

Passed by both Houses



New South Wales

Industrial Relations (Ethical Clothing Trades) Bill 2001

Contents

	Page	
Part 1	Preliminary	
1	Name of Act	2
2	Commencement	2
3	Definitions	2
4	Notes	3
Part 2	Ethical Clothing Trades Council	
5	Constitution of Council	4
6	Membership and procedure of Council	4
7	Functions of Council	5
8	Quarterly reports	6
9	Report on implementation of ethical clothing industry practices	7
10	Council may arrange for use of services of staff or facilities	7

	Page	
Part 3	Mandatory code of practice for outworkers	
11	Nature of mandatory code of practice	8
12	Making of mandatory code of practice	8
13	Obligations under mandatory code	9
14	Inconsistency between code and award	9
15	Applied provisions	9
16	Interpretation of applied provisions	10
17	Authorisations for section 51 of the Trade Practices Act 1974 (Cth)	11
18	Exemptions	11
Part 4	Miscellaneous	
19	Regulations	12
20	Amendment of Industrial Relations Act 1996 No 17	12
21	Review of Act	12
Schedules		
1	Constitution and procedure of Council	13
2	Amendment of Industrial Relations Act 1996	18

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2001*



New South Wales

Industrial Relations (Ethical Clothing Trades) Bill 2001

Act No , 2001

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

Clause 1 Industrial Relations (Ethical Clothing Trades) Bill 2001

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Industrial Relations (Ethical Clothing Trades) Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

award has the same meaning as it has in the *Industrial Relations Act 1996*.

Code of Practice Committee means the committee described in clause 5 of Part 2 of the Homeworkers Code.

Council means the Ethical Clothing Trades Council constituted by this Act.

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.

exercise a function includes perform a duty.

function includes a power, authority or duty.

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.

industrial organisation has the same meaning as it has in the *Industrial Relations Act 1996*.

industrial relations legislation has the same meaning as it has in the *Industrial Relations Act 1996*.

lawful entitlements 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.

mandatory code means a code of practice in force under Part 3.

outworker in the clothing trades means a person described in clause 1 (f) of Schedule 1 to the *Industrial Relations Act 1996* and who is an employee within the meaning of that Act.

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.

Target Code means the Deed of Co-operation between the Textile Clothing and Footwear Union of Australia and Target Australia Pty Ltd dated 28 July 1995.

4 Notes

Notes included in this Act do not form part of this Act.

Part 2 Ethical Clothing Trades Council

5 Constitution of Council

There is constituted by this Act an Ethical Clothing Trades Council of New South Wales.

6 Membership and procedure of Council

- (1) The Council is to consist of the following 7 part-time members:
 - (a) one person appointed by the Minister who is to be Chairperson of the Council,
 - (b) one person appointed by the Minister from a panel of 3 persons nominated by Australian Retailers Association, New South Wales Division,
 - (c) one person appointed by the Minister from a panel of 3 persons nominated by Australian Business Limited,
 - (d) one person appointed by the Minister from a panel of 3 persons nominated by The Australian Industry Group, New South Wales Branch,
 - (e) one person appointed by the Minister from a panel of 3 persons nominated by Labor Council of New South Wales,
 - (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,
 - (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.
- (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.
- (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.

- (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,
 - (h) to conduct education programs, and to disseminate information, relating to outworkers and the clothing industry,
 - (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,
 - (j) to make the reports referred to in this Part.
- (3) The Council may provide advice, and make recommendations, to the Minister even though the Minister has not requested it to do so.
- (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.

8 Quarterly reports

- (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.
- (2) The Council is to report on, and may include recommendations with respect to, any of the following matters in a quarterly report:
- (a) activities of clothing industry retailers and manufacturers in relation to their obligations under the Homeworkers Code,
 - (b) participation by clothing industry retailers in voluntary industry agreements such as the Target Code relating to outwork practices in the clothing trades,
 - (c) activities of clothing industry retailers and manufacturers in relation to their obligations under the mandatory code (if in force).
- (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.
- (4) The Minister may waive the requirement that the Council make a quarterly report for any period specified by the Minister.

