



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
- (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*.



New South Wales

Industrial Relations (Ethical Clothing Trades) Bill 2001

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New South Wales

Industrial Relations (Ethical Clothing Trades) Bill 2001

No. , 2001

A Bill for

An Act with respect to outworkers in the clothing trades; to constitute the Ethical Clothing Trades Council and make provision with respect to a mandatory code of practice; to make related and consequential amendments to the *Industrial Relations Act 1996*; and for other purposes.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Industrial Relations (Ethical Clothing Trades) Act 2001*. 4
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2 Commencement 6

This Act commences on a day or days to be appointed by proclamation. 7
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3 Definitions 9

In this Act: 10

award has the same meaning as it has in the *Industrial Relations Act 1996*. 11
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Code of Practice Committee means the committee described in clause 5 of Part 2 of the Homeworkers Code. 13
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Council means the Ethical Clothing Trades Council constituted by this Act. 15
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employer of an outworker in the clothing trades means a person described in clause 1 (f) of Schedule 1 to the *Industrial Relations Act 1996* as the employer of the outworker. 17
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exercise a function includes perform a duty. 20

function includes a power, authority or duty. 21

Homeworkers Code means the agreement, known as the Homeworkers Code of Practice, containing two parts and Part 2 of which was signed on behalf of The Textile Clothing and Footwear Union of Australia, The Council of the Textile and Fashion Industries Ltd, The Australian Chamber of Manufacturers and The Australian Business Chamber and various individual companies in 1997. 22
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industrial organisation has the same meaning as it has in the *Industrial Relations Act 1996*. 28
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industrial relations legislation has the same meaning as it has in the *Industrial Relations Act 1996*. 30
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<i>lawful entitlements</i> of an outworker means the entitlements conferred on the outworker by law, including any entitlements conferred by or under the industrial relations legislation or any other legislation.	1 2 3
<i>mandatory code</i> means a code of practice in force under Part 3.	4
<i>outworker</i> in the clothing trades means a person described in clause 1 (f) of Schedule 1 to the <i>Industrial Relations Act 1996</i> and who is an employee within the meaning of that Act.	5 6 7
Note. A person described in Schedule 1 (f) as an outworker in the clothing trades is any 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.	8 9 10 11 12
<i>Target Code</i> means the Deed of Co-operation between the Textile Clothing and Footwear Union of Australia and Target Australia Pty Ltd dated 28 July 1995.	13 14 15

4 Notes	16
Notes included in this Act do not form part of this Act.	17

Part 2 Ethical Clothing Trades Council	1
5 Constitution of Council	2
There is constituted by this Act an Ethical Clothing Trades Council of New South Wales.	3 4
6 Membership and procedure of Council	5
(1) The Council is to consist of the following 7 part-time members:	6
(a) one person appointed by the Minister who is to be Chairperson of the Council,	7 8
(b) one person appointed by the Minister from a panel of 3 persons nominated by Australian Retailers Association, New South Wales Division,	9 10 11
(c) one person appointed by the Minister from a panel of 3 persons nominated by Australian Business Limited,	12 13
(d) one person appointed by the Minister from a panel of 3 persons nominated by The Australian Industry Group, New South Wales Branch,	14 15 16
(e) one person appointed by the Minister from a panel of 3 persons nominated by Labor Council of New South Wales,	17 18
(f) one person appointed by the Minister from a panel of 3 persons nominated by The Textile Clothing and Footwear Union of New South Wales,	19 20 21
(g) one person having such experience or skills in the clothing industry as the Minister considers will enable the person to make a contribution to the work of the Council or who is chosen by the Minister to represent consumer, community or other interests.	22 23 24 25 26
(2) The person appointed as Chairperson is to have such knowledge of outwork practices in the clothing trades as the Minister considers necessary to ensure that the work of the Council is efficiently performed.	27 28 29 30
(3) The Chairperson must not be a person who represents an employer or employees engaged in the clothing trades or a person who has a direct financial interest in the clothing industry.	31 32 33

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- (4) If nominations for the purposes of subsection (1) (b), (c), (d), (e) or (f) are not submitted within the time or in the manner directed by the Minister, the Minister may appoint a person to be a member instead of the member required to be appointed, being a person who in the Minister's opinion is suitably representative of the persons represented by the bodies referred to in those paragraphs.
- (5) Schedule 1 has effect with respect to the Council.

