

26 April 2018

Mr Darrell Channing
Director – Merger and Authorisation Review
Australian Competition and Consumer Commission (ACCC)
23 Marcus Clarke Street, Canberra 2601

By email only: darrell.channing@accc.gov.au

Dear Mr Channing

Application to the ACCC for reauthorisation of the Homeworkers Code of Practice (Code)

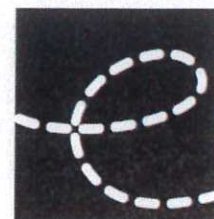
Please find **enclosed** the Homeworker Code Committee Incorporated's (HWCC) application for revocation and substitution of authorisations A91354-91357.

The HWCC does not concede that any of the arrangements which comprise the Homeworkers Code of Practice (proposed to be renamed Ethical Clothing Australia's Code of Practice, incorporating Homeworkers) (the **Code**) contravene the *Competition and Consumer Act 2010* (Cth). This application is made as a matter of caution to remove any uncertainty as to the lawfulness of the Code and to encourage greater participation in the accreditation program.

In support of this application, the HWCC submits that the Code delivers significant public benefits across a range of areas with those benefits having fundamental importance for continued improvements in compliance with legal obligations designed to protect the rights of vulnerable Textile, Clothing and Footwear (TCF) workers.

Looking to the future, the HWCC considers that the benefits delivered by the Code are likely to be significant and increase, having regard to:

- a. continued non-compliance in the Australian TCF industry with respect to workers' pay, entitlements and workplace health and safety conditions;
- b. the trend towards increased awareness by consumers and demand for ethically produced TCF products, including with respect to the conditions of workers producing such goods and services;
- c. increased recognition by industry participants of the value of accreditation and participation in the Code.



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The application includes detailed evidence compiled by the HWCC, a registered charity and not-for-profit organisation, in support of the claimed public benefits.

The HWCC's view is that there are in fact are no public detriments arising from the Code or its operation. Despite this, the application includes a detailed consideration of the potential public detriments raised by the ACCC in its 2013 determination. In the event that the ACCC is inclined to the view that there are or may be potential public detriments, the HWCC submits that those detriments have been mitigated effectively by the Committee, including by way of changes sought to the Code as part of this application, and in any event are clearly outweighed by the public benefits associated with the Code.

Please note that the ACCC has agreed to a fee waiver for this application as per correspondence from David Jones, General Manager, Adjudication, dated 23/04/2018.

Should you wish to discuss this application, please contact me on email angela@ethicalclothingaustralia.org.au or via phone (03) 9419 0222.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'AmBell', with a long, sweeping flourish extending to the right.

Angela Bell
National Manager
Ethical Clothing Australia

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

SECRETARY

Office held

(Print) Name of authorised person

MICHELE O'NEIL

This [insert day] day of [insert month] [insert year]

20/4/2018

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

- 4.4. the rationale for the proposed conduct
- 4.5. the term of authorisation sought and reasons for seeking this period.
- 5. Provide the name of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant goods or services) and detail how or why they might be impacted.

Market information and concentration

- 6. Describe the products and/or services, and the geographic areas, supplied by the applicants and identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (eg supplier-customer).
- 7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.
- 8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.
- 9. Describe the competitive constraints on the parties to the proposed conduct, including any likely change to those constraints should authorisation be granted. You should address:
 - 9.1. existing or potential competitors
 - 9.2. the likelihood of entry by new competitors
 - 9.3. any countervailing power of customers and/or suppliers
 - 9.4. any other relevant factors.

Public benefit

- 10. Describe the benefits to the public that are likely to result from the proposed conduct. Refer to the public benefit that resulted under the authorisation previously granted. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

Public detriment including any competition effects

- 11. Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Refer to the public detriment that may have resulted under the authorisation previously granted. Provide information, data, documents, or other evidence relevant to the ACCC assessment of the detriments.

Contact details of relevant market participants

- 12. Identify and/or provide contact details (phone number and email address) for likely interested parties such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.

Additional information

- 13. Provide any other information or documents you consider relevant to the ACCC's assessment of the proposed application.⁴

⁴ Applicants should consult with the ACCC prior to lodgement to discuss the scope and range of documents needed in the context of the particular application.



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23/04/2018

Angela Bell
National Manager
Ethical Clothing Australia

Via email: angela@ethicalclothingaustralia.org.au

Dear Ms Bell

Fee waiver request

Thank you for your letter of 17 April 2018 to the Australian Competition and Consumer Commission (**ACCC**) asking that we waive or reduce the fee for your anticipated application for revocation and substitution.

In particular, you advised that the Homeworker Code Committee (**HWCC**) intends to seek the revocation of authorisations A91354-A91357 and substitution of new authorisations in order for the Homeworkers Code of Practice (to be renamed 'Ethical Clothing Australia's Code of Practice, incorporating Homeworkers', **the Code**).

HWCC has requested that the application fee be reduced or waived in full.

In support of your request, among other things, you submitted that:

- the HWCC is a not-for profit organisation and registered charity;
- the HWCC relies on support from the Victorian Government Department of Economic Development, Jobs, Transport and Resources (DEDJTR) to administer, implement and promote the Code.
- overall funding is limited and remains on par with the levels since its last application and so in real terms the funding levels have reduced;
- the revenue the HWCC obtains from the fees charged to businesses seeking accreditation under the Code is very low in relation to the costs of administering the Code, and
- the HWCC has already contributed significant time and resources towards the preparation of its application for reauthorisation of the Code, which has diverted funds away from its operations.

I have considered the information provided and, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I have decided that the application fee to be paid by HWCC will be waived in full. No application fee will apply with respect to the application for revocation and substitution to be lodged by HWCC.

This decision will remain in force for a period of three months. The three month period will expire on 23 July 2018.

A copy of this letter should accompany the application for revocation and substitution to be lodged by HWCC. The cover letter to the application should mention that a letter from the

ACCC regarding a fee waiver is enclosed. The Application, together with this letter, will be placed on the public register at that time.

If the Application for authorisation is lodged by Council Solutions after 23 July 2018, a full application fee of \$2,500 will apply, unless a subsequent request for a fee waiver is made and approved by the ACCC.

If you have any queries in relation to this matter, please contact Robert Janissen on (02) 6243 1387 (or at robert.janissen@accc.gov.au).

Yours sincerely



David Jones
General Manager
Adjudication



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Application for revocation of an authorisation for proposed conduct and substitution of a replacement

April 26, 2018

Application for revocation of an authorisation for proposed conduct and substitution of a replacement

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A. APPLICANT'S DETAILS

1. This application is made by the Homeworker Code Committee Incorporated (**HWCC**), a registered charity and not for profit association (ABN 88997259919). The registered office of the HWCC is Suite A, Level 1, 205 Johnston St, Fitzroy, Victoria, 3065. Postal details are PO Box 2087, Fitzroy Victoria, 3065.
2. The contact person for the HWCC is Angela Bell, National Manager. Her telephone number is (03) 9419 0222. Her email address is angela@ethicalclothingaustralia.org.au.
3. A description of the HWCC's activities is detailed below at paragraphs 11 to 12.
4. The HWCC's email address for service of documents in Australia is info@ethicalclothingaustralia.org.au

B. AUTHORISATIONS TO BE REVOKED

5. The following authorisations were granted to the HWCC on 3 October 2013 and are due to expire on 26 October 2018:
 - a. A91354
 - b. A91355
 - c. A91356
 - d. A91357.
6. The HWCC seeks for the authorisations to be revoked because they are due to expire, and the authorisations to be substituted with the authorisations set out below.

C. AUTHORISATIONS TO BE SUBSTITUED

7. The HWCC seeks that the authorisations be revoked and substituted for conduct outlined in the proposed revised Ethical Clothing Australia's Code of Practice, Incorporating Homeworkers, Part 1 (Manufacturers) and Part 2 (Retailers) (the **Code**).
8. The documents that comprise the Code are:
 - a. Part 1 (Manufacturers) (Appendix 1);
 - b. Part 2 (Retailers) (Appendix 2).
9. The HWCC seeks authorisations in relation to the following provisions of the *Competition and Consumer Act 2010* (**CCA**):
 - a. *Exclusionary provisions (primary boycott)*
Giving effect to a contract, arrangement or understanding that may contain an exclusionary provision within the meaning of section 45 of the CCA.
 - b. *Secondary boycotts*
Engaging in conduct that may hinder or prevent the supply or acquisition of goods or services by a third person within the meaning of sections 45D, 45DA, or 45DB of the CCA.

- c. *Boycott Agreements*
Giving effect to a contract, arrangement or understanding that may substantially lessen competition within the meaning of section 45 of the CCA.
- d. *Agreements affecting competition*
Giving effect to a contract, arrangement or understanding that may substantially lessen competition within the meaning of section 45 of the CCA.

10. The HWCC seeks authorisations on behalf of:

- a. itself;
- b. each of the entities that have one or more representatives on the HWCC's Committee, now and for any representatives on the Committee for the period of the authorisation. HWCC membership includes representatives of the NSW Business Chamber, Ai Group and the Union, as well as accredited company representatives. A list of the current members is in Appendix 3;
- c. current accredited businesses and signatories to the Code; and
- d. future accredited businesses and signatories to the Code.

D. THE PROPOSED CONDUCT

Homeworker Code Committee Incorporated (HWCC)

- 11. The HWCC oversees the operation and management of the Code. It is a joint employer and union initiative. The HWCC trades under its registered business name, Ethical Clothing Australia (ECA).
- 12. The HWCC currently operates with funding support from the Victorian Government Department of Economic Development, Jobs, Transport and Resources (DEDJTR).

Overview of the Code

- 13. In its 2013 determination, the ACCC described the Code as follows:

"The Code is a mechanism within the textile, clothing and footwear industry designed to assist businesses to ensure that they and their outsourced supply chains (if any) comply with relevant Awards and workplace laws. In particular, the provisions of the Code require compliance with relevant Awards and workplace laws in relation to all workers directly engaged by a business, and in any outsourced supply chain, in order for the business to gain accreditation. An objective of the relevant Awards and workplace laws is to protect vulnerable workers, in particular, homeworkers.

