

[Act 2001 No 128]



New South Wales

Industrial Relations (Ethical Clothing Trades) Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to provide various measures for ensuring that outworkers in the clothing trades receive the entitlements conferred on them by law (their *lawful entitlements*).

The Bill:

- (a) constitutes an Ethical Clothing Trades Council (the *Council*) consisting of members representing various sectors of the clothing industry and that is chaired by a person with knowledge of outwork practices in the clothing trades, and

* Amended in committee—see table at end of volume.

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- (b) confers on the Council a broad range of functions, including the giving of advice and making of recommendations concerning the clothing industry and outwork practices in the clothing trades, the making of quarterly reports on relevant matters and the monitoring and fostering of the development within the industry of voluntary self-regulatory mechanisms (such as the voluntary agreement known as the Homeworkers Code entered into by some sectors of the clothing industry in 1997 and the Deed of Co-operation of 1995 known as the Target Code between The Textile Clothing and Footwear Union of Australia and Target Australia Pty Ltd) and other mechanisms as means of ensuring that outworkers receive their entitlements, and
- (c) requires the Council to advise on the efficacy, during the 12 month period after the constitution of the Council, of industry compliance with voluntary self-regulatory mechanisms for ensuring outworkers receive their entitlements and to make recommendations as to whether a mandatory code of practice should be made as referred to in paragraph (d), and
- (d) enables the Minister administering the proposed Act to make a mandatory code of practice requiring specified employers and other persons in the clothing industry to adopt the standards of conduct and practice with respect to outworkers in the clothing trades set out in the code if voluntary self-regulatory mechanisms prove inadequate or ineffective in ensuring that outworkers receive those entitlements, and
- (e) provides for the enforcement of obligations imposed by the mandatory code, and
- (f) amends the *Industrial Relations Act 1996* to facilitate the recovery of unpaid remuneration by outworkers in the clothing trades by providing a method of recovery that enables an outworker to serve a claim for unpaid remuneration (verified by statutory declaration) in the first instance on an apparent employer and provides for the liability to be transferred if necessary to another actual employer.

The Bill also makes certain related and consequential amendments to the *Industrial Relations Act 1996* (for example, to clarify the meaning of outworker in the clothing trades in that Act).

The Bill also amends section 386 of the *Industrial Relations Act 1996*. Section 386 requires an inspector to obtain the permission of the occupier, or a search warrant, before exercising a power of entry to any part of premises used for residential purposes. The proposed amendment makes it clear that the section does not prevent an inspector from entering any part of premises used both for residential purposes and for work in or in connection with the clothing trades.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. In particular, *outworker* in the clothing trades is defined by reference to provisions of the *Industrial Relations Act 1996* (as to be amended by the proposed Act) as a person (not being the occupier of a factory) who performs outside a factory any work in the clothing trades or the manufacture of clothing products, whether directly or indirectly, for the occupier of a factory or a trader who sells clothing by wholesale or retail and who is an employee within the meaning of that Act. *Lawful entitlements* of an outworker are defined as entitlements conferred on the outworker by law, including any entitlements conferred by or under the industrial relations legislation or other legislation.

Clause 4 provides that notes included in the proposed Act do not form part of it.

Part 2 Ethical Clothing Trades Council

Clause 5 constitutes an Ethical Clothing Trades Council of New South Wales.

Clause 6 provides for the Council to consist of 7 part-time members appointed by the Minister. The Council is to be chaired by a person chosen by the Minister who has knowledge of outwork practices in the clothing trades. Five other members are to be chosen from panels selected by organisations representing various sectors of the clothing industry. One other member is to be a person chosen by the Minister as having appropriate experience or skills in the clothing industry or representing consumer, community or other interests.

Clause 7 specifies the functions of the Council.

Clause 8 provides for the Council to make quarterly reports to the Minister on an on-going basis.

Clause 9 provides for the Council to make the report to the Minister referred to in paragraph (c) of the Overview of the Bill on implementation of ethical clothing industry practices during the 12 month period after the commencement of the proposed section.

Clause 10 enables the Council to arrange for the use of the services of staff or facilities of a government department.

Part 3 Mandatory code of practice for outworkers

Clause 11 enables the Minister to make a code of practice for the purpose of ensuring that outworkers in the clothing trades received their lawful entitlements if the Minister considers:

- (a) that current voluntary self-regulatory mechanisms are inadequate to achieve improvements in the level of compliance with obligations to ensure outworkers receive their lawful entitlements, or
- (b) that persons engaged in the clothing industry are not in good faith attempting to negotiate improvements or extensions to those voluntary mechanisms.

Clause 12 sets out the procedures to be followed by the Minister in making a code of practice, including the requirement that a code be made only after the Minister has considered a report of the Council under proposed section 9 and various requirements to ensure that the code is published and is publicly available.

Clause 13 makes it an offence for a person to fail to comply with obligations imposed on the person by the code with respect to the adoption of standards of conduct or practice set out in the code with respect to outworkers in the clothing trades.