7 Functions of Council

- (1) The Council has such functions as are conferred or imposed on it by or under this or any other Act.
- (2) In particular, and without limiting subsection (1), the Council has the following functions:
- (a) to advise and make recommendations to the Minister generally on the clothing industry and outwork practices in the clothing trades, including the impact of developments in that industry on outworkers,
 - (b) to advise the Minister on the level of compliance of sectors of the clothing industry with their obligations (whether or not voluntarily undertaken) to ensure that outworkers receive their lawful entitlements,
 - (c) to make recommendations about the means by which compliance with those obligations might be encouraged and enforced,
 - (d) to foster the adoption and observance of self-regulatory mechanisms, such as the Homeworkers Code and the Target Code, through consultation with the Code of Practice Committee, clothing industry retailers and manufacturers, relevant industrial organisations and other interested persons and bodies,
 - (e) to support changes to the Homeworkers Code that the Council considers might increase its effectiveness in ensuring that outworkers receive their lawful entitlements,
 - (f) to promote, as may be appropriate, the Homeworkers Code, the Target Code and any similar code and any code made under this Act, and persons who comply with those codes,

(g)	to facilitate consultation between clothing industry retailers and relevant industrial organisations concerning the making and implementation of voluntary industry agreements such as the Target Code relating to outwork practices in the clothing trades,	1 2 3 4
(h)	to conduct education programs, and to disseminate information, relating to outworkers and the clothing industry,	5 6
(i)	to advise and make recommendations to the Minister on the operation, and any amendment to or revocation of the mandatory code (if in force) and the scope of any exemptions that should be given by the regulations,	7 8 9 10
(j)	to make the reports referred to in this Part.	11
(3)	The Council may provide advice, and make recommendations, to the Minister even though the Minister has not requested it to do so.	12 13
(4)	In exercising its functions, the Council is subject to the control and direction of the Minister, except in relation to any report given to the Minister under this Part.	14 15 16
8	Quarterly reports	17
(1)	The Council is to monitor and make quarterly reports in writing to the Minister of its findings as to whether outworkers in the clothing trades are receiving their lawful entitlements.	18 19 20
(2)	The Council is to report on, and may include recommendations with respect to, any of the following matters in a quarterly report:	21 22
(a)	activities of clothing industry retailers and manufacturers in relation to their obligations under the Homeworkers Code,	23 24
(b)	participation by clothing industry retailers in voluntary industry agreements such as the Target Code relating to outwork practices in the clothing trades,	25 26 27
(c)	activities of clothing industry retailers and manufacturers in relation to their obligations under the mandatory code (if in force).	28 29 30
(3)	The first quarterly report for the purposes of this section is to be made as soon as practicable after the end of 3 months after the commencement of this section.	31 32 33
(4)	The Minister may waive the requirement that the Council make a quarterly report for any period specified by the Minister.	34 35

- 9 Report on implementation of ethical clothing industry practices** 1
- (1) The Council is to evaluate, and report to the Minister on action (whether voluntary or otherwise) taken by the clothing industry during the period of 12 months after the commencement of this section to improve compliance in the industry with obligations to ensure outworkers in the clothing trades receive their lawful entitlements. 2
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- (2) The report is to include the Council's recommendations as to: 7
- (a) whether, if a mandatory code were made, it would improve compliance, and 8
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- (b) the content and suggested penalties for failure to comply with such a code. 10
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- (3) The report is to be forwarded to the Minister as soon as practicable after the end of the 12 month period. 12
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- 10 Council may arrange for use of services of staff or facilities** 14
- The Council may, with the approval of the Minister, arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department. 15
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Part 3	Mandatory code of practice for outworkers	1
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11	Nature of mandatory code of practice	3
(1)	The Minister may make a code of practice for the purpose of ensuring that outworkers in the clothing trades receive their lawful entitlements.	4 5
(2)	In particular, the Minister may make a code of practice if the Minister considers:	6 7
(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	8 9 10 11
(b)	that persons engaged in the clothing industry are not in good faith attempting to negotiate improvements or extensions to those voluntary self-regulatory mechanisms.	12 13 14
(3)	The code may require employers or other persons engaged in the clothing industry, or a sector of the clothing industry, specified or described in the code to adopt the standards of conduct and practice with respect to outworkers in the clothing trades set out in the code.	15 16 17 18
(4)	The code of practice may refer to or incorporate, with or without modification, a standard or other document prepared or published by a body specified in the code, as in force at a particular time or from time to time.	19 20 21 22
12	Making of mandatory code of practice	23
(1)	The Minister may make a code of practice only after considering a report of the Council under section 9 (Report on implementation of ethical clothing industry practices).	24 25 26
(2)	The code of practice is made by order published in the Gazette.	27
(3)	The code takes effect on the day on which the order is so published or, if a later day is specified in the order for commencement, on the later day so specified.	28 29 30
(4)	The Minister may, by order published in the Gazette, amend or revoke the code at any time.	31 32