The Code contains a number of measures to encourage and assess compliance with relevant Awards and workplace laws, including:

- *yearly compliance auditing of accredited businesses and their outsourced supply chains by the Textile, Clothing and Footwear Union of Australia (TCFUA). This assists businesses to identify and assess the risks associated with sub-contracting practices within their outsourced supply chain. In carrying out its auditing role under the Code, the TCFUA relies on its existing powers under the*

¹ Note, the terms homeworker and outworker are commonly used to define the same type of worker and can be interchangeable. The Code states "Outworker" or "homeworker" means a person who performs work on, or in relation to, products in the textile, clothing and footwear industry, at residential premises or at other premises that would not conventionally be regarded as business premises.

Fair Work Act 2009 to enter textile, clothing and footwear businesses and access and copy records.

- *education of businesses as to their legal obligations, as a component of the auditing process and through training programs overseen by the Code Committee and its members;*
- *the right for accredited businesses to use the Ethical Clothing Australia licence mark and trade mark in association with their Australian made products, thus signalling their compliance with the workplace laws and the Code to customers; and*
- *education of industry workers [including homeworkers and outworkers] and customers regarding the Code and its operations.”²*

14. The HWCC considers that this is a fair description of the Code. However, it notes that in 2018, the TCFUA amalgamated with the Construction, Forestry, Mining and Energy Union (CFMEU) and the Maritime Union of Australia. The name of the new amalgamated entity is the Construction, Forestry, Maritime, Mining and Energy Union (CFMEU). The former TCFUA is now the Textile, Clothing and Footwear (**TCF**) Sector of the Manufacturing Division of the CFMEU. Throughout the remainder of this document, it is referred to as **the Union**.

15. The 2013 determination also included a detailed summary of the operation of Parts 1 and 2 of the Code at paragraphs 60 to 73. The summary of Part 1 is extracted below.

“The Manufacturers’ Agreement is a contractual agreement between the TCFUA, the Australian Industry Group and the NSW Business Chamber. This first level agreement governs the relationship between the manufacturing related representatives on the Code Committee. In conjunction with the Retailers’ Agreement, it also governs the parameters within which the Code Committee operates.

In order to become accredited under the Code, a business enters into a copy of the same agreement with the TCFUA alone. At this level the agreement is directed at governing the relationships between the business and the TCFUA and the Code Committee.

The Manufacturers’ Agreement establishes a system to accredit individual manufacturers, fashion houses and wholesalers in the textile, clothing and footwear industry (referred to generally as accredited manufacturers). In order to become accredited, businesses must commit to ensuring that its workers and workers in any outsourced supply chain, including outworkers, receive their legal entitlements. Once accredited, a business becomes automatically licensed to display the Ethical Certification Trademark series.

In order to gain and maintain accreditation, a manufacturer is required to:

- a) *ensure to the best of its ability that all textile, clothing or footwear entities in any outsourced supply chain are compliant with their legal obligations.³³ This includes ensuring to the best of its ability that:*
 - i. *all of its direct in-house workers and outworkers are receiving, at a minimum, their legal entitlements;*
 - ii. *all workers in any outsourced supply chain who work on its products are receiving, at a minimum, their legal entitlements;*
 - iii. *any outworkers in any outsourced supply chain receive a standard letter regarding the Code and the role of the TCFUA in the industry;*
 - iv. *it, and all suppliers within any outsourced supply chain, are registered with the Board of Reference if they give out work; and*

² ACCC Determination – Applications for revocation of A91252-55 and substitution of authorisations A91354-57, lodged by the Homeworker Code Committee Incorporated in respect of the Homeworkers Code of Practice, 8 October 2013 (**2013 ACCC Determination**), page i

- v. *if it gives out work to contractors other than outworkers, it has received a statutory declaration from each of its contractors in the form of Schedule 1, 2 or 5 of the Code as relevant;*
- b) *provide as relevant signed statutory declarations to Ethical Clothing Australia, attesting to its compliance with Part 1 of the Code;*
- c) *pay the yearly accreditation fee and be in a position to provide any documentation which it is legally required to create under the TCF Award and workplace laws³⁷ to Ethical Clothing Australia; and*
- d) *co-operate with the [then] TCFUA regarding compliance checks of itself and all of the entities in any outsourced supply chain and advise Ethical Clothing Australia of any changes to its manufacturing circumstances within seven days.*

Each accredited manufacturer commits to investigating within 14 days any notification by the TCFUA that a contractor is in breach of its legal obligations. If the accredited manufacturer confirms the breach, the accredited manufacturer must cease trading with the contractor unless and until the contractor has remedied its breach within 14 days.

To the extent that the Code contains content as to workers' entitlements, this content is largely for information and replicates existing legal obligations in the TCF Award and the Fair Work Act...

The ACCC considers that, with the exception of clause 9.4(d) of Part 1 of the Code, this clause will ensure that the Code will not extend participating businesses' existing legal obligations to workers, including if those legal obligations change in the future...

The Code provides for the deaccreditation of a manufacturer if it or its supply chain become noncompliant with the Code or if the manufacturer ceases manufacturing in Australia. Prior to deaccrediting a manufacturer, the Code Committee is required to provide notice to the accredited manufacturer stating the grounds of deaccreditation. The manufacturer has 28 days from the notice's delivery date to provide material to satisfy the Code Committee that it has complied with the Code.

Clause 14 includes a dispute resolution process which may be utilised by businesses dissatisfied with a decision of the Code Committee or the findings of an audit report by the TCFUA. The dispute resolution process makes provision for disputes to be resolved via discussion between the parties to the dispute or, ultimately, via independent mediation."

16. The summary of Part 2 included in the 2013 ACCC Determination is extracted below:

"Broadly, the Retailers' Agreement is an agreement between the TCFUA, the Australian Industries Group, the NSW Business Chamber and the Australian Retailers Association. This agreement governs the operations of the Code Committee. As with the Manufacturers' Agreement, individual retailers may also sign a copy of the Retailers' Agreement and thus become retail signatories under the Code.

The Retailers' Agreement establishes a system whereby retailers can ensure that all Australian textile, clothing and footwear businesses in their supply chain are compliant with their legal obligations. By becoming a retail signatory to the Code, each retailer agrees to:

- a) *inform the TCFUA immediately if it becomes aware that a supplier in its supply chain may not be complying with its legal obligations;*
- b) *immediately investigate any claims by the TCFUA that a supplier in its supply chain has breached its legal obligations and advise the TCFUA of the outcome;*
- c) *take all action reasonably required by the TCFUA to encourage any supplier in breach of its legal obligations to remedy the breach within 14 days. This may include termination of the supply contract and boycott of the supplier;*

- d) *provide the necessary documents in order to allow the TCFUA to find and audit the compliance of all suppliers in its supply chain. This information may be provided in the form of a list of the suppliers' contact details and existing documents required to be produced by taxation and corporations law;*
- e) *inform all of its existing and any future suppliers that it is a signatory to the Code and that the TCFUA will be conducting checks of suppliers' compliance with their legal obligations in relation to workers' terms and conditions;*
- f) *require each of its suppliers to provide to it those documents, which it will then make available to the TCFUA, which are required by the TCFUA in order to audit each supplier's compliance with their legal obligations;*
- g) *include in any future supply agreements, and use its best endeavours to amend existing supply agreements to include, obligations on its suppliers to:*
 - i. *undertake to comply with all legal obligations including registration with the Board of Reference if they give out work;*
 - ii. *keep appropriate records (as required by law) regarding contracted work;*
 - iii. *make available to the retailer, within five days of being requested, those records which the supplier is legally obliged to create; and*
 - iv. *acknowledge that the retailer may terminate any contract with the supplier or refuse to enter into any future contract with the supplier if it is proved that the supplier has not complied with its legal obligations;*
- h) *appoint a liaison officer for the purpose of handling all enquiries or allegations raised by the TCFUA in relation to the Code; and*
- i) *permit its suppliers to use the Ethical Certification Trademark series on labels and swing tags if they are accredited under the Code.*

The Retailers' Agreement also includes clauses regarding the resolution of any disputes between the parties to the Retailers Agreement via mediation conducted by an independent mediator as agreed by both parties.

The Retailers' Agreement may be terminated by each party upon no less than three months written notice, or less in the event that the other party refuses to mediate in good faith or remedy a breach of the Retailers' Agreement"

17. The HWCC also considers that the summary extracted above is fair, however wishes to clarify the following matters:

- a. the HWCC proposes to amend Part 1 to remove schedules 1 to 5 to remove the statutory declaration contained therein (see paragraph 63(a)(v));
- b. the HWCC's operations are governed by its rules of association, not Part 2 of the Code (see paragraph 70);
- c. the dispute resolution mechanisms contained within the Code have not been utilised in the current period of authorisation to date.

Renaming the Code to 'Ethical Clothing Australia's Code of Practice, incorporating Homeworkers', from 'Homeworkers Code of Practice'.

18. In its 2013 determination, the ACCC strongly recommended that the Committee consider an amendment to the name of the Code prior to any future application for reauthorisation to reflect the fact that the Code covers all workers in the industry, not just homeworkers. The Committee has considered this recommendation and proposes to change the name. This is reflected in the Part 1 (Manufacturers) Appendix 1 and Part 2 (Retailers) Appendix 2.

Update on operation of Part 1 (Manufacturers)

19. Since 3 October 2013, the date of the ACCC's grant of the current authorisations, there have been a total of 87 applications for accreditation under the Code and a total of 83 accreditations. These new companies have ranged from businesses manufacturing for in-house labels and/or others to fashion houses producing a wide variety of clothing, footwear, textiles and accessories. Over this period ECA has continued its program of yearly renewals for re-accreditations as well as managing ad hoc de-accreditations.
20. There are 90 companies accredited under the Code. Appendix 4 is a list of accredited businesses current as at April 16, 2018. The number of supply chain entities, including homeworkers or outworkers, value adders, contractors and other businesses is much higher. The total number of supply chain participants is approximately 500, based on a recent review conducted by ECA staff (noting that some supply chain participants appear in multiple supply chains).
21. ECA accredited companies produce a wide range of products with the major categories being: Babies and Children, Basics and Underwear, Bags and Accessories, Branded Apparel, Corporate Wear, Fashion, Footwear and Hats, Manufacturers, Menswear, Outdoor and Activewear, Schoolwear, Sleepwear, Swimwear, Weddings and Formal Wear, and Workwear and Uniforms (including sporting and hospitality uniforms).
22. Accredited companies range from household names and leading Australian designer labels to small, owner-operated makers and businesses and manufacturers of a range of clothing from sportswear to school uniforms to protective wear. It includes many businesses that are basing their entire practices on ethical and sustainable foundations.
23. Accredited companies are located across most Australian states and territories with the highest concentration in Victoria (49), followed by NSW (25), Queensland (10), South Australia (2), Western Australia (2), Tasmania (1) and the ACT (1). There are a further 11 applications for accreditation currently in process from companies registered in Victoria (4) and NSW (6) and SA (1).

