



TEXTILE CLOTHING & FOOTWEAR UNION OF AUSTRALIA

National Secretary

Michele O'Neil

National Office

359 Exhibition Street
Melbourne Victoria 3000

PO Box 441
Carlton South Victoria 3053

Phone (03) 9639 2955

Fax (03) 9639 2944

Email nationaloffice@tcfvic.org.au

Website www.tcfua.org.au

**NATIONAL REVIEW INTO MODEL
OCCUPATIONAL HEALTH AND SAFETY LAWS (CTH)
(HARMONISATION PROCESS)**

CLOTHING FACTORY REGISTRATION

BRIEFING PAPER

by the

**TEXTILE CLOTHING & FOOTWEAR
UNION OF AUSTRALIA
(16 September 2009)**

Clothing Factory Registration

1. Currently, the **Occupational Health and Safety Amendment (Clothing Factory Registration) Regulation 2008** ('the CFR Regulation') (see attached) made pursuant to the **Occupational Health and Safety Act 2000 (NSW)** applies in NSW.
2. In summary, the CFR Regulation makes provision with respect to:
 - The registration of premises, used in connection with certain aspects of the clothing industry as registered clothing factories;
 - The display of certificates of registration;
 - The manner of giving notice to Work Cover (NSW)
 - The keeping of a public register by Work Cover of registered clothing factories.
3. The register is open to the public, including the relevant union, the TCFUA.
4. In an industry which has been defined by widespread exploitation at every level of the contracting/supply chain, there have been clearly identified benefits of the operation of the CFR Regulation in the NSW clothing industry, including:
 - Through the exercise of right of entry rights under state and federal legislation, assisting TCFUA officials to identify monitor the level of health and safety in clothing factories or businesses, many of which would satisfy the commonly understood description of a 'sweatshop';
 - Enhancing transparency of what are typically long and complex contracting supply chains in relation to compliance with relevant industrial instruments for workers within those supply chains;
 - By requiring an '*occupier of clothing factory who is an employer*' to register as a clothing factory with Work Cover, typical sham contractor arrangements are undermined, such that the operator identifies to the relevant authority that it is an employing entity. This is crucial in an industry where sham contracting arrangements are used to justify low rates of pay (significantly under award) and the absence of other safety net terms and conditions of employment.
4. The relationship between poor industrial conditions and substandard OH&S in the clothing industry is, in our view uncontestable. Clothing manufacture and associated functions are typically characterised by a range of work practices which contribute to unacceptable health and safety conditions of those performing the work; these include consistent long hours (12 -14 hour days are common), working 6-7 days per week, a lack of appropriate breaks, working non stop until an order/s is completed, and poor physical working environments (i.e. concrete

floor, old machinery, lack of ventilation, inadequate heating and cooling, poor or non-existent rest/canteen areas).

5. In this context, the CFR Regulation in NSW is a critical piece of the regulatory and industrial framework directed towards ameliorating the detrimental effects of exploitation within the industry.
6. The TCFUA (NSW/South Australia/Tasmania) on average conducts approximately 400 visits to clothing factories/sweatshops per annum. Many of these operate at the third, fourth or subsequent levels of a long contracting chain. A significant number of these also engage outworkers or home based workers. Without access to the details of factory registration maintained by Work Cover, it would be extremely difficult for the TCFUA effectively monitor the clothing industry in relation to the ensuring compliance with OH&S and industrial legislation.
7. We note the terms of Recommendation 76 of the WRMC Response to Recommendations of the national Review into Model OH&S Laws, provides in part as follows:

Recommendation 76

We recommend that Ministers agree that:

(a) in developing and periodically reviewing the model OH&S Act, there should be a presumption that separate and specific OH&S laws (including where they form part of an Act that has other purposes) for particular hazards or high risk industries that are within the responsibility of the Ministers, should only continue where they have been objectively justified.

(c) as far as possible, the separate legislation should be consistent with the nationally harmonized OH&S laws;

(d) where specific provisions are necessary, they should normally be provided by regulations under the model Act, with specific provision in the model Act relating to the matters previously regulated by the separate legislation kept to a minimum.

8. In this context, we seek the maintenance in NSW, and extension to other jurisdictions, the important health and safety protections provided by the framework of factory registration in the clothing industry.



New South Wales

Occupational Health and Safety Amendment (Clothing Factory Registration) Regulation 2008

under the

Occupational Health and Safety Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Occupational Health and Safety Act 2000*.

ERIC ROOZENDAAL, M.L.C.,
Acting Minister Assisting the Minister for Finance

Explanatory note

The object of this Regulation is to include in the *Occupational Health and Safety Regulation 2001*, the provisions of the *Occupational Health and Safety (Clothing Factory Registration) Regulation 2001* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the registration of premises, used in connection with certain aspects of the clothing industry, as registered clothing factories,
- (b) the display of certificates of registration,
- (c) the manner of giving notice to WorkCover,
- (d) the keeping of a public register by WorkCover of registered clothing factories,
- (e) savings and formal matters.

This Regulation is made under the *Occupational Health and Safety Act 2000*, including sections 33 (the general regulation-making power) and 35.

2008 No 361

Clause 1

Occupational Health and Safety Amendment (Clothing Factory Registration)
Regulation 2008

**Occupational Health and Safety Amendment (Clothing
Factory Registration) Regulation 2008**

under the

Occupational Health and Safety Act 2000

1 Name of Regulation

This Regulation is the *Occupational Health and Safety Amendment (Clothing Factory Registration) Regulation 2008*.

2 Commencement

This Regulation commences on 1 September 2008.