(5) The Minister:	1
(a) must consult the Council and consider any relevant report or recommendation made by it, and	2 3
(b) may consult such other organisations or persons as the Minister thinks appropriate,	4 5
before amending or revoking the code.	6
(6) Copies of the following are to be available for public inspection, without charge, at the principal office of the Department of Industrial Relations during ordinary office hours:	7 8 9
(a) a copy of the code of practice,	10
(b) if the code of practice has been amended, a copy of the code as so amended,	11 12
(c) if the code of practice refers to or incorporates any other document prepared or published by a specified body, a copy of each such document.	13 14 15
13 Obligations under mandatory code	16
An employer or other person engaged in the clothing industry, or a sector of the clothing industry, specified or described in the mandatory code who fails, without reasonable excuse, to adopt any standard of conduct or practice set out in that code with respect to outworkers in the clothing trades that the employer or other person is required by the code to adopt is guilty of an offence.	17 18 19 20 21 22
Maximum penalty: 100 penalty units	23
14 Inconsistency between code and award	24
In the event of an inconsistency between the provisions of the mandatory code and the provisions of an award, the provisions of the award that are applicable to outworkers in the clothing trades prevail to the extent of the inconsistency.	25 26 27 28
15 Applied provisions	29
(1) The following provisions of the <i>Industrial Relations Act 1996</i> and the regulations made under that Act apply to and for the purposes of this Part (<i>the applied provisions</i>):	30 31 32
(a) Part 7 of Chapter 5 (Entry and inspection by officers of industrial organisations),	33 34

- (b) Part 4 of Chapter 7 (Inspectors and their powers), 1
 - (c) Part 5 of Chapter 7 (Evidentiary provisions), 2
 - (d) Part 6 of Chapter 7 (Criminal and other legal proceedings), 3
 - (e) any other provision prescribed by the regulations. 4
- (2) The applied provisions have effect subject to such modifications as are prescribed by this Part or the regulations. 5
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16 Interpretation of applied provisions 7

For the purposes of the application of the applied provisions, a reference in the applied provisions: 8
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- (a) to this Act (that is, the *Industrial Relations Act 1996*) is to be read as a reference to this Act (that is, the *Industrial Relations (Ethical Clothing Trades) Act 2001*), and 10
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 - (b) to the regulations is to be read as a reference to the regulations under this Act, and 13
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 - (c) to the industrial relations legislation includes a reference to this Act, and 15
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 - (d) to employment is to be read as a reference to employment as an outworker in the clothing trades, and 17
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 - (e) to an employer is to be read: 19
 - (i) as a reference to an employer within the meaning of this Act, or 20
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 - (ii) except in Part 7 of Chapter 5—as a reference to any person (other than an outworker in the clothing trades) required to comply with the mandatory code, and 22
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 - (f) to employees is to be read as a reference to outworkers in the clothing trades, and 25
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 - (g) to an industrial instrument includes a reference to the mandatory code, 27
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- as the case requires. 29

17	Authorisations for section 51 of the Trade Practices Act 1974 (Cth)	1
(1)	This section takes effect on the day on which the mandatory code takes effect.	2 3
(2)	The following are specifically authorised by this Act for the purposes of the <i>Trade Practices Act 1974</i> of the Commonwealth and the <i>Competition Code of New South Wales</i> :	4 5 6
(a)	any agreements entered into before or after the commencement of this section by persons in order to comply with any requirements imposed on them by the mandatory code,	7 8 9
(b)	the conduct of the persons in entering into any such agreements,	10 11
(c)	the conduct of the persons in performing any such agreements,	12
(d)	any thing done by persons in order to comply with any requirements imposed on them by the mandatory code.	13 14
(3)	Things authorised to be done by subsection (2) are authorised only to the extent (if any) that they would otherwise contravene Part IV of the <i>Trade Practices Act 1974</i> of the Commonwealth or the <i>Competition Code of New South Wales</i> .	15 16 17 18
(4)	In this section: agreement includes a contract, arrangement or understanding.	19 20
18	Exemptions	21
	The regulations may exempt any person or body or class of persons or bodies from the operation of the mandatory code or from a specified provision of the code.	22 23 24