Outline of changes sought between the existing authorisations and new authorisations

24. In summary the HWCC seeks approval for the following changes, outlined below:
 - a. Removal of schedules 1, 2, 3, 4 and 5
 - b. Renaming Schedule 6 (Letter to Homeworker) as Appendix A in the Code
 - c. Clause 10 - Update to terminology adopted in relation to licensing and use of trade marks
 - d. Clause 12 - Change to the name from "Education, Publicity and Compliance Funds" to "Code Funds" and other updates
25. All changes proposed are outlined in versions marked with tracked changes as Part 1 (Manufactures) **Appendix 1** and are explained below. As noted above, the name of the Code has been changed as a result of feedback from the ACCC.

Changes to Part 1 (Manufacturers)

Removal of Schedules (1, 2, 3, 4 and 5)

26. The HWCC seeks to streamline the accreditation application and renewal process by removing a number of the schedules to Part 1 of the Code. As part of this change the HWCC seeks approval for the removal of Schedules 1, 2, 3, 4 and 5.
27. Currently there is overlap between various Schedules and mandatory compliance documentation that results in duplication and inefficiencies in paperwork processed by Compliance Officers from the Union as part of an accredited or pending-company's supply chain audit. Most specifically:
 - a. Schedules 2, 4 and 5 statutory declarations and supplier/outworker lists duplicate the information provided to Compliance Officers from the Union' through Board of Reference (BOR) Registration forms and quarterly lists over the course of the compliance process; and
 - b. Schedule 3 Agreement between Accredited Principal companies and their Contractors duplicates the Written Agreement (as per the Award requirements) viewed by compliance officers from the Union.
28. The changes will result in the avoidance of unnecessary administrative burdens. The HWCC has identified that much of the paperwork submitted in a manufacturer's application (set out in the relevant Schedules) becomes superseded by the audit processes under the Code. Furthermore, the information/Schedules proposed for removal are unnecessary for Compliance Officers from the Union and ECA accreditation advisors to perform their roles.
29. By way of background, at the start of an application or renewal process, companies submit Schedule paperwork reflecting their immediate manufacturing circumstances, such as whether they perform all work in-house or outsource to other contractors or homeworkers or outworkers. However, when supply chain details are provided by Compliance Officers from the Union to ECA accreditation advisors at the completion of an audit, these often reveal that the original paperwork supplied was incorrect or out-dated, meaning it is invalid and needs to be resubmitted.
30. Timing contributes to the limitations of schedules proposed for removal. The full supply chain details provided by the accreditation applicant is the start of the collection of Schedule/statutory declaration paperwork. As this process may sometimes take several months supply chain arrangements have often changed by the time the process is completed, rendering original paperwork out-dated and triggering a need for updated paperwork.
31. The proposed changes will therefore reduce administrative burdens without impeding the quality of information gathered or the achievement of objectives of the Code. The HWCC notes that administrative burdens were one of the main public detriments complained of by parties opposing its 2013 application for authorisation. The Committee has been mindful of reducing any unnecessary administrative burdens as it has reviewed operations and the Code in the intervening period and is confident that the proposed changes strike the right balance.
32. Further to protect the integrity of the Code, the HWCC has already amended its ECA Fees and Discounts Form which are referred to in but not formally a part of the Code Appendix 5.
33. Effective 1 January 2018 ECA has implemented the following changes

- a. The amending of the application/accreditation renewal Fee Form to include a page listing a principal company's outsourced suppliers and/or homeworkers.
- 34. It has also inserted additional text in the declaration its ECA Fees and Discounts Form as outlined below:
 - a. The addition of the following text under 'Declaration and signature' in the Fee Form:
 - i. *'I will advise ECA within 7 days of any changes to my manufacturing circumstances such as the dropping or adding of new suppliers or homeworkers, ceasing all local manufacturing, moving location or changing contact details.'*
 - ii. *'My business completes all work in-house' [or]*
 - iii. *'My business outsources cut, make, trim or value adding such as to screen printers, dye houses, laundries etc., and/or homeworkers, as per the attached list.'*
- 35. The integrity of the accreditation process will be safeguarded by a principal company's disclosure of its direct suppliers to ECA at the start of an accreditation process, and the robustness of the supply chain compliance audit conducted by Compliance Officers from the Union. The requirement that accredited companies inform ECA of any changes in their supply chain within 7 days remains a key component of ongoing accreditation and ensures adequate information provision requirements on companies.
- 36. As a further measure to ensure that supply chain relationships are properly identified for each manufacturer, ECA now provides accredited companies with a supply chain report at the end of their accreditation. This provides a centralised and comprehensive report on the information that would otherwise be established through various Schedules and audit processes. This measure has the added benefit of helping businesses understand their supply chain and legal obligations.
- 37. The Committee has also satisfied itself that the removal of the Schedules will not impede any enforcement capability and notes specifically that it is unaware of the information contained in the schedules/statutory declarations having ever been used to enforce Code breaches.

Clause 12 - Change to the name from "Education, Publicity and Compliance Funds" to "Code Funds" and other updates

- 38. Approval is sought for the following changes to Clause 12:
 - a. Change name from "Education, Publicity and Compliance Funds" to "Code Funds";
 - b. Change reference from 'Funds' to funding. This clarifies that this section is about funding, as opposed to a dedicated specific "Fund";
 - c. Update name from AI G to Ai Group;
 - d. Add recognition that accredited companies are also on the Committee and through this participation contribute in kind;
 - e. The addition of the word "fees" to bring greater clarity;
 - f. The addition of "Local" in references to the Governments that could provide funding contributions, and

- g. A change to bring the last sentence in this Clause to be located beside its description.

39. The changes are sought to simplify, modernise and provide greater clarity to this Clause.

Update to terminology adopted in relation to licensing and use of trade marks (Clause 10)

40. The changes to Clause 10 provide for the use of 'license mark or certification marks' in addition to the ECA trade mark.

Update regarding Part 2 (Retailers)

41. Part 2 of the Code (Retailers) has been inactive in recent years. This has resulted from changes in the industry environment, however the HWCC seeks approval for changes to this Agreement that will renew the relevance of the Agreement and enable its reauthorisation.

History and recent inactivity of Part 2(Retailers)

42. From its establishment until the 2013 ACCC reauthorisation, the Retailers Agreement was Part 1 of the Homeworkers Code of Practice. This reflected the fact that in the early years of the Code, many (if not most) of the large-scale Australian TCF manufacturers were retailers.

43. In recent decades the TCF industry in Australia has changed significantly, including as a consequence of shifts in tariffs and trade policies, resulting in increased imports and off-shoring. As many of the original signatories to the Retailer's Agreement have moved their manufacturing off-shore, the Code has shifted its focus to the accreditation of local manufacturers.

44. While the size and scale of local manufacturing has declined in Australia, there is still an active local TCF industry and a growing interest in ethical purchasing.

Proposed changes to Part 2 (Retailers)

45. The HWCC has recently reviewed Part 2 (Retailers) so that it can be re-activated for retail businesses that seek to demonstrate a commitment to third-party accreditation and seek to display the ECA trade mark when selling local and ethically-made TCF products.

46. In consultation with the Australian Retailers Association, the co-signatory to this part of the Code, small but important changes are sought to modernise the Agreement for today's retail environment, including the recognition that today retailers can operate online or under a variety of leasing arrangements.

Outline of changes sought between the existing authorisations and new authorisations

Part 2 (Retailers)

47. Various changes including to rename the Code, key definitions, and dispute resolution clauses (itemised below)

48. All changes proposed are outlined in versions marked with tracked changes as Part 2 (Retailers) Appendix 2 and are explained below.

Changes to Part 2 (Retailers)

49. The Homeworker Code Committee seeks a range of changes to the Code Part 2 (Retailers).
50. These changes are shown with tracked changes in Appendix 2. The key substantive changes are outlined below:
- a. Definition (Clause 1) has been inserted for the "Code of Practice" or "Agreement."
 - b. Definition of Retailer (Clause 1) has a number of modifications. Firstly, the Committee and the ARA seek to broaden this definition to include all retailer businesses. Second, the definition ensures that the Agreement only captures businesses that can legally operate in Australia and to recognise that retailers now operate online. Third, it includes additional requirements that to be eligible to participate in the Agreement the Retailer must already have at least one supplier accredited as a manufacturer under the Code. Fourth, the definition specifies that if the business is eligible to be a manufacturer under Part 1 of the Code, then it must be accredited to be eligible to participate in the Retailer agreement.
 - c. The term 'Exploitation' is replaced with 'Legal breach' (Clause 1 Definitions & consequential changes). This supports a modernisation of terms and is more reflective of the work undertaken by ECA's accreditation program.
 - d. Definition of "Supplier" (Clause 1) has been expanded to expressly recognise subleases, concessional, in-store or online display or the like, contractual arrangements.
 - e. Various consequential updates and housekeeping amendments to definitions (Clause 1)
 - f. Under Clause 3.1 increases the time for response from five (5) to seven (7) days, providing internal consistency between Code agreements.
 - g. Under Clause 4.1 a new form for provision of current supplier lists (Attachment A), as well as an obligation to update Attachment A within seven (7) days of any change and associated changes.
 - h. Under Clause 4.2 amendments are sought to detail what action is required by the retailer as part of the agreement. Attachment B has been created for retailers to complete to demonstrate how they are promoting and encouraging accreditation amongst their suppliers. Further a timeframe of six monthly updates has been introduced for reporting by Retailers.
 - i. Clause 7 – Dispute Resolution has been updated to provide consistency with the dispute resolution process in the Manufacturers Agreement.
 - j. Clause 8 amendments are proposed to reflect the modernisation of terms related to licensing and trade marks.
 - k. Addition of Clause 9 to provide for the payment of an annual fee to participate in the Agreement.
 - l. Clause 10 – Termination has been updated to reflect various changes made to the Retailers Agreement that may give cause for termination. Timeframes for any notice periods are also added.
51. The Committee believes that these changes to the Retailers Agreement will refresh its relevance in updated industry conditions and provide for a more robust Agreement that assists in bringing Retailers back into the Code.

