

Introduction

The focus of the Review of Australia's Textile Clothing and Footwear (TCF) Industry is on innovation and competition. Innovation is not limited to only technological development. The concept also encompasses novel organisational insights and developments, which can multiply the productive and commercial benefits available from technological developments alone.

The modern TCF industry in Australia is characterised by extensive reliance upon supply of production, personnel and skills from outside businesses, often involving a complex succession of interlinked and contractual relations, which are collectively known as supply chains.

The key commercial imperative for successful organisational innovation in these kinds of supply chain structures concerns the need for businesses to control the quality, as well as the physical integrity, of goods supplied to the business, as well as ensuring timely adherence to delivery commitments within an acceptable range of costs. In other words, key businesses in supply chains have to know where the goods supplied to them are made and under what conditions those goods are made.

This is precisely the same imperative facing public regulators, which are interested in determining whether those labouring to produce these goods are receiving their minimum legal requirements in relation to pay, occupational health and safety and provision of workers compensation insurance. This is also the same key imperative faced by the other public regulators concerned with the environmental impacts of these work processes, or otherwise concerned with the consumer safety of the resulting products.

Supply chains are already regulated by modern forms of business practices. Key businesses in existing supply chains take great care with the contractual arrangements that they negotiate, in order to assure the agreed delivery within acceptable time and cost frameworks of goods of adequate quality. These types of complex contractual arrangements are referred to by modern regulatory theory scholars as private contractual governance structures.

Important regulatory innovation in South Australia in recent times, provide a best practice model by which public regulatory laws can harness these existing forms of private contractual regulation. This occurs through harnessing the relevant supply chain contractual governance structures in order to ensure that vulnerable workers labouring in obscure circumstances at the exploitative end of long and complex supply chains receive their due entitlements and health and safety protections.

Code of Practice

The *Fair Work (Clothing Outworker Code of Practice) Regulations 2007* was published in the South Australian Government Gazette on 18 October 2007 and became operational on 1 March 2008. The Code of Practice (SA Code) is contained in Schedule 1 of the Regulations.

The introduction of the SA Code continues the mechanism of using supply chain transparency measures as the most effective way of uncovering the often hidden nature of clothing outwork. This mechanism recognises the unique and visible role that clothing retailers play in the supply chain. The inculcation of a culture of respect for the rights of

employees and compliance with award obligations is most effective when addressed by all sectors of the industry.

The SA Code, which is closely modelled on the NSW mandatory code will also complement and encourage compliance with the national and voluntary *Homeworkers Code of Practice* (Voluntary Code). A party engaged in the clothing industry is exempt from the Mandatory Code if it is a signatory to, or accredited under, the Voluntary Code. This document is available from the 'No SweatShop Label' website at www.nosweatshoplabel.com.

The Voluntary Code is closely linked to the *Fair Wear* Campaign, which aims to eliminate the exploitation of outworkers at home in the Australian clothing industry through actively encouraging Australians to think critically about where and how clothes are produced. Accredited companies' benefit from having a group of suppliers they can select from who are meeting legal and community standards. Hence, these companies can be certain that their clothing products and brand names are protected from unscrupulous activities.

This process will assist companies to develop strong and reliable relationships with suppliers who are providing ongoing assurance of quality, delivery time and meeting both community and legal standards and will support branding protection, integrity of products and minimise poor publicity.

The exploitation of clothing outworkers is a serious industrial and social problem in Australia. The industry is structured in a complicated chain of out-sourced production that often ends with socially isolated and grossly underpaid workers who subsidise the profits of others in the production chain. The outworkers, their families and the broader community bear the costs of those exploitative employment conditions. The fact that outworkers are outside the conventional industrial relations framework means that they often fall through the cracks.

Award Regulation

The South Australian *Clothing Trades Award* (SA Award) and the equivalent Federal award contain unique clauses specific to outworkers in the industry. These clauses, which are almost identical, provide a minimum set of conditions regarding manufacturer and retailer obligations as well as outworker obligations and rights. Apart from setting wages and conditions for clothing outworkers and employers, the awards contain special transparency clauses designed to regulate the employment of outworkers.

However, the SA Award and Federal award do not extend to retailers, located at the top of the supply and production chain. The exception to this is where a retailer is a direct employer of an outworker, a situation that rarely occurs in South Australia.

The SA Code seeks to bridge this gap through requiring reporting practices that create transparency and accountability through all levels of the supply and production chain.

The introduction of the SA Code will be of benefit to complying retailers. Any competitive advantage that non-compliers previously enjoyed will be eliminated as all retailers are placed on a level playing field. This is particularly beneficial for complying retailers, who enjoy a unique position in the supply chain in being able to bring direct pressure on suppliers to comply with the terms of the award.

Today the organisation of much out-sourced local production is characterised by a complex supply chain that often distances principal contractors-retailers and/or fashion houses from remote and isolated home based workers. One or several intermediaries may operate between the principals and the workers, connected via a series of contractual relationships. However it is also not unknown for outworkers to be engaged directly by retail fashion houses.