Part 4 Miscellaneous	1
19 Regulations	2
(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	3 4 5 6
(2) Without limiting subsection (1), regulations may be made for or with respect to the mandatory code.	7 8
(3) The regulations may create a summary offence punishable by a maximum penalty of 50 penalty units.	9 10
20 Amendment of Industrial Relations Act 1996 No 17	11
Schedule 2 has effect.	12
21 Review of Act	13
(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	14 15 16
(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	17 18
(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	19 20

Schedule 1	Constitution and procedure of Council	1
	(Section 6 (5))	2
Part 1	General	3
1	Definitions	4
	In this Schedule:	5
	<i>Chairperson</i> means the Chairperson of the Council.	6
	<i>member</i> means any member of the Council.	7
Part 2	Constitution	8
2	Terms of office of members	9
	Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	10 11 12
3	Remuneration	13
	A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.	14 15 16
4	Deputies	17
(1)	The Minister may, from time to time, appoint a person to be the deputy of a member (other than the Chairperson), and the Minister may revoke any such appointment.	18 19 20
(2)	In the case of a deputy appointed for a member who was appointed under section 6 (1) (b), (c), (d), (e) or (f), the deputy must be appointed from the same, or another, panel nominated by the organisation that nominated the member.	21 22 23 24
(3)	In the absence of a member, the member's deputy may, if available, act in the place of the member.	25 26

- (4) While acting in the place of a member, a deputy: 1
- (a) has all the functions of the member and is taken to be a member, and 2
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 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person. 4
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- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member. 7
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- 5 Vacancy in office of member** 9
- (1) The office of a member becomes vacant if the member: 10
- (a) dies, or 11
 - (b) completes a term of office and is not re-appointed, or 12
 - (c) resigns the office by instrument in writing addressed to the Minister, or 13
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 - (d) is removed from office by the Minister under this clause, or 15
 - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or 16
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 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 21
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 - (g) becomes a mentally incapacitated person, or 25
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable. 26
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- (2) The Minister may at any time remove a member from office. 31
- 6 Filling of vacancy in office of member** 32
- (1) If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy. 33
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(2) The person must be appointed from the same, or another, panel nominated by the organisation that, under section 6, nominated the member whose office has become vacant.	1 2 3
7 Effect of certain other Acts	4
(1) Part 2 of the <i>Public Sector Management Act 1988</i> does not apply to or in respect of the appointment of a member.	5 6
(2) If by or under any Act provision is made:	7
(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or	8 9 10
(b) prohibiting the person from engaging in employment outside the duties of that office,	11 12
the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.	13 14 15 16
8 Disclosure of pecuniary interests	17
(1) If:	18
(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council, and	19 20 21
(b) the interest appears to raise a conflict with the performance of the member's duties in relation to the consideration of the matter,	22 23 24
the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.	25 26 27
(2) A disclosure by a member at a meeting of the Council that the member:	28 29
(a) is a member, or is in the employment, of a specified company or other body, or	30 31
(b) is a partner, or is in the employment, of a specified person, or	32
(c) has some other specified interest relating to a specified company or other body or to a specified person,	33 34

- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1). 1
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- (3) Particulars of any disclosure made under this clause must be recorded by the Council in minutes for the meeting at which the disclosure is made. 5
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- (4) A contravention of this clause does not invalidate any decision of the Council. 8
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Part 3 Procedure 10

9 General procedure 11

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council. 12
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10 Quorum 15

The quorum for a meeting of the Council is 4 of its members. 16

11 Presiding member 17

The Chairperson (or, in the absence of the Chairperson, another member of the Council elected by the members present at the meeting) is to preside at a meeting of the Council. 18
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12 Voting 21