Relevant provisions of the *Competition and Consumer Act 2010 (Cth)* to which the proposed conduct might arguably apply

52. The HWCC does not concede that any of the arrangements which comprise the Code contravene the *Competition and Consumer Act*. The applications are made as a matter of caution to remove any uncertainty as to the lawfulness of the Code and to encourage greater participation in the accreditation program. The relevant provisions to which the proposed conduct might apply (which is not admitted) are outlined above at paragraph [8].

Rationale for the proposed conduct

53. The HWCC considers that the Code:
- a. protects the hardworking and skilled homeworkers and outworkers in the Australian TCF industry by helping to ensure that they are working in safe conditions and receiving their lawful pay and entitlements.
 - b. strengthens the Australian TCF industry and supports local skills by promoting transparency and connecting brands with local manufacturers.
54. Further detailed discussion regarding the rationale for the Code is contained in the public benefits section, below.

Term of authorisation sought

55. The HWCC seeks authorisation of the Code for another five year period. A five year term is sought to enable medium term planning by the HWCC Committee with confidence as to its ACCC authorisation. The HWCC Committee submits that any risks associated with the reauthorisation and operation of the Code are minor and do not warrant a shorter period for review reasons.

List of potentially affected persons

56. A list of interested parties is at Appendix 6.

E. MARKET INFORMATION - THE TEXTILE, CLOTHING AND FOOTWEAR INDUSTRY

Industry overview

57. The ACCC's October 2013 determination included a summary of the textile clothing and footwear industry at paragraph 14, extracted below:

"The textile, clothing and footwear manufacturing industry covers all stages of production of textile, clothing, footwear and leather products. This includes the processing of raw materials such as cotton, wool, leather and synthetics, through to the production of final goods such as clothes, shoes, household linen, carpets and industrial textiles."

58. The HWCC considers that since 2013:
- a. the industry has reduced further in size and production;
 - b. there is a trend by consumers towards ethical consumption, particularly following the Rana Plaza collapse (see paragraph 126 below);

59. The industry otherwise remains defined by the following features:

- a. the industry is price and time sensitive;
- b. it is fragmented with numerous small business operations;
- c. it relies predominately on female workers, particularly those from culturally and linguistically diverse (CALD) backgrounds; and
- d. there are high levels of non-compliance with legal obligations in supply chains.

Existing legal framework in TCF industry, including protection for outworkers

60. The HWCC considers that the Australian TCF industry is not a level playing field as businesses gain an unfair competitive advantage when they operate exploitative supply chains and fail to meet their legal obligations, particularly in relation to outworkers.

61. The Code seeks to bring about increased compliance with existing legal obligations for accredited businesses and signatories, and their supply chains. The 2013 determination included an overview of the then applicable TCF industry workplace legal obligations at paragraphs 33 to 40.

62. A summary of changes to relevant workplace laws and the TCF Award is at Appendix 7.

63. The TCF industry reforms³ to the *Fair Work Act 2009 (FW Act)*, passed in 2012, demonstrated that the Parliament accepted the necessity for specific legislation and regulation for TCF outwork. In summary, those changes:

- a. extended the operation of most of the provisions of the FW Act to contract outworkers (i.e. deeming contract outworkers to be employees for certain purposes under the FW Act).
- b. provided a mechanism for outworkers to recover unpaid amounts up the supply chain (i.e. against entities other than the direct employer);
- c. extended TCF industry specific right of entry rules to sweatshop premises;
- d. enabled an outwork code of practice to be issued.

64. The HWCC's view is that while TCF reforms to the FW Act and the Textile, Clothing, Footwear and Associated Industries Award 2010 (**TCF Award**) have resulted in some improvement in compliance across the industry, sham contracting, outworkers receiving below award and legislative wages and conditions, and sweat shops continue. In support of this observation, and that those at paragraphs 58 and 59 above, the HWCC refers to:

- a. the 2015 Fair Work Ombudsman (**FWO**) campaign into the TCF Industry, summarized below at paragraphs 65 to 72;
- b. academic research undertaken by Professor Christina Cregan and Philip Johnson of Melbourne University outlined below at paragraphs 73 to 75;
- c. the commentary on findings of ECA Compliance Officers at paragraphs 80 to 85.

³ Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012 (Cth)

Fair Work Ombudsman campaign

65. In 2015 the FWO commenced a campaign into the TCF industry.
66. The campaign is in two parts: (1) Information and Education Phase which was undertaken between 2015 – 2017 and (2) an Audit and Compliance Phase, which commenced in 2017 and is ongoing.
67. On 12 May 2017, the FWO released a report arising from Part 1. *Fair Work Ombudsman; 'Designed to Fit – Insights and outcomes from the Fair Work Ombudsman's education phase of the National Textile, Clothing and Footwear Campaign 2015'*⁴.
68. As part of the TCF industry campaign, the FWO consulted with a number of stakeholders including the **the Union**, ECA, Ai Group, NSW Business Chamber, ACCI, ARA and Asian Women at Work.⁵
69. During the campaign the FWO had contact with 412 industry participants, direct engagement with 295 textile, clothing and footwear manufacturers and 38 businesses that identified as utilising 80 outworkers.⁶
70. The Industry Snapshot in the report stated that education and assistance in the campaign tailored specifically to the industry was considered necessary due to the following particular features of the industry:
- *The industry has reduced in size and production. There has been a significant shift within the Australian Textile, Clothing and Footwear industry in the past few decades. The effect of globalization and access to overseas competition for consumers has changed the landscape for local producers. There is pressure on the price of local production which has rendered those at the lower levels of the varied and fragmented supply chains particularly vulnerable;*
 - *87% of businesses in the industry are categorised as small businesses. Small businesses are less likely to have dedicated or in-house support for human resource and payroll matters;*
 - *The industry has relatively high levels of female workers including those from culturally and linguistically diverse (CALD) backgrounds. Cultural barriers including language difficulties, fear of discrimination and a perceived lack of alternate employment opportunities can lead to workers not being aware of their rights and entitlements; and*
 - *FWO data surrounding requests for assistance from workers in the industry in the 2012 calendar year reveals a high contravention rate (39.56%) which may reflect difficulties in navigating supply chain arrangements. Supply chains in this industry are both varied and fragmented, with many 'layers' stretching from the sourcing of the product right through to the end supply to the customer.*⁷
71. The FWO report notes that interactions undertaken as part of the campaign '*revealed limited understanding or observation among business operators of their obligations under workplace laws, including minimum pay rates that apply to workers involved in the manufacturing process.*'⁸
72. This is consistent with the views of the HWCC on the current state on the Australian TCF industry.

⁴ Fair Work Ombudsman, '*Designed to Fit – Insights and outcomes from the Fair Work Ombudsman's education phase of the National Textile, Clothing and Footwear Campaign 2015*' available here: <<
<https://www.fairwork.gov.au/ArticleDocuments/557/TCF-campaign-report.pdf.aspx>>>

⁵ Ibid, page 4

⁶ Ibid, page 2

⁷ Ibid, page 3

⁸ Ibid, page 10

Academic research

73. This view is also supported by recent academic research on the working conditions of outworkers in Victoria undertaken by Professor Christina Cregan and Philip Johnston (Melbourne University) resulting in two reports.

74. Professor Cregan and Johnston summarised the findings of the first report as follows:

“This independent university study, conducted in June 2014, investigated the wages and working conditions of 56 clothing outworkers in Melbourne, Victoria. Outworkers received an average hourly rate of pay of \$7.74 in their current (or most recent) job. They worked, on average, for 51 hours per week. Most did not receive regular work and experienced periods of unemployment between jobs. The great majority did not receive benefits, such as superannuation or paid holiday leave. Most suffered a variety of work-related health issues, both psychological and physical, but received no paid sick leave. There was, however, a very small group who received rates of pay and benefits similar to award terms, following union negotiations with their employer based on legal compliance requirements. In addition, one worker was employed on a wage basis and received award terms”⁹.

75. Professor Cregan and Johnston’s second report outlined the attitudes and experiences of outworkers, in their own words from the interviews undertaken in June 2014. Professor Cregan and Johnston write in summary that *“Outworkers described long hours of intense, monotonous work, low pay, irregular hours of work and gaps between jobs...They suffered physical problems such as back-ache, sight problems, and allergies.”¹⁰*

F. PUBLIC BENEFITS

76. In its 2013 determination, the ACCC identified three broad key public benefits associated with the Code, as follows:

- a. Efficiencies in the management of supply chain risk for Code participants, relating to non-compliance with workplace legal obligations;
- b. Efficiencies in signalling compliance with legal obligations for Code participants;
- c. Increased compliance with legal obligations in relation to TCF workers.

77. The HWCC considers that these categories will reflect broadly the public benefits that are likely to result from the Code in the period of authorisation sought. The evidence it provides in support of this submission is outlined below.

Public benefit – the Code leads to increased compliance with existing legal obligations in relation to workers

78. The extent of continued non-compliance with existing workplace laws in the TCF industry is discussed above in Part E. The HWCC considers that the key public benefit the Code has delivered, and will continue to deliver, is increased compliance with existing workplace laws in the Australian TCF industry. In support of its view it refers to:

- a. the observations of Compliance Officers regarding their compliance visits (an average of 30 compliance visits per month are undertaken in respect of new applications for accreditation, and annual renewals of accredited companies);

⁹ Professor Christina Cregan (Department of Management & Marketing, Faculty of Business & Economics) and Phillip Johnson (Melbourne University): *“Wages and Conditions of outworkers in the clothing industry in Melbourne, Victoria (Part 1) (June 2014), page 1*

¹⁰ Professor Christina Cregan (Department of Management & Marketing, Faculty of Business & Economics) and Phillip Johnson (Melbourne University) *“Wages and Conditions of outworkers in the clothing industry in Melbourne, Victoria (Part 2) (December 2016, page 11*

- b. recent improvements made by the HWCC to accreditation documents and guides to assist businesses to understand their existing legal obligations;
- c. the outworker outreach and education programs undertaken by the HWCC and the Union under the Code, including in languages other than English.

