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The Honourable Jarrod Bleijie MP
Attorney-General and Minister for Justice
State Law Building
50 Ann Street
BRISBANE QLD 4000

By email: attorney@ministerial.qld.gov.au

Dear Mr Bleijie,

Re: Objections to the repeal of the Mandatory Code of Practice for Outworkers in the Clothing Industry

Australian Lawyers for Human Rights (**ALHR**) urges you, as the Attorney-General and Minister for Justice, to reconsider the Queensland Government's decision to repeal the Mandatory Code of Practice for Outworkers in the Clothing Industry (**the Code**) in November last year. Our concerns have arisen out of news articles¹ and anecdotal evidence from outworkers and their advocates within the community.

Outworkers in Australia and Queensland

In Australia, there are 300,000 people making clothes for our major retailers, designers and suppliers of school uniforms, who work for between \$2 and \$3 an hour. Their basic rights are being violated. They have no or minimal entitlements (holidays, sick leave etc), work in conditions that risk their health and safety, and work long hours—up to 18 hours a day, seven days a week—to meet unrealistic deadlines.²

Outworkers in the textile clothing and footwear industries in Australia are amongst the most vulnerable to exploitation in our community. Theoretically outworkers are afforded the same workplace protections contained in the *Fair Work Act 2009* (Cth) as other workers. However, in practice outworkers are denied entitlements required by law including: fair wages, superannuation, annual leave, sick leave and workers' compensation.³ They also usually have to pay for their own machinery, tools and thread.⁴

¹ Kym Agius, Herald Sun, *Queensland outworkers demand just wages*, November 28, 2012 <http://www.heraldsun.com.au/news/breaking-news/qld-outworkers-demand-just-wages/story-e6frf7kf-1226525871928> retrieved 19 January 2013.

² Actnow.com.au, "Sweatshops in Australia", (October 2005). Available: http://www.actnow.com.au/Issues/Sweat_shops_in_Australia.aspx at 18 February 2013.

³ Fairwear, "Outworkers in Australia". Available: <http://www.fairwear.org.au/workers-stories> at 18.02.2013.

⁴ *Ibid.*

Other concerns for outworkers in the clothing industry include serious adverse health effects due to stressful conditions of work such as unrealistic deadlines, very small wages and the presence of dangerous machinery in the home.

The vast majority of outworkers in Australia are women.⁵ Migrant workers⁶ are heavily represented in this area of employment and often have difficulty comprehending English thus making them highly vulnerable to exploitation. Child labour is used in the area of outwork.⁷

The reason outworkers fall through the regulatory cracks is because they work from home and are typically from non-English speaking backgrounds and have little or no understanding of their legal entitlements. This is why the Government must act to protect and ensure their basic rights.

It is crucial that outworkers have legislated protections that uphold their fundamental human rights and give force to Australia's international legal obligations which are outlined in more detail below.

The Mandatory Code of Practice for Outworkers in the Clothing Industry (the Code)

The Code was introduced in January 2011 with significant support from community groups, faith groups and unions, with the aim of protecting outworkers' rights in Queensland, noting that the Code was necessary because often outworkers fall outside the protective statutory regimes.

The Code provided for transparency and accountability throughout clothing supply chains in Queensland by requiring the identification of all persons involved in the production of a garment. The Code required retailers in Queensland to report on clothing designs, fabric and seam details, and the names and addresses of who had worked on the product. These requirements were not excessive or onerous and this system of accountability and reporting ensured that outworkers in Queensland were treated in accordance with State and Federal workplace laws and ensured basic standards of workplace rights.

The Code was a progressive legislative mechanism leading the way for Australia in upholding the basic human rights of outworkers.

The stated rationale for repealing the Code was "too much red tape in the clothing industry". However, the reality is that this level of accountability is critical for ensuring that outworkers are receiving their proper entitlements and being treated justly and fairly. Rather than too much red tape, the Code enacted a bare minimum safety net for ensuring outworker's fundamental human rights were protected. The reality is that the legislative mechanisms provided for in the *Fair Work Act 2009* (Cth) including relevant Modern Awards⁸ and the National Employment Standards (NES) are often not enough to protect outworkers as outworkers often fall between the cracks of workplace regulation.

The Code was an effective system for ensuring outworkers' basic human rights are not being contravened and, for this reason, we suggest that the Newman government should be proactive and reenact the Code or a legislative equivalent.

Queensland Code of Practice on Employment and Outwork Obligations, textile clothing and footwear suppliers (Code of Practice)

ALHR is very supportive of the Queensland government's Code of Practice on Employment and Outwork Obligations, textile clothing and footwear suppliers (**Code of Practice**). The foreword to the Code of practice provides:

⁵ J Tassie, "Home Based Workers at Risk; Outworkers and occupational Health and Safety", (1997) Elsevier Science Ltd., 181. Available: http://www.airc.gov.au/familyprovisions/acci/AttH_Tassie_Paper.pdf at 18 February 2013.

⁶ Actnow.com.au, above n2.

⁷ J Tassie, above n 5.

⁸ Namely, the *Textile, Clothing, Footwear and Associated Industries Award 2010*.

