 20 minute break. It involves walking along and crossing a public road, frequented by both domestic and commercial vehicles. He also held that it was reasonable for the company to direct workers to meet with their union in a room in the HR/Admin building, approximately two metres from the HR manager's office with lunch or tea facilities.'*[18]

22. In its oral evidence to the Senate Inquiry into the *Transition to Forward with Fairness Bill*, the TCFUA advocated for change to the right of entry formulation in context of the particular characteristics of the TCF industry including as follows:

> *'Ms Wiles – The right of entry issue is crucial in our industry, as it is in many others, but particularly in ours because of the nature and the demographic of our membership. Many of you would know that the great majority of our members are from a non-English speaking background. Where we do have right of entry we often assist by bringing in interpreters or use other officials of the union that can assist in that communication process. It is very difficult to advise people outside a workplace because people have other commitments and other obligations. There is a lot of fear in our industry, too, about being seen to be a member of a union. We have a good number of silent members, people that do not want their membership to be known even to their workmates.*
>
> *The issue about right of entry is not only about the entry itself but also about what happens when the union actually gets into the site. Increasingly we are finding that employers are using their rights under the current legislation to*

[17] Ibid; also see Transcript of Hearing (30 September 2008)
[18] Quote from the TCFUA's submission to the Senate Inquiry into the Fair Work Bill 2008 [para 162]. See also Transcript (above) [PN958] – [PN963]

dictate where those employees can meet with the union. It is often in places where management and supervisors can see which employees are going to meet with the union. As to the traditional location for meeting members or potential members or other employees, in their lunch room, part of that was a practical issue, in that it is the only time there is to meet them. Also, everyone is in the same place and people do not have to identify themselves to get access to a union official or the information that the union official is giving to them. For our union it is a critical issue. Ms O'Neill [sic] *said that it is the intersection of these provisions that provide such enormous pressure on people in terms of their employment.'*[19]

23. The right of entry framework remained unaltered until the passage and commencement of the Fair Work Act 2009. As to what constitutes an 'unreasonable request' in relation to a permit holder's discussions with employees, guidance is provided in ss 492(2) as follows:

> ***'Section 49 Conduct of interviews in particular rooms etc***
>
> ***(2) [Examples of unreasonable requests]***
>
> *Without limiting when a request under subsection (1) might otherwise be unreasonable, a request under paragraph (10(a) is unreasonable if:*
> *(a) the room or area is not fit for purpose of conducting the interviews or holding the discussions; or*
> *(b) the request is made with the intention of:*
> *(i) intimidating persons who might participate in the interviews or discussions; or*
> *(ii) discouraging persons from participating in the interviews or discussions; or*
> *(iii) making it difficult for persons to participate in the interviews or discussions, whether because the room or area is not easily accessible during mealtimes or other breaks, or for some other reason.*
>
> ***(3) [Request not unreasonable]***
> *However, a request under subsection (1) is not unreasonable only because the room, area or route is not that which the permit holder would have chosen.*

24. The Explanatory Memorandum to the Fair Work Bill 2008 outlined that the intent of the provision was to:

[19] Hansard; Senate, EEWR 31-32 (7 March 2008)

- Cover situations where the room or area is not appropriate for the holding of discussions or interviews with employees e.g. where a bathroom or unsafe area is nominated [ss492(2)(a)][20];
- To ensure that an occupier cannot nominate a particular room or location for the purpose of trying to hamper people freely attending and participating in discussions [ss492(2)(b)][21];
- To be a non exhaustive list of when a request is unreasonable, with the capacity of FWA to deal with a dispute under s505.[22]

25. Whilst the FW Act provisions represented an improvement as compared under the WR Act , in practice, the TCFUA's right of entry is regularly frustrated by employers in the industry. Some businesses, hostile to the union generally and/or it role in investigating compliance with minimum award and legal conditions, have used a range of strategies (often used in combination) in an effort to keep the union out of their workplaces.