79. Each of these matters is discussed in detail below.

Observations of Compliance Officers regarding compliance visits undertaken under the Code

80. As part of the accreditation program under the Code, Compliance Officers from the Union undertake an average of 30 compliance visits each month. Compliance visits take place for both new applications and annual renewals of accredited companies.
81. Compliance Officers advise that at the commencement of the audit and compliance process for companies seeking accreditation (for the first time) it is usually the case that multiple breaches of the TCF Award and/or the FW Act and/or other legislation are identified in the applicant's supply chain. The Compliance Officers advise that while this level of non-compliance can vary between compliance audits, as a general rule, the number of contraventions is generally not small in number.
82. Common examples of non-compliance with provisions of the TCF Award, identified include the following:
- a. Schedule F (Outwork and Related Provisions) breaches including:
 - i. failure to register with the Board of Reference;
 - ii. no written agreements or agreements which do not conform to the requirements of the Schedule;
 - iii. no Work Records or Work Records which do not conform to the requirements of Schedule F;
 - iv. Quarterly lists (of where/who work is given out to) not having been provided to the Board of Reference and/or the Union;
 - b. Non-compliance with other TCF Award terms including minimum conditions, for example:
 - i. non-payment of annual leave loading;
 - ii. the payment of below award wage rates for both ordinary time and overtime;
 - iii. Non, or late, payment of superannuation;
 - c. Breaches of Work, Health and Safety and/or Work Cover legislation including:
 - i. No WorkCover insurance;
 - ii. Poor manual handling standards for plant and equipment;
 - iii. Dangerous storage of goods, including chemicals;
 - iv. Unsafe fire exits and fire extinguishers and/or;
 - v. Poor or unsanitary kitchen, canteen or toilet facilities.
83. Compliance Officers advise that at the commencement of the audit and compliance process for companies seeking re-accreditation these breaches of workplace laws are often identified but these are more limited and restricted to breaches in areas such as hourly rates, superannuation not being paid, and occupational and health and safety matters.
84. The HWCC notes that the accreditation process is a collaborative process and it is one that allows for any breaches to be addressed. The accreditation process aids businesses and supply chain participants in understanding their various obligations and the overarching goal is to have all compliant as part of the process. The process allows for breaches to be rectified, or in some instances where a supply chain participant refuses to fix a breach, then the

principal company seeking accreditation can make a decision about continuing to use that supply chain participant. Accreditation cannot be granted unless all supply chain participants become compliant within the specified timeframe.

85. A recent example is outlined in the compliance case study below:

Compliance case study

When undertaking a compliance audit at a manufacturer in Victoria in September 2017 the TCFUA compliance officer identified a number of areas in breach of the law. This company is a supply chain participant for at high profile label that is accredited with ECA. This company operates in house and performs cut, make and trim services and garment pressing for a number of fashion houses.

Since the last audit in 2016 the company had changed names and relocated to a home-based factory. It had been in the new location for approximately 9 months at the time of the audit.

This manufacturer has been audited annually since the principal company applied for accreditation a number of years ago. Despite the annual audits, this time a number of breaches were identified and it demonstrates why the annual audits of the full supply chain are crucial to the integrity of ECA's accreditation process.

During the audit it was identified that the company was non-compliant in a number of areas that directly impacted three workers employed by the company.

- 1. The underpayment of wages – most specifically the increase as from 1st July 2017 to the minimum wage had not been applied.*
- 2. Superannuation non-payments – no payments had been made on behalf of the workers since the relocation.*
- 3. Important employee details were not being retained – there was no record keeping for annual leave and personal careers leave accruals.*
- 4. The WorkCover insurance had lapsed since the name change.*
- 5. Other Occupational, Health & Safety (OH&S) matters were also identified*
 - a. Housekeeping – there were trip hazards*
 - b. Chairs were not in good order*
 - c. Fire extinguisher test date had expired and*
 - d. Electricals not been tested.*

The compliance officer noted the outstanding matters in writing on the official compliance check list 'non-compliance form' providing a timeframe of two weeks for remediation, so that there was no misunderstanding of what was required to become legally compliant.

During the two-week period the company made contact with ECA's independent compliance officer. The outcome was achieved within the required period, as follows.

- 1. The hourly rate increased with the workers back paid to July 1st 2017*
- 2. Superannuation paid and up to date*
- 3. The accruals recorded and back dated to reflect the correct current entitlements*
- 4. WorkCover insurance paid, and*
- 5. OH & S issues resolved.*

The workers were grateful of the assistance gained as part of the accreditation process, as they had been too scared to say anything to management, in fear of losing their jobs. As part of the accreditation they were able to raise a number of workplace issues, in confidence.

One of the workers said "we are so thankful for your help, to get back the money that is owing to us" another worker stated "our work place is now a lot better since you spoke to the boss".

Note on availability of statistics regarding the audit process

86. The HWCC presently records the number of applications, accreditations, de-accreditations or withdrawn applications each year. The HWCC is currently in the process of replacing its existing accreditation database. It is anticipated the new database will allow the HWCC to record more detailed statistics about the number, and nature, of breaches observed and rectified during the accreditation process.

Recent improvements to HWCC documents to assist businesses to understand their existing legal obligations

87. The HWCC has continued to seek to improve the accreditation process by developing two template letters, *ECA Suppliers letter first tier* and *ECA Suppliers letter second tier*, to assist companies prior to the first compliance visit by the Compliance Officers from the Union. Both of these documents are included as Appendix 8.

88. ECA's *Guide to the Textile, Clothing, Footwear and Associated Industries Award (the Award Guide)*, and the *A Guide to your Legal Obligations* are used extensively during the accreditation process for those businesses needing additional support during the process. These documents are regularly updated to ensure they accurately reflect any changes to relevant legislation or the TCF Award.

Homeworker and Outworker Outreach and Education

89. The HWCC continues to undertake a range of activities to support homeworkers and outworkers covered under the Code.¹¹ These include:

- a. advising outworkers and homeworkers and outworkers about their pay and legal entitlements;
- b. supporting events that educate homeworkers and outworkers and allow for the sharing of experiences;
- c. producing resources for homeworkers and outworkers that raise awareness of the TCF Award and their legal entitlements; and
- d. providing multilingual information.

90. Outworker Outreach Officers from the Union take part in visits with Compliance Officers to the homes of homeworkers and outworkers in the supply chains of Code participants. As a result, contact is made with hundreds of homeworkers during the course of the year, with an average of nearly 40 contacts each month. These contacts commonly reveal issues with compliance, which can be remedied.

91. A recent outworker case study is outlined below:

Outworker Case Study

During an initial compliance audit undertaken in 2013, Compliance Officers from the Union identified that an outworker had not received any of their lawful entitlements.

This outworker was in the supply chain of a principal company seeking accreditation.

The Compliance Officers identified a series of breaches including that:

1. *The hourly rate of pay was \$5.21 less than the Award rate*
2. *There were no annual leave or personal carers leave accruals*
3. *The employer had not paid any superannuation*
4. *There was no agreement on the number of hours of work each week, with long periods of time where no work was given, and*

5. *There were limited work records on the work required on garments.*

As part of the accreditation process, the Compliance Officers from the TCFUA and the principal company ensured that all of the breaches relating to the outworker were rectified.

The Compliance Officers from the Union have advised that during the annual renewals the compliance levels have improved for this supply chain participant however in March 2018, the outworker proactively raised a concern that their superannuation was not being paid. The Union was able to check and the problem was rectified.

This case study not only reveals some of the breaches found in relation to outworkers and the fact that it raises awareness amongst outworkers of their legal rights, but it also evidence of the need for the annual re-accreditation program.

92. The HWCC also makes readily available general educational and training materials to accredited businesses and businesses seeking accreditation, which are discussed below in paragraphs 104 to 106.

93. To ensure that compliance information is available and accessible as widely as possible, in recent years Vietnamese translations have been created for HWCC compliance related documents.

94. In addition, the HWCC produces seasonal newsletters in both English and Vietnamese for homeworkers and outworkers. The HWCC also supports community events and social activities, primarily in Victoria and New South Wales, each year.

Public benefit – the Code leads to efficiencies in the management of supply chain risks for Code participants

95. In its 2013 determination, the ACCC concluded that the Code was likely to improve business efficiency in managing outsourced supply chain risks, particularly in relation to the risk that a sub-contractor is not compliant with its legal obligations to workers.¹²

96. The HWCC considers there are a range of benefits to accredited businesses and signatories arising from the Code. These include:

- a. managing legal and reputational risk in supply chains (noting the TCF Award and FW Act create obligations for each business in a supply chain in relation to workers who perform contracted work);
- b. understanding their legal obligations, as ECA has a range of tools and information kits available.
- c. demonstrating that their products are Australian made and manufactured under ethical conditions through the use of the independent, third-party ECA trade mark.
- d. increasing their connection to potential customers, including consumers, government and major purchasers, through ECA promotion and advocacy.
- e. being part of a wider community, increasing their connection to other local and ethical manufacturers.

97. In support of its view, it refers to and relies on:

- a. the results of a survey of accredited businesses recently undertaken by HWCC;

¹² 2013 ACCC Determination paragraph 143

- b. the range of educational resources provided by the HWCC to businesses during the accreditation process;
- c. the recent introduction of new end of audit reports.