Clause 14 provides that in the event of an inconsistency between the provisions of the mandatory code and the provisions of an award under the *Industrial Relations Act 1996*, the provisions of the award prevail to the extent of the inconsistency.

Clause 15 applies a number of provisions of the *Industrial Relations Act 1996* to facilitate enforcement of proposed Part 3. The applied provisions include provisions relating to proceedings for offences, evidentiary provisions and provisions conferring powers of inspection.

Clause 16 provides for the interpretation of certain references in the applied provisions.

Clause 17 authorises certain conduct for the purposes of complying with the mandatory code that might otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

Clause 18 enables the regulations to exempt persons and bodies and classes of persons and bodies from compliance with the mandatory code or specified provisions of it.

Part 4 Miscellaneous

Clause 19 empowers the making of regulations for the purposes of the proposed Act, including the power to create offences punishable by a maximum penalty of 50 penalty units.

Clause 20 gives effect to the amendments to the *Industrial Relations Act 1996* set out in Schedule 2.

Clause 21 provides for a review of the proposed Act after 5 years.

Schedule 1 Constitution and procedure of Council

Schedule 1 contains provisions relating to the constitution and procedure of the Ethical Clothing Trades Council (such as provisions dealing with terms of office, remuneration, appointment of deputies, the manner in which vacancies in office occur, disclosure of pecuniary interests and the quorum for meetings).

Schedule 2 Amendment of Industrial Relations Act 1996

Schedule 2 makes various amendments to the *Industrial Relations Act 1996*.

Schedule 2 [1] restates the general definition of *employee* in section 5 (1) of the Act to put it beyond doubt that employees include the persons described in Schedule 1 to the Act who are taken to be employees under section 5 (3).

Schedule 2 [2] amends section 127 of the Act to make it clear that nothing in the section limits or excludes any liability for remuneration of a person who is a principal contractor arising under the Act or any other law or an industrial instrument.

Schedule 2 [3] inserts sections 127A–127G into the Act to facilitate the recovery of unpaid remuneration by outworkers in the clothing trades by providing an additional method of recovery to current methods of recovery available to outworkers as described in paragraph (f) of the Overview to the Bill.

Proposed section 127A defines certain words and expressions used in the sections.

Proposed section 127B enables an outworker in the clothing trades to make a claim for unpaid remuneration against the person the outworker believes is his or her employer (the *apparent employer*) if the employer has not paid the outworker all or any of the remuneration payable for work done by the outworker for the employer (the *unpaid remuneration*). The particulars set out in the claim are required to be verified by statutory declaration.

Proposed section 127C makes the apparent employer liable for the unpaid remuneration unless the apparent employer refers the claim to another person the apparent employer knows or has reasonable grounds to believe is the actual employer and the actual employer accepts liability for the unpaid remuneration by paying the whole or part of the amount claimed to the outworker concerned within 14 days after the claim is referred.

Proposed section 127D sets out the way in which an actual employer served with a referred claim can accept liability for the whole or part of the amount claimed. The apparent employer will be liable for any part of the amount that is not paid by the actual employer. However, the apparent employer will be able, after paying the outstanding amount to the outworker concerned, to deduct or set-off the amount against any amount that the apparent employer owes the actual employer.

Proposed section 127E provides for an outworker to recover unpaid remuneration from an apparent employer unless the employer proves that the work concerned was not done or that the amount claimed for the work in the unpaid remuneration claim is not the correct amount in respect of the work.

Proposed section 127F creates offences relating to unpaid remuneration claims and referred claims.

Proposed section 127G makes it clear that proposed sections 127A–127F do not limit or exclude any other rights of recovery of remuneration an outworker in the clothing trades has, or any liability of any person with respect to the remuneration of such an outworker, whether or not arising under the Act or any other law or an industrial instrument and also preserves certain other rights of recovery.

Schedule 2 [4] is a consequential amendment to section 382 of the Act to enable jurisdiction conferred by the proposed Act on a Local Court constituted by a Magistrate (through the application under proposed section 15 of section 397 of the *Industrial Relations Act 1996* as an applied provision) to be exercised by the Chief Industrial Magistrate or any other Industrial Magistrate.

Schedule 2 [5] contains the amendment to section 386 of the Act relating to powers of entry to residential premises described in the Overview above.

Schedule 2 [6] amends the description of outworkers in the clothing trades contained in clause 1 (f) of Schedule 1 (persons deemed to be employees) to the Act to omit the reference to work “for which a price or rate is fixed by an industrial instrument” so that the description will more accurately describe outworkers, who are not necessarily engaged under an award as employees and to otherwise clarify the effect of the provision.

Schedule 2 [7] and **[8]** amend clause 2 (1) (a) of Schedule 1 by way of statute law revision as a consequence of the omission of the definition of **factory** from, and amendment of the definition of **occupier** in, the *Factories, Shops and Industries Act 1962* (now the *Shops and Industries Act 1962*) by the *Occupational Health and Safety Act 2000*.