9 Report on implementation of ethical clothing industry practices

- (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) The report is to include the Council's recommendations as to:
 - (a) whether, if a mandatory code were made, it would improve compliance, and
 - (b) the content and suggested penalties for failure to comply with such a code.
- (3) The report is to be forwarded to the Minister as soon as practicable after the end of the 12 month period.
- (4) The Minister must, as soon as practicable after receiving the report, lay a copy of the report, or cause it to be laid, before both Houses of Parliament.
- (5) If a House of Parliament is not sitting when the Minister seeks to comply with subsection (4), the Minister must present copies of the report to the Clerk of the House of Parliament.
- (6) A report presented to the Clerk of a House of Parliament:
 - (a) is taken on presentation, and for all purposes, to have been laid before the House of Parliament, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) for all purposes is taken to be a document published by order or under the authority of the House, and
 - (d) on the first sitting day of the House after receipt of the report by the Clerk, must be recorded:
 - (i) in the case of the Legislative Council in the Minutes of the Proceedings of the Legislative Council, or
 - (ii) in the case of the Legislative Assembly in the Votes and Proceedings of the Legislative Assembly.

10 Council may arrange for use of services of staff or facilities

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.

Part 3 Mandatory code of practice for outworkers

11 Nature of mandatory code of practice

- (1) The Minister may make a code of practice for the purpose of ensuring that outworkers in the clothing trades receive their lawful entitlements.
- (2) In particular, the Minister may make a code of practice 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 self-regulatory mechanisms.
- (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.
- (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.

12 Making of mandatory code of practice

- (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).
- (2) The code of practice is made by order published in the Gazette.
- (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.
- (4) The Minister may, by order published in the Gazette, amend or revoke the code at any time.

- (5) The Minister:
- (a) must consult the Council and consider any relevant report or recommendation made by it, and
 - (b) may consult such other organisations or persons as the Minister thinks appropriate,
before amending or revoking the code.
- (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:
- (a) a copy of the code of practice,
 - (b) if the code of practice has been amended, a copy of the code as so amended,
 - (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 Obligations under mandatory code

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.

Maximum penalty: 100 penalty units

14 Inconsistency between code and award

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.

15 Applied provisions

- (1) The following provisions of the *Industrial Relations Act 1996* and the regulations made under that Act apply to and for the purposes of this Part (*the applied provisions*):
- (a) Part 7 of Chapter 5 (Entry and inspection by officers of industrial organisations),

Clause 15 Industrial Relations (Ethical Clothing Trades) Bill 2001

Part 3 Mandatory code of practice for outworkers

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

16 Interpretation of applied provisions

For the purposes of the application of the applied provisions, a reference in the applied provisions:

- (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
 - (b) to the regulations is to be read as a reference to the regulations under this Act, and
 - (c) to the industrial relations legislation includes a reference to this Act, and
 - (d) to employment is to be read as a reference to employment as an outworker in the clothing trades, and
 - (e) to an employer is to be read:
 - (i) as a reference to an employer within the meaning of this Act, or
 - (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
 - (f) to employees is to be read as a reference to outworkers in the clothing trades, and
 - (g) to an industrial instrument includes a reference to the mandatory code,
- as the case requires.

17 Authorisations for section 51 of the Trade Practices Act 1974 (Cth)

- (1) This section takes effect on the day on which the mandatory code takes effect.
- (2) The following are specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:
 - (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,
 - (b) the conduct of the persons in entering into any such agreements,
 - (c) the conduct of the persons in performing any such agreements,
 - (d) any thing done by persons in order to comply with any requirements imposed on them by the mandatory code.
- (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 *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.
- (4) In this section:
agreement includes a contract, arrangement or understanding.

18 Exemptions

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.

Part 4 Miscellaneous

19 Regulations

- (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.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the mandatory code.
- (3) The regulations may create a summary offence punishable by a maximum penalty of 50 penalty units.

20 Amendment of Industrial Relations Act 1996 No 17

Schedule 2 has effect.

21 Review of Act

- (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.
- (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.
- (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.

Schedule 1 Constitution and procedure of Council

(Section 6 (5))

Part 1 General

1 Definitions

In this Schedule:

Chairperson means the Chairperson of the Council.

member means any member of the Council.

Part 2 Constitution

2 Terms of office of members

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.

3 Remuneration

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.

4 Deputies

- (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.
- (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.
- (3) In the absence of a member, the member's deputy may, if available, act in the place of the member.