98. Each of these matters is addressed in detail below.

Results of 2018 survey undertaken by HWCC of accredited businesses

99. More than 50 per cent of accredited companies participated a recent survey undertaken by the HWCC.
100. The survey found that:
- a. 94 per cent of respondents either strongly agreed or agreed that their business valued its accreditation under the Code.
 - b. 78 per cent either strongly agreed or agreed that the ECA helped manage risks throughout their supply chain.
101. When asked their reasons for seeking and/or retaining accreditation, the top three reasons given by companies was because:
- a. they value the people who make their products;
 - b. they wanted to be able to demonstrate good behaviour to their customers;
 - c. it demonstrates they are Australian Made.
102. When asked about the benefits of ECA accreditation, the top three reasons given by companies was:
- a. being able to demonstrate Australian made;
 - b. independent certification to show customers;
 - c. having support in ensuring that company is compliant with the law.
103. Survey data can be provided to the ACCC upon request.

Education and support in managing supply chain risks to Code participants

104. The HWCC regularly provides education resources to businesses seeking accreditation or renewal of accreditation, including the following key documents:
- a. ECA's *Guide to the Textile, Clothing, Footwear and Associated Industries Award (the Award Guide)*;
 - b. ECA's *A Guide to your Legal Obligations* industry training presentation.
105. 'The Award Guide' provides a summary of businesses obligations under the TCF Award including yearly wage rate updates and templates such as Work Records, while the industry presentation gives more of an overview of the applicable obligations. Both are available online on ECA's industry training hub webpage. These documents were last updated in early 2018. They are provided to businesses at the start of the accreditation process and are also made

available to prospective accreditation businesses. These documents are included as Appendix 9 and 10.

106. Compliance and outworker outreach officers from the Union also provide advice and support to accredited and applicant companies throughout the accreditation process.

New End of Compliance Audit Reports introduced

107. In 2017 the HWCC introduced a new End of Compliance Audit Report as Appendix 11. This report details the steps the principal company has taken to ensure compliance with their legal obligations when manufacturing in Australia. The report is now being sent to companies at the end of a successful renewal or application process.
108. In 2018 the HWCC supplemented this report with the End of Compliance Audit Supply Chain Report as Appendix 12, outlining the supply chain of the principal company. This report has been created so that accredited companies that outsource work have a complete list of the businesses and/or homeworkers in their supply chain. In line with the End of Compliance Audit Report, it is provided at the end of the accreditation or renewal process.
109. These reports are specific to each company and aim to help the business manage their supply chain and to understand the work that has been undertaken as part of the accreditation process.
110. The reports were developed in response to feedback from accredited companies and are the result of the joint work of ECA Accreditation Advisors and Compliance and Outworker Outreach Officers from the Union.
111. The reports now accompany the accreditation certificate that is issued to companies at the end of a successful application or renewal.
112. These documents and real business examples are included as Appendix 11 and 12.

Online Industry Training Hub

113. In 2016, ECA upgraded its website. As a result businesses can find educational resources and information on a dedicated industry training hub webpage. This section of the website includes links to:
- a. The Award;
 - b. Board of Reference applications and guides;
 - c. a template for a Work Record for a Contractor,
 - d. a template for a Work Record for a Homeworker Work Records;
 - e. a template for a Written Agreement with a Contractor; and
 - f. a template for a Written Agreement with a Homeworker.
114. This means that in addition to the paper copy in the Award Guide, working templates (excel spreadsheet and/or word documents) are available to businesses. This section was a key feature of the website rebuild and it is heavily utilised as a reference point by ECA's accreditation advisors and Compliance Officers from the Union as a tool to aid accredited companies. It also houses ECA's industry guide.

Public benefit – the Code leads to efficiencies in signaling compliance with legal obligations for accredited companies

115. The HWCC considers that the Code, in conjunction with the ECA trade mark, provides a benefit to accredited businesses and signatories by signaling that they are compliant with their legal obligations. In support of this view, it refers to and relies on:

- a. the results of the survey it commissioned of accredited businesses;
- b. the use of the ECA trade mark by accredited companies and the additional trade marks obtained by the HWCC since 2013;
- c. the significant change in consumer and retailer sentiment in recent years, following the Rana Plaza collapse;
- d. the results of a literature review commissioned by the HWCC in 2017, which found, among other things, that accredited labelling has been shown to have a positive influence on the consumer at the point of sale by reminding consumers of the ethical concerns involved in clothing production as they are making a purchase decision.
- e. public events and media (including social media) and internet outreach to consumers and industry participants undertaken by the HWCC to promote the Code in recent years.

116. Each of these matters are discussed in detailed below.

Results of 2018 survey undertaken by HWCC of accredited businesses

117. The survey of accredited businesses undertaken by the HWCC in 2018 identified that many companies are using the trade mark or their accreditation as part of the following communications.

118. The survey found that:

- a. 83.67% of companies mention ECA accreditation on their website;
- b. 69.39% of companies promote ECA accreditation via social media;
- c. 61.22% of companies communicate their ECA accreditation to customers in-store;
- d. 55.10% of companies mention ECA accreditation when speaking at public events or to the media.

119. The survey also found that 63.27% of accredited companies agreed or strongly agreed that customers were asking more questions about labour rights and/or the people who make their clothing.

ECA Trade mark Use

120. Under the terms of the licensing agreement, accredited companies are able to use the ECA trade mark/certification mark on swing tags, garment tags, websites, packaging, or promotional materials such as brochures and business cards.

121. The ECA trade mark is now used widely by accredited companies in a range of ways from swing tags to website promotions, business cards and in advertising. The use of the trade mark is valuable to accredited companies, as evidenced by the ECA survey results.

122. Examples of ECA's trade mark in use by accredited companies are included in Appendix 13.

123. The IP Australia certificate is included as Appendix 14.

124. In 2016, the HWCC applied to have the initialism 'ECA (ECA®)' trade marked under Class 24 (Textile piece goods; Textiles), Class 25 (Clothing; Footwear; Headgear for wear) and Class 35 (Retail services; Retailing of goods (by any means)). The application was successful and the HWCC received a Certificate of Registration from IP Australia on February 9, 2017. This registration is valid up to 7 July 2026.

125. The IP Australia certificate is included as Appendix 15.

Rana Plaza

126. The 2013 collapse of the Rana Plaza in Bangladesh was the deadliest garment factory disaster in history, resulting in 1,134 deaths and 2,500 injuries. The collapse of Rana Plaza brought worldwide attention to the poor working conditions of garment workers. The HWCC considers that the event led to a significant increase in awareness among consumers about the conditions of garment workers, and increased demand for ethically produced fashion.

HWCC literature review regarding accredited labelling scheme

127. A literature review commissioned by the HWCC in 2017 found that the use of accredited labelling schemes (as well as social media influencers) is effective in communicating the ethical message to potential consumers and potentially converting them to ethical purchasing behaviour.

128. The review found that overcoming the attitude-behaviour gap is difficult but that in-store labelling such as swing tags and signage can play a role if the consumer's needs for style, lifestyle fit, and price have been met.

129. In summary, it found that accredited labelling has been shown to have a positive influence on the consumer at the point of sale, reminding consumers of the ethical concerns involved in clothing production as they are making a purchase decision. It also found that simple, specific labels that are backed up by accreditation allow producers to enter into a dialogue with consumers. This communication makes choosing an ethical option an easier decision for consumers. The literature review also noted that social media has a positive impact on the buying intentions of consumers if delivered by a trusted source.

130. The review found that research into the way Australians buy, engage with and receive information about ethical clothing is lacking to date.

131. The review did identify however a one-off IPSOS 2013 report surveying 1,000 Australians aged between 16 and 64 about the issue of ethical clothing within a group of 12,484 across 16 countries. That report found that Australian consumers felt that companies producing clothing off-shore were taking advantage of and exploitative of local workers. For example, 84% of respondents agreed or strongly agreed with the question "Do you believe that conditions for workers who make clothing in less developed countries are exploitative?" Similarly, 83% of respondents agreed or strongly agreed with the question "Do you believe that conditions for workers who make clothing in less developed countries are taking advantage of workers?" The survey however did not ask questions about local production and manufacturing or the use of accreditation labelling.

132. A copy of this literature review can be provided to the ACCC upon request.

133. While research is limited in Australia, the HWCC believes there is a growing interest in ethical TCF products, particularly since the Rana Plaza collapse in 2013, and this is evidenced by the increasing interest in the work undertaken by ECA via social media platforms, free media and community and industry events (discussed below) and by the fact that a clear majority of respondents to the HWCC survey agreed or strongly agreed customers were asking more questions about labour rights and/or the people who make their clothing.

Public events, education and training

134. Since October 2013, ECA has participated formally in more than 30 public events which have been a combination of industry, civil society, media and community education activities. In addition, ECA has participated in approximately 25 education sessions at universities and colleges to promote awareness and understanding of supply chain management. For details on the range of activities undertaken by ECA since its 2013 application see Appendix 16.
135. In recent years ECA has increasingly become focussed on participating in industry, awareness-raising and community-building promotional activities. These activities, most commonly held in Victoria and New South Wales, are focussed on educating manufacturers, contractors, retailers, consumers and the wider community about the purpose and remit of the Code.
136. These public activities have undertaken a variety of formats including panel discussions, presentations and workshops and have seen ECA representatives speaking alongside accredited companies, retailers, civil society groups, union representatives and journalists.
137. This variety and caliber of this work is best demonstrated by the following highlight events of 2017:
- a. Melbourne Fashion Week industry panel discussion;
 - b. An ethical production training workshop hosted by ECA for local small business;
 - c. A co-hosted consumer focused panel discussion, 'How Fashion Can Empower Women', with e-retailer Well Made Clothes;
 - d. A co-hosted "Future Talks" IMG industry session (4th installment) with Clean Cut as part of Mercedes Benz Fashion Week. Featuring ECA accredited brands Manning Cartell and Viktoria & Wood;
 - e. A co-hosted industry seminar, "Buy Better", in collaboration with Fashion Revolution;
 - f. A presentation with the Union to approximately 700 nurses at the Australian Nursing and Midwifery Federation Victorian Annual Delegates Conference;
 - g. Co-hosted "Made in Melbourne" event alongside ECA accredited brands Nadia Foti and Tatyana Design, September 2017; and
 - h. Two panel presentations following the release of "What She Makes" an Oxfam report on the living wages of overseas garment workers.
138. Also in 2017 ECA was invited to collaborate with the City of Melbourne to host an Ethical Clothing Showcase as part of Melbourne Fashion Week. The event provided an opportunity for 14 accredited companies to showcase their high-quality fashion pieces and the commitment they have made to supporting Australian industry. The showcase attracted

members of the public as well as industry stakeholders and media. The event was a sign of the increasing interest in local and ethical fashion.