“The Queensland Government is firmly committed to providing all Queenslanders with a fair and balanced system of industrial relations: A system that supports economic prosperity and social justice providing protections for employees and employers.”⁹

ALHR encourages the Queensland government to continue its commitment to providing all Queenslanders with a fair and balanced system of industrial relations by reinstating the Code including to promote just and reasonable human rights standards.

Australia’s international human rights law obligations

The repeal of the Code is also imprudent as it ignores a number of significant international human rights instruments.

Australia, as a party to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *Convention on the Elimination of Discrimination against Women* (CEDAW) and the *Convention on the Rights of the Child* (CRC), is bound by international law to fulfill various obligations under those Conventions including to ensure the rights contained in each of the above Conventions are respected and protected.

The rights contained in each of these core international human rights instruments extend to outworkers by virtue of the obligations of non-discrimination and equality under the law that each casts on Australia. The lack of regulation of the textile industry impacts on rights contained in each of these treaties.

ALHR acknowledges that it is the Commonwealth and not the Queensland Government that is party to these legally binding Conventions. However, these Conventions represent a global consensus on basic human rights that should be upheld and respected. Queensland, as a leading State in a developed nation that is leading the world in many areas, should, at the very least, ensure that its citizens’ basic human rights are respected. The Code was one effective way of ensuring this.

ICESCR

ALHR notes that a lack of accountability in the textile industry will lead to violations of Article 7 of the ICESCR which recognises the right of workers to just, favourable, safe and healthy conditions of work, in particular, fair wages and women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

CEDAW

CEDAW provides the basis for realising equality between women and men through ensuring women's equal access to, and equal opportunities in, education, health and employment.

Article 11 provides for the elimination of discrimination against women in the field of employment including the right to equal remuneration and the right to adequate health and safety conditions within the workplace.

The majority of outworkers in Queensland are women. The Code protected female outworkers in Queensland against discrimination in the workplace and ensured equal pay.

CRC

Children form part of the outworker labour market. This violates Article 32 of the CRC which recognises the right children to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Article 32 also impels States parties to take legislative, administrative, social and educational measures to ensure the implementation of the present article, including:

⁹ See: <http://www.justice.qld.gov.au/fair-and-safe-work/industrial-relations/law-and-penalties/codes-of-practice/employment-and-outwork-obligations-textile-clothing-and-footwear-suppliers-code-of-practice> .

- providing for a minimum age or minimum ages for admission to employment;
- providing for appropriate regulation of the hours and conditions of employment;
- providing for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Further best practice standards

Along with the above international human rights Conventions,¹ the following Conventions also represent internationally acknowledged basic standards for respecting and protecting fundamental human rights.

The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)* has not yet been ratified by Australia. While Australia is not bound by the provisions of the MWC, it does represent the basic internationally acknowledged standards for the treatment of migrant workers and their families, of which all states should be cognisant.

Migrant workers and their families are a vulnerable group within Australian society, and the MWC was created as an extra protection in recognition of the specific difficulties such workers face. The MWC represents a best practice guide for the treatment of migrant workers.

Article 25 of the MWC states the general principle that migrant workers are entitled to the same conditions of work as others. This includes remuneration, overtime, hours of work, rest, holiday pay, safety and health.

Similarly, while Australia has not yet ratified the *ILO (International Labor Organisation) Minimum Wage Fixing Convention (the Minimum Wage Convention)*, it represents internationally acknowledged standards for treatment of workers, towards which all states should be working. The Minimum Wage Convention calls for a system where minimum rates of wages can be fixed for workers employed in certain trades (in particular, those done in the home) for which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low.

As previously stated, often outworkers fall through the cracks of workplace regulation as they work from home and generally have negligible knowledge of their legal entitlements. The Code was a practical and efficient way of informing the community of the rights of outworkers and the reasonable standards of treatment to be expected in the treatment of outworkers in Queensland.

The Repeal

Repealing the Code has put the security and wellbeing of outworkers and their families at risk. Outworkers are no longer given the protection that brings their work in line with international human rights standards, as well as the general Australian philosophy of being fairly paid for work.

Furthermore, the repeal means that the basic human rights of outworkers in Queensland communities cannot be ensured and, once again, the most vulnerable workers in our communities may be subject to illegal exploitation and significant personal danger from unsafe workplaces and work practices.

Therefore, it is critical that the Newman government act urgently to reenact the Code or a legislative equivalent to ensure that rights of all people living and working in Queensland are protected.

Reinstatement of the Code

International human rights law is set out in a number of instruments to ensure all human beings' rights and interests are protected. Female workers, child workers and migrant workers, anywhere in Australia, should not fall outside the scope of such protections.

The repeal has serious consequences for people who are least able to protect their interests, namely, women and people from non-English speaking backgrounds.

As the highest law officer of the State of Queensland we hope that you will understand the need to protect people's rights and interests when they are least able to protect them; themselves.

Without the Code, outworkers are vulnerable to exploitation and the Queensland Government will have failed in preventing systemic violations of human rights

Queensland can do much better than this.

In the interests of fairness, justice, equality and respect for human rights and Australia's international legal obligations, ALHR requests that you consider reinstating the Code.

If you would like to discuss any aspect of this letter, please contact me on 0433 846 518 or email: s.keim@higginschambers.com.au

Best regards,

Stephen Keim SC
President
Australian Lawyers for Human Rights