- (4) While acting in the place of a member, a deputy:
 - (a) has all the functions of the member and is taken to be a member, and
 - (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.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

5 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (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
 - (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
 - (g) becomes a mentally incapacitated person, or
 - (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.
- (2) The Minister may at any time remove a member from office.

6 Filling of vacancy in office of member

- (1) If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

- (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.

7 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
- (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
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

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.

8 Disclosure of pecuniary interests

- (1) If:
- (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
 - (b) the interest appears to raise a conflict with the performance of the member's duties in relation to the consideration of the matter,

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.

- (2) A disclosure by a member at a meeting of the Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,

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).

- (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.
- (4) A contravention of this clause does not invalidate any decision of the Council.

Part 3 Procedure

9 General procedure

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.

10 Quorum

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

11 Presiding member

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.

12 Voting

- (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.
- (2) The Chairman has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (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.

13 Transaction of business outside meetings or by telephone

- (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) 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.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Council.
- (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.

14 First meeting

The Minister may call the first meeting of the Council in such manner as the Minister thinks fit.

Schedule 2 Amendment of Industrial Relations Act 1996

(Section 20)

[1] Section 5 Definition of employee

Omit section 5 (1). Insert instead:

(1) **General definition**

In this Act, *employee* means:

- (a) a person employed in any industry, whether on salary or wages or piece-work rates, or
- (b) any person taken to be an employee by subsection (3).

[2] Section 127 Liability of principal contractor for remuneration payable to employees of subcontractor

Insert after section 127 (11):

- (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.

[3] Sections 127A–127G

Insert after section 127:

127A Definitions—sections 127B–127G

In sections 127B–127G:

employer 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.

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).

outworker in the clothing trades means a person described in clause 1 (f) of Schedule 1 as an employee.

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).

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*.

unpaid remuneration claim means a claim for unpaid remuneration under section 127B.

127B Claims by outworkers in clothing trades for unpaid remuneration

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

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**).

(2) The claim must be made within 6 months after the work is completed.

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

The claim is to be made by serving a written notice on the apparent employer that:

- (a) claims payment of the unpaid remuneration, and
- (b) sets out the following particulars:
 - (i) the name of the outworker,
 - (ii) the address at which the outworker may be contacted,
 - (iii) a description of the work done,
 - (iv) the date on which the work was done,
 - (v) the amount of unpaid remuneration claimed in respect of the work.

(4) The particulars set out in the unpaid remuneration claim must be verified by statutory declaration.

- (5) This section applies only in respect of remuneration for work carried out after the commencement of the section.
- (6) Clause 3 of Schedule 1 does not apply to an employer served with an unpaid remuneration claim under this section.

127C Liability of apparent employer for unpaid remuneration for which an unpaid remuneration claim has been made

- (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.
- (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 *actual employer*).
- (3) An apparent employer refers an unpaid remuneration claim in accordance with this section by:
 - (a) advising the outworker concerned in writing of the name and address of the actual employer, and
 - (b) serving a copy of the claim (a *referred claim*) on the actual employer.
- (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.

127D Liability of actual employer for unpaid remuneration for which an unpaid remuneration claim has been made

- (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.
- (2) An actual employer who accepts liability must serve notice in writing on the apparent employer of that acceptance and of the amount paid.

- (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).

127E Recovery of amount of unpaid remuneration

- (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.
- (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.

127F Offences relating to unpaid remuneration claims and referred claims

A person must not:

- (a) by intimidation or by any other act or omission, intentionally hinder, prevent or discourage a person from making an unpaid remuneration claim, or
- (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
- (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.

Maximum penalty: 100 penalty units.

127G Effect of sections 127A–127F

- (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.

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.

- (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.

[4] Section 382 Jurisdiction of Chief and other Industrial Magistrates

Insert “*Industrial Relations (Ethical Clothing Trades) Act 2001*” in alphabetical order under “Other industrial relations legislation” in section 382 (1).

[5] Section 386 No entry to residential premises without permission or search warrant

Insert at the end of the section:

- (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.

[6] Schedule 1 Persons deemed to be employees

Omit clause 1(f). Insert instead:

- (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.)

[7] Schedule 1, clause 2 (1) (a)

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*”.

[8] Schedule 1, clause 2 (1) (a)

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*”.