- (1) A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council. 22
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- (2) The Chairman has a deliberative vote and, in the event of an equality of votes, has a second or casting vote. 24
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- (3) A member presiding at a meeting in the absence of the Chairman has a deliberative vote but does not, in the event of an equality of votes, have a second or casting vote. 26
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13	Transaction of business outside meetings or by telephone	1
(1)	The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Council.	2 3 4 5
(2)	The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	6 7 8 9 10
(3)	For the purposes of:	11
(a)	the approval of a resolution under subclause (1), or	12
(b)	a meeting held in accordance with subclause (2),	13
	the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Council.	14 15
(4)	A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Council.	16 17 18
(5)	Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.	19 20 21
14	First meeting	22
	The Minister may call the first meeting of the Council in such manner as the Minister thinks fit.	23 24

Schedule 2	Amendment of Industrial Relations Act 1996	1
		2
	(Section 20)	3
[1]	Section 5 Definition of employee	4
	Omit section 5 (1). Insert instead:	5
	(1) General definition	6
	In this Act, <i>employee</i> means:	7
	(a) a person employed in any industry, whether on salary or wages or piece-work rates, or	8
		9
	(b) any person taken to be an employee by subsection (3).	10
[2]	Section 127 Liability of principal contractor for remuneration payable to employees of subcontractor	11
		12
	Insert after section 127 (11):	13
	(12) Nothing in this section limits or excludes any liability with respect to payment of remuneration by a person who is a principal contractor arising under this Act or any other law or any industrial instrument.	14
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		17
[3]	Sections 127A–127G	18
	Insert after section 127:	19
127A	Definitions—sections 127B–127G	20
	In sections 127B–127G:	21
	<i>employer</i> means a person described in clause 1 (f) of Schedule 1 as an employer, being a person other than a person whose sole business in connection with the clothing industry is sale of clothing by retail.	22
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	Note. A person described in clause 1 (f) of Schedule 1 as an employer is taken to be an employer for the purposes of this Act by section 5 (3).	26
		27

outworker in the clothing trades means a person described in clause 1 (f) of Schedule 1 as an employee. 1
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Note. A person described in clause 1 (f) of Schedule 1 as an employee is taken to be an employee for the purposes of this Act by section 5 (3). 3
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remuneration means an amount payable, within the meaning of the definition of **amount payable** in section 364 (1), in connection with work done by an outworker and includes an amount payable to the outworker under the *Annual Holidays Act 1944* or the *Long Service Leave Act 1955*. 5
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unpaid remuneration claim means a claim for unpaid remuneration under section 127B. 10
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127B Claims by outworkers in clothing trades for unpaid remuneration 12

(1) When may an outworker make an unpaid remuneration claim under this section? 13 14

An outworker in the clothing trades may make a claim under this section for any 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 for work done by the outworker for the employer (the **unpaid remuneration**). 15
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(2) The claim must be made within 6 months after the work is completed. 21 22

(3) How is an unpaid remuneration claim made? 23

The claim is to be made by serving a written notice on the apparent employer that: 24
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(a) claims payment of the unpaid remuneration, and 26

(b) sets out the following particulars: 27

(i) the name of the outworker, 28

(ii) the address at which the outworker may be contacted, 29
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(iii) a description of the work done, 31

(iv) the date on which the work was done, 32

(v) the amount of unpaid remuneration claimed in respect of the work. 33
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(4) The particulars set out in the unpaid remuneration claim must be verified by statutory declaration. 35 36

	(5) This section applies only in respect of remuneration for work carried out after the commencement of the section.	1 2
	(6) Clause 3 of Schedule 1 does not apply to an employer served with an unpaid remuneration claim under this section.	3 4
127C	Liability of apparent employer for unpaid remuneration for which an unpaid remuneration claim has been made	5 6
	(1) Except as provided by subsection (4), an apparent employer served with an unpaid remuneration claim under section 127B is liable (subject to any proceedings as referred to in section 127E) for the amount of unpaid remuneration claimed.	7 8 9 10
	(2) An apparent employer may, within 14 days after being served with an unpaid remuneration claim, refer the claim in accordance with this section to another person the apparent employer knows or has reasonable grounds to believe is the person for whom the work was done (the <i>actual employer</i>).	11 12 13 14 15
	(3) An apparent employer refers an unpaid remuneration claim in accordance with this section by:	16 17
	(a) advising the outworker concerned in writing of the name and address of the actual employer, and	18 19
	(b) serving a copy of the claim (a <i>referred claim</i>) on the actual employer.	20 21
	(4) The apparent employer is not liable for the whole or any part of an amount of unpaid remuneration claimed for which the actual employer served with a referred claim accepts liability in accordance with section 127D.	22 23 24 25
127D	Liability of actual employer for unpaid remuneration for which an unpaid remuneration claim has been made	26 27
	(1) An actual employer served with a referred claim under section 127C may, within 14 days after the service, accept liability for the whole or any part of the amount of unpaid remuneration claimed by paying it to the outworker concerned.	28 29 30 31
	(2) An actual employer who accepts liability must serve notice in writing on the apparent employer of that acceptance and of the amount paid.	32 33 34