Production of 'Ethical Fashion 101' Handbook

139. In 2016 the HWCC collaborated with the then-industry body Australian Fashion Chamber (AFC) to produce 'Ethical Fashion 101: a business handbook by Ethical Clothing Australia') in 2016. The handbook covers the benefits of transparent and ethical business practices and explains accreditation under the Code. This resource was distributed to all AFC members and was made available on the then-AFC's mentor section of its webpage. The handbook was also circulated to accredited brands and manufacturers – both current and prospective companies – and was made available on ECA's website.
140. With the merger of the AFC and the Council of Textile & Fashion, this document is to be re-branded as a joint production of ECA and the new Australian Fashion Council.
141. A copy of the 2016 handbook is included as Appendix 17.

ECA website outreach

142. In 2016 ECA redesigned its website. The refreshed website is focused on providing a more user-friendly experience for accredited brands, prospective brands, industry stakeholders and consumers. The website now offers an overview of: the organisation and the steps to becoming ECA accredited; categorised accredited brands and manufacturers for consumer reference; promotional activities and industry news; as well as industry training regarding legal obligations. The website offers information to businesses in a more accessible manner, it also helps to connect consumers and accredited companies in a more engaging platform.
143. ECA has been successfully growing its engagement online and web traffic statistics show that since the date of the re-launch of the website in 2016 up until December 2017, the ECA website received 705,058 page views and 191,111 sessions. When comparing 2016 statistics to 2017, ECA has recorded year on year increases across page views.

Majority Brands Campaign Launch

144. In late 2017, ECA launched a new interactive page on its website showcasing the accredited companies that manufacture more than 50 per cent of their products locally. The launch was rolled out online and across social media platforms and all brands and manufacturers featured were encouraged to share their involvement as well. The purpose of this online campaign was to ensure that accredited businesses were recognised by the general public.
145. ECA website screen shots of this campaign marked Appendix 18.

Social media outreach

146. Social media has become a valuable tool promoting the Code. ECA utilises three social media platforms: Instagram, Facebook and Twitter.
147. These platforms are primarily utilised to: educate people about the Code; announce new accreditation and reaccreditation; promote industry news and events; share stories about the workers and makers of the TCF products; and advise about ECA news.
148. Instagram is the most popular social media account, with more than 20,100 followers. During 2017 alone ECA increased its Instagram followers by 10,100. Via Instagram, ECA has been able to:

- a. share footage from public facing events and presentations as well as local factory visits which give followers an insight into the manufacturing processes;
- b. showcase ECA accredited companies and products;
- c. promote the ECA trade mark (for example, showing photos of garment swing tags and window displays); and
- d. support ongoing campaigns.

149. Three examples of Instagram posts are included in Appendix 19.

150. Facebook is used as a tool to share stories of ECA brands and manufacturers and their ongoing commitment to supporting local industry. During the past year Facebook page 'likes' increased by more than 1,400 from the 2016 numbers which demonstrates growth and increased engagement online. Similarly, ECA was successful during the year to increase its Twitter followers, up 171 from the year before.

Campaigns: Meet your Maker and Fashion Revolution Collaborations

- 151. ECA's original 'Meet your Maker' campaign was launched in 2011 and it encouraged accredited companies to connect with their customers by sharing the stories of their makers.
- 152. ECA's original 'Meet your Maker' campaign is now strongly aligned with the same intent and purpose as the 'Fashion Revolution' Week – an international initiative that acknowledges the 2013 Rana Plaza garment factory collapse. Each year during Fashion Revolution Week consumers are encouraged to ask 'Who made my clothes?' Conversely it is a time for TCF manufacturers and labels and producers to show the people and makers behind their products. ECA and accredited companies now participate in this initiative and it is seen as a way to increase awareness about the people making TCF products, their skills and expertise, as well as embracing transparency.
- 153. Examples of ECA promoting the work of makers during Fashion Revolution Week are included in **Appendix 20**.

Free Media

- 154. ECA has continued to encourage the media to consider profiling ECA accredited companies. During 2017 alone, ECA and/or its accredited companies were featured in The Australian, Channel 9, The ABC, Jones Magazine, Peppermint Magazine, Ragtrader, Frankie Magazine, Fashion Journal and the Sydney Morning Herald.
- 155. Recent free media highlights include:
 - a. *"Shop Less, Mend More: making more sustainable fashion choices."*, The Guardian, February 2018
 - b. *"Homegrown Heroes"*, Jones Magazine, November 2017
 - c. *"The Business of Ethical Fashion"*, Peppermint Magazine, May 2017
 - d. *"Sick of fast fashion? Here are five ways to make your wardrobe more sustainable."*, ABC News, May 2017
 - e. *"Ask Yourself...do I Really Need it?"*, The Australian, January 2017

Conclusion regarding public benefits

156. The HWCC submits that the Code delivers significant public benefits across a range of areas, those benefits having fundamental importance for continued improvements in compliance with legal obligations designed to protect the rights of vulnerable workers. Looking to the future, the HWCC considers that the benefits delivered by the Code are likely to be significant and increase, having regard to:

- a. continued non-compliance in the TCF industry with respect to workers' entitlements;
- b. the trend towards increased awareness by consumers and demand for ethically produced clothing, including with respect to the conditions of workers producing garments;
- c. increased recognition by industry participants of the value of accreditation and participation in the Code.

G. POTENTIAL PUBLIC DETRIMENTS

157. In its 2013 determination, the ACCC identified the following broad potential public detriments arising from the Code, as follows:

- a. potential for restriction of competition between suppliers;
- b. potential for increased costs imposed by the Code;
- c. concerns about the role of the [then] TCFUA as auditor under the Code.

158. The HWCC seeks to address each of these potential public detriments below.

Potential Public Detriment - Restriction of competition between suppliers

159. In its 2013 determination, the ACCC referred to concerns by parties which (at that time) opposed the Code on the basis that it restricted competition between suppliers. This was because the Code was perceived as not being voluntary in all circumstances on the basis that:

- a. accreditation was a condition of some Australian government industry grants and participation in procurement tenders; and
- b. if a business becomes accredited, every supplier in its supply chain must undergo compliance auditing.¹³

160. The ACCC noted that a number of the clauses in the Code potentially restrict competition market participants, as they required accredited businesses to:

- a. reflect the provisions outlined in the Code in agreements with suppliers;
- b. where possible, to terminate and not enter into future contracts with suppliers found to have been exploiting workers.¹⁴

161. In summary, the HWCC submits that:

¹³ 2013 ACCC Determination par 189

¹⁴ 2013 ACCC Determination par 203, Clause 4.3 Part 1 and Clause 9.5 Part 2 of the Code

- a. there is no evidence that the operation of the Code has had any adverse effect on competition and the Code is unlikely to have any adverse effect on competition into the future;
- b. participation in the Code is voluntary for businesses seeking accreditation or to become signatories;
- c. the Code seeks to ensure that existing legal obligations are being complied with in applicants' supply chains. It does not impose new obligations on suppliers;
- d. it is reasonable for businesses seeking accreditation to wish to ensure that their supply chains are compliant with existing workplace laws (particularly having regard to their existing legal obligations, which are discussed below);
- e. it is critical that the HWCC has the ability to act on breaches within the supply chain in order to maintain the integrity of the Code;
- a. there are presently no government (State or Federal) policies which require businesses to be accredited under the Code in order to apply for State or Federal Government grants or participation in procurement tenders. This is discussed in more detail at paragraphs 174 to 175 below.

Further submissions regarding potentially restrictive clauses in the Code

- 162. Having the capacity to act on breaches within the supply chain remains an important element of the Code, and it adds to the Code's integrity and efficacy.
- 163. Clause 9.5 of Part 1 (Manufacturers) and Clause 6.1 of Part 2 (Retailers)) are critical to the Code's effectiveness and ensuring that breaches are addressed in a timely way within a particular supply chain. These Clauses go to the rigour and integrity of the Code itself.
- 164. The requirements that all supply chain participants are compliant with the relevant Australian laws should be retained, particularly as the Code allows for an appropriate response and specified process for any identified breaches.
- 165. Breaches raised by the Compliance Officers from the Union with either principals or retailers under the Code are contraventions of the minimum safety net wages and conditions under the TCF Award, the National Employment Standards (**NES**) and/or other relevant legislation (e.g. OH&S legislation). That is, any breaches raised by Compliance Officers are contraventions of existing legal obligations which apply irrespective of participation in the Code.
- 166. The HWCC notes that under Schedule F of the TCF Award 2010 [clause F.8] and Part 6.4A (Division 3) of the FW Act, mechanisms exist whereby principals can be held responsible for unpaid remuneration owed to outworkers down the contracting chain. The requirements under Schedule F are discussed in more detail below.
- 167. The use of the ECA trade mark represents compliance with the relevant Australian laws throughout the entire supply chain, not just the principal company, and so allowing businesses to be in a known breach of the laws would undermine the Code and be damaging to the credibility of ECA and the Code.

Clause 9.5 of Part 1, Code of Practice (Manufacturer's Agreement)

- 168. In practice, where a breach/s under the Code is identified, the approach of Compliance Officers is to bring the breach to the attention of the principal as soon as possible and seek its

response. The Compliance Officer will often do this by phone initially and then follow up with an email communication. Often this first step is sufficient for the principal to take the required steps to address the issue/s satisfactorily within their supply chain. That is, it is often not necessary to formally invoke the relevant clauses in Part 1/Part 2 of the Code.