26. The most obvious strategy used is to isolate the union's officers from where workers gather and rest in their breaks. The easiest way to do this is to deny the union meeting with workers in the meal and lunch areas. In addition, the employer may also employ a range of other strategies, including:

- refusing to facilitate notice that the union will be attending, e.g. by allowing the distribution and posting of notices or removing them once posted by a delegate;
- forcing the union to use rooms or areas which ordinarily are not used for, or associated with meetings of workers (e.g. management and administration areas; management training rooms or within eye view of such);
- allocating rooms or areas without appropriate facilities (e.g. heating, cooling, chairs, tables, fridge, food warming, running water);

[20] Fair Work Bill 2008; Explanatory Memorandum (House of Representatives) [para 1967]
[21] Ibid; [para 1968]
[22] Ibid; [paa 1969]

- allocating rooms or areas a distance from the employee lunch area, making it logistically very difficult for an employee to attend the discussions in their meal and rest breaks.
- having managers or supervisors present in close vicinity to where the employee discussions/meetings are taking place so that those workers attending can be observed and recorded;
- threatening workers in advance of the union's visit (or after) and intimidating them not to attend meetings or provide information in relation to an investigation.

27. Often, these strategies used in combination, result in parts of the workforce not even being aware that the union is on site and available to speak to them. This is despite efforts by the TCFUA to inform its membership and other employees in advance of an approaching visit, including by making contact with delegates and by the distribution of written notices.

28. The fear that many workers have in the TCF industry as being identified as a union member or having any contact with the union cannot be underestimated. Their concern is not a theoretical one. The TCFUA is aware of numerous examples of where workers have been targeted or victimised after joining the union and/or assisting the union when it is investigating contraventions of award and legal conditions. For this reason, many workers elect to be 'silent members'. In an industry where there is widespread non compliance, the capacity of the union to obtain accurate and clear information directly from workers affected is critical. Without effective access to workers, this capacity is significantly compromised.

29. The TCFUA in its submission to the 2012 Inquiry into the Fair Work Act 2009[23] outlined its concerns regarding the current right of entry (venue) provisions. One of these concerns centred on the current formulation of ss492(2)(b)(i)-(ii) and (iii)

[23] Fair Work Act Post Implementation Review (2012); Submission of the TCFUA (17 February 2012)

and the threshold requirement to prove 'intention' in relation to an employer/occupier request being made to intimidate or discourage, or to otherwise make it difficult for employees to participate in interviews or discussions.[24] On this point, the TCFUA submitted:

> *'[78]….In the great majority of cases the evidence will be equivocal on this point, particularly where affected employees are reluctant to appear in FWA for reasons outlined above. What exactly is required to prove that a request to holds discussions in a room adjoining the administration/management area was done with the intention of 'intimidating or discouraging' workers from speaking with the union? In the TCFUA's submission, satisfying the intention test is almost unachievable unless there is clear and uncontested evidence that the employer's conduct was so motivated.*
>
> *[79] The TCFUA is aware of one case where a senior member of management simply stood and ate his lunch in the corridor between the meals area and the room allocated for right of entry. Given the location of the room for right of entry, in reality there was no other reason for a production employee to be in the other area (except to speak to the union). The senior manager's presence alone was sufficient to persuade the bulk of employees from participating in the discussions with the union'.*[25]

30. The TCFUA further submitted that the 'test should be re-crafted to capture the effect of such behaviour (rather than the intention), with a rebuttable presumption that such conduct was done for the prohibited purpose (i.e. to intimidate or discourage employees etc). [26]

31. In addition, the TCFUA also recommended that there be a clear right for unions to meet with employees in their meal, tea and canteen areas. [27] In the TCFUA's experience, the need for such an amendment is borne out with consistent regularity. We provide the following recent case studies as a snapshot of the ongoing frustration of right of entry by employers in the TCF industry. We have not directly named the companies involved, however, are prepared to provide specific details to the Committee on a confidential basis if this assists.

[24] Ibid; [paras 74 – 80]
[25] Ibid; [para 79]
[26] Ibid; [para 80]
[27] Ibid; [para 81]

Case study 1

32. During 2011 and 2012 the TCFUA sought to exercise right of entry at the premises of a Melbourne based textile manufacturer. The company allocated the boardroom/office for the union to hold discussions and interview workers. The union believed that the venue was unsuitable for the following reasons:

- The boardroom was in the administration/management area of the building;
- It was located approximately 10 minutes walk from the lunch/meals area;
- To attend, an employee would need to walk through the office/admin area, past reception and into the boardroom. The area was observable from the managing director's office who kept his office door open when the employee discussions took place;
- The managing director's daughter also worked in reception and could observe and report to her father the names of any worker who attended the discussions;
- The space was too small for all of the employees to attend during their meal and rest breaks;
- There were no employee lunch and rest break facilities in the boardroom including tea, coffee, sink, microwave or drinking water.