3 Amendment of Occupational Health and Safety Regulation 2001

The *Occupational Health and Safety Regulation 2001* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 3)

Chapter 10A

Insert after Chapter 10:

Chapter 10A Registration of clothing factories

Part 10A.1 Preliminary

330A Definitions

In this Chapter:

certificate of registration means a certificate of registration of a clothing factory issued by WorkCover under this Chapter, and includes a replacement certificate of registration issued under this Chapter.

clothing factory means any building or place in which:

- (a) four or more persons are engaged directly or indirectly in any handicraft or process in or incidental to the making, altering, preparing, ornamenting or finishing of any clothing, fabrics, footwear, hats, buttons or related products for trade, sale or gain, or
- (b) mechanical power is used in aid of any handicraft or process in or incidental to the making, altering, preparing, ornamenting or finishing of any clothing, fabrics, footwear, hats, buttons or related products for trade, sale or gain.

clothing industry award means:

- (a) any of the following awards made under the *Workplace Relations Act 1996* of the Commonwealth:
 - (i) the *Clothing Trades Award 1999*,
 - (ii) the *Felt Hatting Industry Award 1999*,
 - (iii) the *Footwear Industries Award 2000*,
 - (iv) the *Textile Industry Award 2000*, or
- (b) any of the following awards made under the *Industrial Relations Act 1996*:
 - (i) the *Button Makers (State) Award* (Award Code: 077),

2008 No 361 Occupational Health and Safety Amendment (Clothing Factory Registration)
Regulation 2008

Schedule 1 Amendment

- (ii) the *Clothing Trades (State) Award* (Award Code: 139),
- (iii) the *Footwear Manufacturing Industry (State) Award* (Award Code: 168),
- (iv) the *Textile Industry (State) Award* (Award Code: 212).

occupier means, in relation to a clothing factory, the person, partnership, association, or corporation employing persons in the clothing factory, or occupying the clothing factory, and includes any agent, manager, foreman, or other person acting or apparently acting in the general management or control of the clothing factory.

mechanical power means power generated by water, steam, gas, oil, electricity, or any power other than manual power.

registered clothing factory means premises in respect of which a certificate of registration is for the time being in force.

Part 10A.2 Registration

330B Clothing factories to be registered

An occupier of a clothing factory who is an employer and is a respondent to, or subject to, a clothing industry award, is guilty of an offence unless the clothing factory is a registered clothing factory.

Maximum penalty: 20 penalty units.

330C Registration of clothing factories

- (1) An application for the registration of premises as a clothing factory is to be made to WorkCover in an approved form.
- (2) WorkCover must, if the application is duly made, register the premises as a clothing factory and issue to the applicant a certificate of registration for the premises.
- (3) A certificate of registration takes effect from the date of issue of the certificate, and remains in force until it ceases to have effect under this Regulation.

330D Change in use of clothing factory or in occupier details

- (1) A certificate of registration ceases to have effect if:
 - (a) the premises in respect of which the certificate was issued cease to be used as a clothing factory, or

- (b) a person other than a person named in the certificate of registration as the occupier of the clothing factory to which the certificate applies becomes the occupier of the clothing factory, or
 - (c) the person named in the certificate of registration as the occupier of the clothing factory to which the certificate applies changes his or her name.
- (2) A person named in a certificate of registration as the occupier of the clothing factory to which the certificate applies must notify WorkCover in writing if the certificate ceases to have effect under this clause, within 14 days after it ceases to have effect.
Maximum penalty: 20 penalty units.
Note. A new certificate of registration may be applied for in respect of the factory under clause 330C.

330E Replacement certificate

- (1) WorkCover may at any time issue to the occupier of premises that are registered as a clothing factory a replacement certificate of registration for those premises.
- (2) A certificate of registration for any premises ceases to be in force if WorkCover issues a replacement certificate of registration for those premises.
- (3) An application for a replacement certificate of registration is to be made to WorkCover in an approved form.

330F Certificate of registration to be displayed

The occupier of a registered clothing factory must cause a copy of a certificate of registration that is in force in respect of the clothing factory to be displayed at the clothing factory in a conspicuous position at or near the principal entrance to the clothing factory.

Maximum penalty: 2 penalty units.

Part 10A.3 Miscellaneous

330G Manner of giving applications and notices

An application or notice under this Regulation is to be given to WorkCover by leaving it at, or sending it by post to, an office of WorkCover.

330H Public register

- (1) WorkCover is to keep a public register in accordance with this clause.
- (2) WorkCover is to record in the register details of each certificate of registration issued under this Chapter, including such of the following details as WorkCover considers appropriate:
 - (a) the registered business name or trading name (if any) of the occupier of the clothing factory,
 - (b) the address of the clothing factory,
 - (c) a description of the type of building or place in which the clothing factory is located (such as whether the factory forms part of an industrial estate or complex),
 - (d) the type of work being carried out in the clothing factory,
 - (e) the number of employees working in the clothing factory.
- (3) However, WorkCover is not to record in the register any information that would disclose:
 - (a) the name of an individual, or
 - (b) any manufacturing or commercial secrets or working processes.
- (4) The register may be kept in any form determined by WorkCover.
- (5) The register is to be available for public inspection, free of charge, at the principal office of WorkCover during ordinary office hours.
- (6) A copy of any entry in the register may be taken on payment of such fee as may be determined by WorkCover.

Part 10A.4 Savings and transitional provisions**330I Savings and transitional provisions**

- (1) Any act, matter or thing that, immediately before the repeal of the *Occupational Health and Safety (Clothing Factory Registration) Regulation 2001*, had effect under that Regulation, continues to have effect under this Regulation.
- (2) A reference in a clothing industry award or other instrument to a factory registered under a law of New South Wales (however expressed) is taken (unless the context otherwise requires) to be a reference to a factory registered under this Chapter, until otherwise provided by the award or instrument.

BY AUTHORITY