National Retail Association

2 December 2011

Barry Leahy
Associate Director General
Office of Fair and Safe Work Queensland
Department of Justice and Attorney-General
GPO Box 69
Brisbane Qld 4001

By Email:

Dear Sir

Administrative Aspects of Outworkers Code

We thank you for giving us the opportunity to comment on aspects of the Outworkers Code administrative requirements.

Introduction:

The current difficulties associated with the implementation of the Code are partly attributable to the lack of consultation associated with the introduction of the Code in the first instance and also the failure to engage with industry in the development and delivery of an education program prior to the commencement of the Code's obligations.

These considerations are particularly important given the mandatory nature of the Code.

Application of the Code:

It is our broad view that awareness of the code and its obligations is not high among small retail businesses and that compliance by small retail businesses is haphazard. If the Government is to make changes to the Code it is recommended that the Government work with the relevant industry bodies to support the delivery of an appropriate education campaign for retailers covered by the code.

National Retail Association Ltd
ABN: 44 009 664 073
6 Overend Street, East Brisbane Qld 4169
PO Box 1544, Coorparoo DC Qld 4151
Phone: 07 3240 0100
Free call: 1800 738 245
Fax: 07 3240 0152
Email: info@nra.net.au
Web: www.nra.net.au

National Retail Association

Mandatory Nature of Code:

There is a significant difference between on the one hand, getting retailers voluntarily to commit to supporting the objectives of the code and taking steps to secure transparency in the supply chain, and, on the other hand, directing retailers who are in the main small businesses to implement the onerous administrative requirements imposed by the Code.

The Objectives of the Code:

In many respects the inherent rationale underpinning the code is flawed.

It is one thing to secure the commitment of large retailers (predominantly national chains) to implement supply chain procedures that will address inappropriate outworker processes. These retailers have the procedures and the resources in place to manage these obligations. In addition these retailers are more likely to be concerned about reputational implications and more committed to good corporate governance.

It was a substantial leap to take a voluntary code applicable to large retailers and impose it as a mandatory code on small retailers.

It is also appropriate to note that it is generally accepted that the use of outworkers or the incidence and size of product generated by outworkers in Queensland is substantially less than is the case in some other jurisdictions. This is relevant to any objective cost benefit analysis that looks at the potential benefit generated by the application of the mandatory code and weighs that benefit against the very considerable and time intensive administrative requirements imposed on small businesses.

Administrative Aspects of the Code:

The Code basically makes retailers responsible for providing the remedy for inappropriate outworker arrangements.

Form 3A

The Code operates by interfering in the commercial and contractual arrangements of retailers and requiring that a condition of any contract entered into with a supplier is that the supplier guarantees that outworkers will be paid award rates and conditions and that contractors contracting to suppliers must give the same guarantee.

The mechanism used in the Code to address these obligations is Form 3A which must be completed by the supplier if outworkers are involved in the supply chain.

This process is not difficult in itself but the legislation does not contemplate the practical difficulties arising when suppliers decline to provide the documentation and the retailer may have limited alternative options.

National Retail Association

Form 2

The retailer is required to give the supplier a completed Form 2.

This form purports to constitute the agreement between the retailer and the supplier regulating the supply of material. It is not clear why this Form is required. The Form appears to duplicate the established commercial arrangements that would otherwise be in place regulating the relationship between the retailer and the supplier.

It is recommended that this requirement be removed.

Clause 12

This clause mandates that the retailer must deal only with a registered supplier. However there appears nothing in the Code that instructs the retailer where a register of suppliers can be accessed in order for this obligation to be acquitted.

Clause 13

This provision unreasonably cast a very broad obligation on retailers. While it is theoretically possible that a retailer may become aware of the information included in subclause (1) and (2), it is very unlikely from a practical point of view.

It is particularly unreasonable that a retailer might be expected to know either the "actual" terms and conditions of employment of an outworker, or the terms and conditions of employment "prescribed under a relevant industrial instrument".

It is equally implausible that a retailer might know based on "an inspection of premises" that an outworker might be employed on less favourable terms and conditions than those prescribed under a relevant industrial instrument.

We note that the definition of "relevant industrial instrument" included in the Code only compounds the difficulty for retailers in trying to unravel and discern their obligations.

It is of grave concern that a retailer might be found in breach of clause 13 of the code based on the vague and improbable circumstances articulated in the clause and having regard to the difficulty retailers will experience in establishing what is a relevant industrial instrument and what are the terms and conditions contained in a relevant industrial instrument.

This clause should be deleted.

National Retail Association Ltd
ABN: 44 009 664 073

6 Overend Street, East Brisbane Qld 4169
PO Box 1544, Coorparoo DC Qld 4151

Phone: 07 3240 0100
Free call: 1800 738 245
Fax: 07 3240 0152

Email: info@nra.net.au
Web: www.nra.net.au

National Retail Association

Clause 14

We hold grave reservations about the utility of Forms 2 and 3. This requirement should be removed.

We do not believe that retailers need to be in possession of the Form 4. This form includes matters relevant to suppliers and contractors . Retailers should not be accountable for record keeping associated with this form. The requirement for retailers to hold copies of the Form 4 should be removed.

The requirement in clause 14(2) for a retailer to report at six monthly intervals to the Department responsible for industrial relations and "all relevant industrial organisations" is another unreasonable imposition on the resources of small businesses.

In particular it is unreasonable for small businesses to be required to prepare reports for "relevant industrial organisations". We note that "relevant industrial organisation" is defined in the Code as "an organisation of employees bound by a state award or the Federal Award". Definitions of state and federal awards are also included, however it is left to the retailer to ascertain the name and contact details of the relevant union.

Conclusion

NRA submits that the objectives of the Queensland Government would be more likely to be achieved if the Code were set aside and a program of collaboration undertaken which might secure the support and commitment of retailers towards an aim of minimizing inappropriate practice at the outworker level.

Regards

Gary Black
Executive Director

National Retail Association Ltd
ABN: 44 009 664 073

6 Overend Street, East Brisbane Qld 4169
PO Box 1544, Coorparoo DC Qld 4151

Phone: 07 3240 0100
Free call: 1800 738 245
Fax: 07 3240 0152

Email: info@nra.net.au
Web: www.nra.net.au