33. The employees at the site told the TCFUA that they were not comfortable in attending discussions in the boardroom. After the TCFUA raised the issue with the company, an alternative room was allocated, by emptying a room in the office/administration area and placing a hot water urn inside. Again, in the TCFUA's view this venue was inappropriate for the following reasons:

- The room was in an office/administration area where other (non production employees) were working in an open plan office so that

members of management could observe which employees were attending the discussions;

- There were no employee facilities including a microwave , drinking water and sink to clean lunch utensils etc;
- The room was too small for all employees to attend, nor was there sufficient seating provided.

34. The employees at the site essentially refused to meet the union in either of the venues provided by the employer and instead preferred to meet with the union outside of the premises on the nature strip. The TCFUA remained in dispute with the employer up and until a Liquidator was appointed to the company in July 2012.

Case study 2

35. The TCFUA has sought to exercise right of entry to the premises of a footwear warehouse/manufacturer in Victoria. The company operates a number of separate sites. Access was formerly provided to the lunchroom at all sites however, such access was withdrawn after protracted enterprise bargaining negotiations. In once case it appeared that the company constructed an additional room simply for the purpose of having an alternative venue to the lunch/meals area.

Site A

36. The room provided by the company to the union to hold discussions is inappropriate for the following reasons:

- The room is an office which has been built next door to the main reception area, away from the factory part of the building where the workers work and the main lunch/meals area;
- The workers can easily be identified as they are required to walk out the main entrance and proceed to the room next door;

- The room is too small for all of the employees to attend the discussions;
- There are no lunch or rest break facilities including tea/coffee facilities, sink, microwave or drinking water.

Site B

37. The room provided by the company to the union to hold discussions is inappropriate for the following reasons:

- The room provided is part of the boardroom (a 'computer room' which also was used as a storage area for faulty shoes and returns). Most of the tables have computers on them;
- The room is also attached to the owner's office (direct door off the room) which was often open;
- The workers can be easily identified in their attendance at the union meetings as they have to walk through the office area to access the room;
- The room is not big enough for all of the workers to attend;
- The room is an additional 5 minutes walking time from the lunch area (10 minutes in total round trip) when paid rest breaks are 10 minutes and meal breaks are 30 minutes unpaid;
- There are no meal and rest break facilities including tea/coffee facilities, sink, microwave etc or drinking water;
- Any time the union has used this venue, administration and management staff have walked in and out of the broader office area.

Case study 3

38. The TCFUA has sought to exercise right of entry to the premises of an automotive textiles manufacturer. Previously, the company had provided the union access to the meal/lunch rooms in which to hold employee discussions. During and following protracted enterprise bargaining negotiations, the company

withdrew access to the lunch areas. A number of alternative venues were proposed including:

- The boardroom
- The production office
- A part of the factory production area
- The delivery area (external to the main factory building)

39. The TCFUA believed the alternative areas were not suitable for reasons including:

- The boardroom is attached to administration/offices, including one of the senior manager's office;
- The boardroom and production office were not big enough to accommodate all employees who may wish to attend. For example, the production office (which is also the supervisor's office) could hold about 6 people out of a factory of between 50 and 60 production employees;
- The factory production area is an actual work station (containing machinery), has no seating and is otherwise unsuitable because of health and safety reasons;
- The (external) delivery area has forklift drivers operating forklifts unloading trucks etc while some employees are on their breaks;
- In respect to all venues, an employee/s can be easily identified by supervisors and other members of management;
- In respect to all venues, they all require additional travel time for employees of between 4 – 6 minutes one way (8 – 12 minutes round trip);
- In each of the venues there are no meal or rest break facilities including tea/coffee, sink, microwave etc, or drinking water.