Because the chain of garment production is so long and complex, it has become easy for responsibility to be passed off from one element to another along the chain. Of particular significance is the dominance of highly mobile but less visible 'middlemen' who source production through outworkers for manufacturers, wholesalers and fashion houses.

In an environment where competitors attempt to outbid each other by offering the lowest price for clothing orders, there is an incentive for the middlemen to deliberately evade any legal obligations.

With the introduction of the SA Code, all sectors of the industry will therefore be subject to a regulatory regime: retailers through either the Voluntary Code or SA Code and manufacturers, suppliers and contractors through the SA Award, Federal Award and either the Voluntary Code or SA Code. This will increase the breadth and scope of compliance activity by SafeWork SA and the Textile, Clothing and Footwear Union (TCFU), which should result in a greater number of outworkers receiving their lawful entitlements.

Record Keeping Requirements

The biggest problem in attempting to assess how many outworkers there are in South Australia and the overall levels of compliance is the hidden nature of the industry and the difficulty in finding the outworkers' work locations, employment relationships, their employers and appropriate employment and business records.

To address this, the SA Code will act as a mechanism to identify suppliers, manufacturers and employers who supply clothing goods for retail sale in South Australia. For SafeWork SA, this will be the first time it gains access to information from retailers. The Code in effect widens the 'net' of compliance activity in that it provides information to SafeWork SA and the TCFUA that would not previously been available about the locations where work is performed by outworkers.

The administration of compliance with the SA Code has sought to follow existing business processes or statutory requirements to minimise the impact to business. It is estimated that the SA Code will have minimal cost impact on business, outside any costs associated with business meeting legal obligations to comply with industrial instruments.

The record-keeping requirements for manufacturers are no greater than that which already exists under the SA Award. Where a manufacturer's supply chain is already complying with the SA Award, then the SA Code will impose very minimal extra compliance costs upon a clothing manufacturer in South Australia.

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In any event, this is also the same information, which the majority of business would already keep for taxation purposes, and in particular for quality control purposes, that is, to know exactly how the goods are actually made throughout the supply chain.

Retailers subject to the requirements of the code have particular reporting requirements, which, to a large extent mirror what is required of manufacturers under the State Award. Of course, retailers have the opportunity (and indeed, the code creates an incentive for this to happen) to become a signatory to the voluntary code.

The impact of the code on retail businesses is of a minor machinery nature and does not substantially alter existing arrangements in terms of record keeping. In any event, the requirements under the code allow retailers to have greater control and power over what happens in the supply and production chains. It allows for greater certainty in regards to supply chains and delivery times and financial costs of garments.

The SA Code is not applicable to charities, retailers of second-hand clothes or the retail of imported clothes.

IALI

The first International Association of Labour Inspectorates (IALI) Conference in the Pacific Region was held in Adelaide, South Australia, between 12 and 14 March 2008. IALI and SafeWork SA (the South Australian government's OHS and industrial relations authority) hosted the Conference and series of events, in partnership with the International Labour Organization (ILO) and all OHS authorities of Australia and New Zealand.

The theme of the Conference was: Towards Healthy, Safe & Decent Work through Alliances, Ethics & Influence. The IALI Conference included regional forums addressing issues specific to the Pacific, South East Asian and Australia/New Zealand.

The South East Asian Forum revealed how well advanced the ASEAN nations, through their ASEAN-OSHNET (ASEAN Occupational Safety and Health Network) activities, are with their cooperation in areas such as labour inspection training. The Forum also dealt with mechanisms to address specific issues of concern, which could best be progressed via Memoranda of Understanding between inspectorates including Australia and New Zealand. Key topics identified for inclusion in the MOU's included ensuring decent working conditions all along the supply chain for goods and services throughout South East Asia and information sharing on workplace safety, through a compendium of best practice.

It was proposed at the Forum that the SA Code be included in the compendium of OHS best practices, specifically regarding appropriate regulation of cross-jurisdictional supply chains.

The SA Outworker Code structure can therefore be promoted as an appropriate generic template for cross-jurisdictional regulation of supply chains crossing ASEAN-OSHNET boundaries in relation to the promotion of safe, healthy and decent work outcomes as well as sustainable economic development.

Conclusion

The clothing industry is already regulated by means of contract i.e. private governance structures in which powerful control is exerted throughout the supply chain. The SA Code harnesses existing private regulatory mechanisms by revealing where work is performed and how it is performed. By tracking what happens in the supply and production chain, this has distinct commercial and social justice consequences. Firstly, by enhancing quality

control and physical integrity of production. Secondly, by revealing the pay and conditions of outworkers.

The recent developments in the South Australian TCF industry are truly innovative, both in Australia and internationally, and are the result of a cooperative partnership between government, business, union and key community groups.