(3) The apparent employer may, after the apparent employer has paid to the outworker concerned any part of the amount of unpaid remuneration claimed for which the actual employer served with the referred claim has not accepted liability, deduct or set-off the amount the apparent employer has paid to the outworker from any amount that the apparent employer owes to the actual employer (whether or not in respect of work the subject of the referred claim).	1 2 3 4 5 6 7 8
127E Recovery of amount of unpaid remuneration	9
(1) Part 2 of Chapter 7 (Recovery of remuneration and other amounts) applies to recovery of an amount payable to an outworker in the clothing trades from an apparent employer who fails to make a payment in respect of an amount of unpaid remuneration for which the employer is liable under section 127C. For the purposes of this section, a reference in Part 2 of Chapter 7 to an industrial instrument is to be construed as a reference to the provisions of this section.	10 11 12 13 14 15 16 17
(2) In proceedings referred to in subsection (1), an order for the apparent employer to pay the amount concerned must be made unless the apparent employer proves that the work 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.	18 19 20 21 22 23
127F Offences relating to unpaid remuneration claims and referred claims	24 25
A person must not:	26
(a) by intimidation or by any other act or omission, intentionally hinder, prevent or discourage a person from making an unpaid remuneration claim, or	27 28 29
(b) make any statement that the person knows is false or misleading in a material particular in any notice given for the purposes of section 127C or 127D, or	30 31 32
(c) serve a referred claim on a person under section 127C that the person does not know, or have reasonable grounds to believe, is an actual employer.	33 34 35
Maximum penalty: 100 penalty units.	36

127G	Effect of sections 127A–127F	1
(1)	Sections 127A–127F do not (except as provided by section 127B (6)), limit or exclude any other rights of recovery of remuneration of an outworker in the clothing trades, or any liability of any person with respect to the remuneration of such an outworker, whether or not arising under this Act or any other law or an industrial instrument.	2 3 4 5 6 7
	Note. An outworker may, for example, seek an order from an industrial court under section 365 instead of making an unpaid remuneration claim under section 127B.	8 9 10
(2)	Nothing in section 127D (3) limits or excludes any right of recovery arising under any other law with respect to any amount of money owed by the apparent employer to the actual employer.	11 12 13 14
[4]	Section 382 Jurisdiction of Chief and other Industrial Magistrates	15
	Insert “ <i>Industrial Relations (Ethical Clothing Trades) Act 2001</i> ” in alphabetical order under “Other industrial relations legislation” in section 382 (1).	16 17 18
[5]	Section 386 No entry to residential premises without permission or search warrant	19 20
	Insert at the end of the section:	21
(2)	This section does not apply to any part of premises used both for residential purposes and for work in or in connection with the clothing trades.	22 23 24
[6]	Schedule 1 Persons deemed to be employees	25
	Omit clause 1(f). Insert instead:	26
(f)	Outworkers in clothing trades. Any 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. (In such a case, the occupier or trader is taken to be the employer.)	27 28 29 30 31 32 33

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- [7] Schedule 1, clause 2 (1) (a)** 1
- Omit “*factory* has the same meaning as in section 4 (1) of the *Factories, Shops and Industries Act 1962*”. Insert instead “*factory* has the same meaning as “Factory” had in the *Factories, Shops and Industries Act 1962* immediately before that definition was repealed by Schedule 2.4 [2] to the *Occupational Health and Safety Act 2000*”. 2
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- [8] Schedule 1, clause 2 (1) (a)** 7
- Omit “*occupier* has the same meaning as in section 4 (1) of the *Factories, Shops and Industries Act 1962*”. Insert instead “*occupier* has the same meaning as “Occupier” had in the *Factories, Shops and Industries Act 1962* immediately before that definition was amended by Schedule 2.4 [3] to the *Occupational Health and Safety Act 2000*”. 8
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