Case study 4

The TCFUA has sought to exercise right of entry at a regionally based textile mill. The company has refused to allow the union to hold discussions in the employee lunch and rest area. The alternative venue provided by the company was a disused office room at the front of the factory. In the view of the TCFUA, the venue was unsuitable for the following reasons:

- The room has not been used for many years, is dirty and is full of broken furniture;
- There are insufficient chairs for the number of employees who wish to attend the employee discussions (forcing employees to take chairs from other areas of the workplace in their own lunch and rest period time);
- The workers can easily be identified by management in their attendance in the room provided;
- The room requires an employee to travel an additional 5 minutes one way from the lunch area (10 minutes round trip);
- There are not lunch and rest break facilities including tea/coffee, sink, microwave etc and no drinking water.

Case study 5

40. The TCFUA sought to exercise right of entry to the premises of a small clothing designer/manufacturer. The employer refused to allow the union to meet with employees in the lunch/meals area. Instead, the union was provided access to the company showroom (which is not used as a meals area). The difficulties with the alternative venue included the following:

- A notice had been sent to the workplace but the owner admitted to the union organiser that he had not posted it. It was apparent that not all of the workers were aware that the union would be attending the site;

- The owner stood in the show room for a number of minutes (for no obvious reason other than seeing which employees attended) and then left and returned to his office upstairs. From his office he could easily observe which employees were coming and going from the showroom.

Case study 6

41. The TCFUA sought to exercise right of entry to the premises of a small textile manufacturer. No actual room was provided at all; instead the union was told it could meet the workers just off the reception area. The additional difficulties for the union included:

    - Although the union had sent a written notice in advance, the employer had not posted it and instead said *'he had told everybody'*;
    - The employer stood in the area until the union requested that he leave so that the discussions could take place with some privacy;
    - Although some of the members came to see the organiser, some did not and the workers present were visibly uncomfortable with the arrangement;
    - The meeting space was too small and inadequate for the numbers of people attending;
    - There were no lunch or rest facilities in the area including sufficient numbers of chairs and no tea/coffee facilities, running water etc.

42. In each of the case studies outlined above, the TCFUA organisers reported that they believed the choice of venue by the employer directly affected the numbers of workers attending the discussions. A combination of factors lead to this conclusion including:

    - The lack of knowledge amongst some or all of the workers when the employer has not taken reasonable steps to facilitate access by posting notices etc;

- The time involved in reaching a venue other than the lunch/meals area. This is particularly a factor in the context of 10 minute paid rest breaks and at lunchtime where the employee has either a 30 minute unpaid break or 20 minute crib break (textile industry);
- The lack of meal and rest facilities which means the employee must first go to the lunch room and warm up food etc, and then travel to the alternative venue. The absence of sink and water facilities also means that they have no facilities to wash dishes and clean hands etc;
- The lack of adequate seating for the numbers of employees who could attend the discussions. This is particularly relevant given that the great majority of workers perform manual work, and often on their feet for their entire shifts;
- The capacity of management and supervisors to easily identify workers who attend the union discussions in venues other than the lunch areas.

43. The current provisions in the FW Act result in ongoing disputation and concern amongst workers regarding their access to the union and its officers. An employee should not be effectively forced to choose between their entitlement to proper meal and rest breaks with access to appropriate facilities and their right to meet with, and engage with the union. However, in practice, this is the choice faced by many employees in the TCF industry, an industry in which non-compliance with minimum conditions is widespread and intimidation and victimisation is common.

44. For these reasons, the TCFUA strongly supports the proposed amendment.

Schedule 4 – Right of Entry
Item 12 (Dispute resolution – frequency of entry)

45. Item 12 of Schedule 12 of the Bill[28] introduces expanded dispute resolution powers for the FWC in respect to the frequency of entry by permit holders to particular premises under s484. The TCFUA does not support the inclusion of this provision. In the TCFUA's view, the FWC (as part of its supervisory role) currently has a considerable range of powers to determine the resolution of right of entry disputes. We concur with the ACTU submissions in this respect.

46. The TCFUA is concerned that if the proposed amendment is included it will simply encourage employers to mount another spurious argument as to why the union should not have access to its members and those eligible to be its members.

Schedule 5 – Functions of the FWC
Schedule 6 – Technical Amendments

47. The TCFUA supports the submissions of the ACTU.

Textile, Clothing and Footwear Union of Australia
(15 April 2013)

[28] See new s505A of the Bill