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Mr Gavin Jones
The Director
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Australian Competition and Consumer Commission
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Dear Mr Jones

The NSW Office of Industrial Relations (OIR) welcomes the opportunity to comment on the Homeworker Code of Practice Committee (the Committee) applications for re-authorisation of the Homeworkers Code of Practice (the Code).

The OIR supports both an interim authorisation and the extension of the Committee's substantive exemption under the Trade Practices Act.

The need for a voluntary code for the clothing industry was supported by the findings of the 1996 Senate Economics References Committee Inquiry into the working conditions of clothing outworkers. Recommendations of the Inquiry included the development of an industry Homeworkers Code of Practice and the adoption of an agreed label declaring the employment conditions under which the garment was made complied with legislative requirements (such as the label currently available to complying signatories to the Code). In order to strengthen industry standards, the New South Wales Government supported the introduction of the voluntary Code.

In 2001 the New South Wales Government introduced the *Industrial Relations (Ethical Clothing Trades) Act 2001*, which amended the *Industrial Relations Act 1996*, clarifying the provisions that deem outworkers to be employees and inserting special provisions that enable outworkers to recover unpaid remuneration from principal contractors and other suppliers in the clothing production chain. These legislative initiatives combined with programs to directly and practically assist outworkers formed the basis of the New South Wales Government's *Behind the Label* Clothing Outwork Strategy, implemented between 2001 and 2005. The development of the Strategy was based on compelling evidence of widespread non-compliance with minimum labour standards by employers in the New South Wales clothing industry.

The New South Wales Government supports industry self-regulation as the most appropriate way to address these issues. In 2003, the Office of Industrial Relations was instrumental in facilitating the development of the new Part 1 of the Homeworkers Code (the Retailers Ethical Clothing Code of Practice) and has undertaken extensive promotion of the Code as a suitable instrument for industry self regulation.

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The New South Wales Government remains committed to ensuring that clothing outworkers receive their lawful entitlements such as pay, leave and other conditions and a safe working environment. This will be best achieved by strategies that promote a fair deal for all players. In July 2005 the New South Wales Government introduced a mandatory code for the clothing industry – the Ethical Clothing Trades Extended Responsibility Scheme. This code is designed to complement the voluntary Code and complying signatories to the voluntary code are exempt from being bound by the mandatory code. The provision for persons or bodies to be exempted from the mandatory code is intended to offer both incentive and reward for those responsible organisations that demonstrate a continuing commitment to effective voluntary mechanisms such as those mentioned earlier.

The voluntary Code is an important mechanism in ensuring a level playing field for those involved in the clothing industry in New South Wales. Removal of this option will result in the apparently punitive step of making all employers answerable to the more onerous mandatory code and will remove the opportunity for industry self-regulation.

Continued use of the Code for industry self-regulation is vital in addressing the exploitation of clothing outworkers in New South Wales. In addition to helping to provide a more equitable base for competition within the industry, the Code provides improved health and social benefits, such as:

- The improved likelihood of compliance with statutory award requirements in the clothing industry
- A lower risk of exploitation of a very disadvantaged group
- Provision of additional choice for consumers in clear identification (labelling) of garments that are ethically made
- Assistance for all industry participants in understanding their rights and responsibilities
- Improvement of social and working lives of outworkers and their families.

It is the view of the OIR that public benefit from both the interim authorisation and the extension of the Homeworkers Code of Practice Committee's substantive exemption far outweighs any possible public detriment.

Indeed, it is the view of the OIR that significant harm would likely result from the denial of interim or on-going authorisation, both to the Committee, the outworkers protected by the complying signatories to the Code, and the industry generally. A temporary denial of interim authorisation would render the voluntary instrument useless, thereby removing any protection afforded through it to outworkers. The integrity of the voluntary instrument would also be destroyed. The Homeworkers Code of Practice is a vital element in continuing to protect outworkers' rights and in improving compliance with current legislation.

OIR therefore supports the Committee's view that there is a need for continuing authorisation for the Code beyond the expiration of the previous authorisations on 22 August 2005. The OIR also reinforces the view that there is an urgent need for both interim and on-going exemption of the Homeworkers Code of Practice in order to continue the vital work of strengthening the New South Wales clothing industry's commitment to treating its workers fairly and in line with legislative requirements.

I look forward to hearing of the progress of these applications at the draft and final determination stages.

Yours sincerely

Pat Manser

Pat Manser
Deputy Director-General

11 August 2005