169. On other occasions, the principal may seek further detail about the alleged breaches, which the Compliance Officer will provide. This may involve an exchange of correspondence between the Compliance Officer and the principal clarifying the nature and extent of the breaches, and what is necessary to remedy those breaches.
170. In the majority of instances, the breaches raised by the Compliance Officers with the principal are addressed relatively quickly, and no further action is required. That is, the principal takes steps with the supplier/maker to ensure full compliance and there is no need for the principal to stop using them.
171. Where there is inadequate progress being made by the principal in getting their supplier/maker to full compliance, the Compliance Officer would then formally invoke clause 9.5 of Part 1 of the Code and seek a formal response by the principal.
172. In practice, the principal in such an instance provides the response within 14 days or alternatively would advise the Compliance Officer that it is unable to do so and needs more time. It is common practice that the Compliance Officer would provide further time in response to such a request. Exceptions to this may include where, for example, the breaches are significant and/or protracted or where the breach concerns a serious occupational health and safety issue.
173. In some instances Compliance Officers have provided an extension of time (beyond the 14 days) for the principal to respond, however the principal has independently decided to cease using the non-compliant maker/supplier until such time as there is clear evidence of compliance. Such instances indicate that the principal considered the reputational, brand and/or legal risk too great to continue using the particular maker/supplier in the absence of breaches being rectified. In those instances recourse was not had to the mechanisms in the Code.

Case Study

The Compliance Officer identified that a maker for a principal/brand owed over \$100,000 in unpaid superannuation to its employees.

The Compliance Officer initially raised this with the principal who immediately took steps to address the issue with the maker.

Unfortunately, the maker did not address, or take steps to address, the issue quickly

The principal sought more time to respond, which was provided by the Compliance Officer.

The principal decided itself to cease using the services of the maker until the issue was satisfactorily addressed i.e. payment of the outstanding superannuation and evidence of payment provided and once this occurred, the principal recommenced using the maker's services.

Procurement

174. On 1 July 2014, the recently elected Federal Government amended its Procurement Guidelines so that accreditation under the Code was no longer a requirement for tendering companies manufacturing on-shore.
175. There are currently no government procurement policies requiring accreditation under the Code. ECA however continues to advocate for accredited companies to be recognised in procurement policies and remains willing and able to resume the service should similar guidelines be enacted at either a federal or state level.

Schedule F of the TCF Award

176. Schedule F (Outwork and Related Provisions) of the TCF Award provides a comprehensive framework for the giving out of work in the TCF industry. These provisions are not new in substance – they build on similar provisions contained in the pre-reform, federal Clothing Trades Award 1999 (Part 9) and the pre-simplified, Clothing Trades Award 1982. The first contract outwork provisions were inserted into the Clothing Trades Award in 1987 arising from a landmark Australian Industrial Relations Commission decision. Re: Clothing Trades Award 1982. However, it is important to note that outwork provisions and regulation have existed in various state and federal awards for more than 100 years.
177. The Australian industrial tribunal, FWC, and its predecessors, have, consistently recognized that the vulnerable position of TCF outworkers requires special attention and particular regulation. Similarly, the Federal Court of Australia has affirmed the importance of such provisions to militating against the systemic exploitation of outworkers.
178. Schedule F of the TCF Award contains a series of cascading obligations which regulate down and across TCF supply chains, to ensure transparency and most importantly to identify where, by whom and under what conditions those goods are being made.
179. In light of the above, the Code cannot reasonably be said to inhibit a business's capacity to outsource work. Further, the level of TCF work now undertaken by outworkers and the level of work given out by principals generally (relative to work undertaken by their own in-house workforce) is significantly higher than it was 10, 20 or 30 years ago.
180. A number of provisions of Schedule F were varied in 2013 (by consent between the [then] TCFUA and certain employer organisations) to provide further flexibility for the engagement of outworkers (i.e. change to minimum weekly hours for part time outworkers). This decision occurred as part of the 2012 Transitional Review of Modern Awards.

Potential public detriment – Increased costs imposed by the Code

181. The HWCC submits, in relation to any costs imposed by the Code:
- a. the operation of the Code and of ECA, its compliance work and its staff is supported by government funding;
 - b. the HWCC has sought to keep accreditation fees as low as possible.
 - c. the HWCC considers that accreditation fees represent good value to businesses seeking accreditation, given the assistance provided in the accreditation process and the benefits that this assistance delivers in eliminating risks arising from non-compliance with legal obligations (including the risks of legal costs, compensation and penalties payable by parties found to be in breach of their legal obligations);

- d. the HWCC has sought to reduce the administrative burden on businesses by proposing the removal of the schedules 1 to 5 from Part 1 of the Code (statutory declarations), which the ACCC identified in its 2013 determination as likely being the most costly of the obligations to comply with under the Code¹⁵;
- e. the majority of the records accessed under the Code for audit purposes are records which a business is required to keep by law in any event.

Comment on Government funding

- 182. In mid-2014 the Commonwealth Department of Employment, formerly Department of Education, Employment and Workplace Relations (DEEWR) cut funding to the program following a change in Government.
- 183. The HWCC successfully obtained funding from the Victorian Government Department of Economic Development, Jobs, Transport and Resources (DEDJTR) initially for the period 2015 - 2016 and has most recently secured funding from DEDJTR for three years from 2017. The program also continues to benefit from in-kind support from the union, employer and business members of the HWCC.

Comments regarding accreditation fees

- 184. The HWCC considers that accreditation fees, which range from \$315 to \$6,300, are highly cost effective for companies seeking accreditation given the assistance that is provided during the accreditation process to manage the legal, financial and reputational risks associated with the entire supply chain.
- 185. The fees are on a sliding scale and determined by a range of factors accommodating emerging, small, medium and large businesses.
- 186. In the second half of 2017, the HWCC approved the introduction of a new fee category of \$630 for businesses outsourcing up to \$50,000 cut, make and trim. The change was sought to aid the growing number of emerging and smaller businesses that are seeking accreditation and it is also a reflection that many brands are choosing to operate on a smaller scale, for the longer term. The new category took effect on January 1, 2018.
- 187. Given its recent fee review the HWCC is confident that the fees for the program remain highly cost effective for a number of reasons including the fact that there are no additional costs to business for travel or other auxiliary costs associated with compliance and that the work would cost significantly higher if undertaken by private sector auditing bodies or consultants. This auditing and compliance work, provided under the Service Level Agreement with the Union, is highly cost effective when compared to other auditing bodies or consultants.
- 188. Moreover, a benefit derived from accreditation is assistance in ensuring compliance with legal obligations. In the absence of ensuring legal compliance, companies would potentially face legal claims resulting in the payment of legal costs, compensation and penalties. The mitigation of this risk is an additional benefit for participating parties.
- 189. The Accreditation and Fees Form is Appendix 5.

Comments on proposed changes to the Manufacturer's Code Schedules

¹⁵ Paragraph 237 ACCC determination

190. As noted above, following consultation with the Compliance Officers and accredited companies, the HWCC seeks approval through this application for variations to the Part 1 (Manufacturers) to remove the various schedules involved in an application for accreditation. The removal of the schedules from the accreditation process will reduce paperwork and accreditation costs for manufacturers.
191. These changes can be seen in the revised Part 1 (Manufacturers) at Appendix 1 and explained in paragraphs 26 to 40 above.
192. Under the proposed new arrangements a complete supplier list would be submitted at the start of a renewal/application as part of the updated ECA Fees and Discounts Form, rather than as a witnessed Statutory Declaration. In addition, ECA will send principal companies a full supply chain list as part of the newly implemented End of Compliance Audit Supply Chain Report.

Potential public detriment – role of the Union as auditor under the Code

193. The HWCC notes that a concern was raised by some parties opposing the Code in 2013 that the [then] TCFUA was the only choice of auditor under the Code.
194. The HWCC made detailed submissions in relation to the role of the [then] TCFUA as auditor under the Code as part of its 2013 reauthorisation application. The HWCC restates and adopts the submissions summarized by the ACCC at paragraph 251- 254 of the 2013 determination, with the clarification that levels of compliance in the audit process varies (par 252(a)). It further notes the following:
- a. The roles of Compliance Officers from the Union are separate from the work undertaken by the Union's organisers. It is the case that it is sometimes necessary for the Compliance Officers from the Union to speak directly to workers at a particular workplace, as part of the ECA compliance process for accreditation. When that occurs, the Union staff acknowledge that they are in the workplace as part of the ECA accreditation process.
 - b. Communicating directly to the workers is an important part of the accreditation process for a number of reasons. For example, it may be necessary to:
 - i. ascertain the number and type of workers at the workplace, including employment status;
 - ii. to clarify shift structures (relevant to the payment of shift loadings and overtime);
 - iii. to confirm which tasks and skills are being used (relevant to determination of skill level classifications and wage rates);
 - iv. to confirm that leave and leave loading is being accrued and paid correctly; and
 - v. to gather information regarding health and safety issues.
 - b. Unfortunately, it is not uncommon for incomplete or incorrect employee records to be provided during the compliance process and verbal communication with workers directly is a key tool to confirm whether correct wages and conditions are being provided as required by the TCF Award, the NES and FW Act.
 - c. It is also important to note that since the reauthorization granted by the ACCC in 2013, ECA has not received any complaints (formal or informal) against the Union acting as auditors, or in relation to the accreditation process. Nor has the dispute resolution process been utilised since its introduction. This attests to the fact that the Code is a

voluntary and collaborative process, but also that the work undertaken by the Compliance Officers from the Union is done with integrity and independence.

Conclusion regarding potential public detriments

195. The HWCC submits that for the reasons set out above there in fact are no public detriments arising from the Code or its operation. In the event that the ACCC is inclined to the view that there are or may be potential public detriments, the HWCC submits that those detriments have been mitigated effectively by the Committee, including by way of changes sought to the Code as part of this present application for reauthorisation.
196. In conclusion, the HWCC submits that the public detriments, if any, associated with the operation of the Code are outweighed by the substantial benefits delivered.

H. OTHER RELEVANT INFORMATION

197. In 2018, the TCFUA amalgamated with the Construction, Forestry, Mining and Energy Union and the Maritime Union of Australia. The name of the new amalgamated entity is the Construction, Forestry, Maritime, Mining and Energy Union (CFMEU). The former TCFUA is now the TCF Sector of the Manufacturing Division of the CFMEU.
198. The amalgamated entity (CFMEU) is the successor to the TCFUA and takes over all assets, liabilities and obligations of the (now deregistered) union.
199. TCFUA staff and officials became employees of the CFMEU. The amalgamation is not anticipated to have any impact on the activities of these staff and officials, or the operation of the Code.