

Legislative Council

Industrial Relations Amendment Bill 2006

Schedule of the Christian Democrat amendment agreed to in Committee of the Whole  
on Thursday 9 March 2006

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Page 3, Schedule 1. Insert after line 2:

[1] **Sections 127A–127G**

Omit the sections.

[2] **Chapter 2, Part 11**

Insert after Part 10 of Chapter 2:

**Part 11 Outworkers in clothing trades**

**Division 1 Preliminary**

**129A Definitions**

In this Part:

*constitutional corporation* means a corporation to which paragraph 51 (xx) of the Commonwealth Constitution applies.

*employer* means a person described in clause 1 (f) of Schedule 1 as an employer and, in relation to Division 3, does not include 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).

*modification* includes addition, exception, omission or substitution.

*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).

*relevant clothing trades award* means the *Clothing Trades (State) Award* made by the Commission and published in the Industrial Gazette on 19 October 2001, as amended and in force from time to time.

*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 129D.

## **Division 2      Conditions of employment**

### **129B      Outworkers in clothing trades employed by constitutional corporations**

- (1) On and from the commencement of this section:
  - (a) the relevant clothing trades award ceases to have effect as an award in relation to outworkers in clothing trades and employers (but only to the extent that such outworkers are employed by constitutional corporations), and
  - (b) the conditions of employment set out in that award (as in force from time to time) in relation to outworkers in clothing trades and employers are, by force of this section, the conditions of employment applicable to outworkers employed by constitutional corporations and employers.

**Note.** The expression *conditions of employment* is defined in the Dictionary to include any provisions about an industrial matter.

- (2) To avoid doubt, subsection (1) (b) extends to conditions relating to the giving out of work by employers.
- (3) Nothing in this section affects the continued operation of the relevant clothing trades award in its application to employees not employed by constitutional corporations and their employers.

### **129C      Application of certain enforcement provisions**

A reference in Part 1 (Breach of industrial instruments) or Part 2 (Recovery of remuneration and other amounts) of Chapter 7 to:

- (a) an industrial instrument includes a reference to provisions of the relevant clothing trades award applying under section 129B, and
- (b) an amount payable under an industrial instrument includes a reference to an amount payable to an outworker under any such provision.

### **Division 3      Remuneration**

#### **129D      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.

#### **129E      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 129D is liable (subject to any proceedings as referred to in section 129G) 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 129F.

**129F 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 129E 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).

**129G 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 129E. 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.

**129H 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 129E or 129F, or
- (c) serve a referred claim on a person under section 129E that the person does not know, or have reasonable grounds to believe, is an actual employer.

Maximum penalty: 100 penalty units.

**Division 4 Miscellaneous**

**129I Effect of this Part**

- (1) This Part does not (except as provided by section 129D (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 129D.

- (2) Nothing in section 129F (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.
- (3) Nothing in this Part limits the rights of entry and inspection of officers of industrial organisations for the purpose of investigating any breach of a provision of this Part or a condition of employment conferred by or under this Part.

**129J Relationship of this Part to Industrial Relations (Ethical Clothing**

**Trades) Act 2001**

In the event of an inconsistency between the provisions of the mandatory code within the meaning of the *Industrial Relations (Ethical Clothing Trades) Act 2001* and the provisions of this Part (or a condition of employment having effect under this Part), the provisions of this Part and those conditions of employment prevail to the extent of the inconsistency.