t.evans@nra.net.au

National Retail Association

5 August 2013

Dr Richard Chadwick
General Manager
Adjudication Manager
Australian Competition & Consumer Commission
Via email: adjudication@accc.gov.au + tanya.hobbs@accc.gov.au

Dear Dr Chadwick

Homeworker Code Committee application for reauthorisation of amended Code

Thank you for the opportunity to make comment on the reauthorisation of the amended Homeworkers Code of Practice.

The National Retail Association (NRA) is a not-for-profit industry organisation that provides professional services and critical information and advice to the retail, fast food and broader service industry throughout Australia.

NRA is Australia's largest and most representative retail industry organisation, representing the majority of national retail chains, as well as independent retailers, franchisees and other service sector employers. NRA represents the interests of over 19 000 store members. NRA has represented the interests of retailers and the broader service sector for almost 100 years. NRA aims to help Australian retail businesses grow.

Executive Summary

The NRA supports in principle a voluntary Homeworkers Code of Practice but is opposed to the proposed amended Code of Practice ('the Amended Code') for the following reasons:

- **Broadening of Scope and Objectives**
  The Amended Code has a much broader scope than the current terms. The Amended Code seeks to cover not only homeworkers but also workers, which would include factory workers. This is contrary to the "HWCC Inc Rules of Association and Statement of Purpose".

No evidence has been presented to demonstrate the need to extend coverage to factory workers.

The expansion of the scope of the Code can only mean a greater administrative burden for signatory businesses. Greater administrative costs mean that businesses that choose to manufacture in Australia or support Australian manufacturers may no longer be able to afford to do so. This is particularly so in the current economic environment.

The current code applies to those businesses in the clothing industry only. The Amended Code intends to extend coverage to those in the textile and footwear industries as well. Once again, no evidence has been presented to demonstrate the need to extend the terms of the current code to these additional industries and the NRA would ask the ACCC to reverse this change.

- **The Cost on Business - Increased Compliance Paperwork**

  There are increased requirements that apply to businesses in order for that business to become and maintain accreditation under the Amended Code. For example, it is proposed that the business provides documentation for initial accreditation annually and whenever a supply chain changes. The reference to supply chain is a new term and this provision could mean that the business could be required to provide updates on a daily basis if changes were frequent. We suggest that the quarterly reports to the Board of Reference of the Fair Work Commission (BOR) should be adequate and this change is unnecessary.

  The Amended Code proposes that all copies of outworker wage records, work arrangements and work records be provided. Previously, the business was only required to provide an example of these records. Once again, this change is onerous and will only lead to increased administrative costs for business.

- **Concerns with the increased roles and duties of the Textile, Clothing and Footwear Union of Australia ('TCFUA')**

  The Amended Code introduces a new clause 6 which defines the role of the TCFUA as "enforcing" compliance with the labour standards under the agreement. This choice of wording implies that the TCFUA has the status of the Fair Work Ombudsman or the Fair Work Commission, which is simply not the case.

  The new proposed clause 6 also provides that the TCFUA's compliance activities extend to identifying incidents of non-compliance with the TCF award, relevant legislation as well as the Code. It also provides that the TCFUA is to ensure compliance with the TCF Award and relevant legislation by non-accredited businesses.

  As the TCFUA receives funding for its compliance activities under the Code, this seems to be a very genuine blurring of the lines between compliance activities and its general union activities (see recommendation below).

This is a voluntary code and the TCFUA have no business being funded to ensure compliance for those businesses that are not a signatory to the Code. In any event, compliance activities should be limited to homeworker legislation and Schedule F of the TCF Award.

- **Blurred lines between the role of the TCFUA as part of the Committee and its role as an industrial union.**
  The Amended Code requires that each business and each entity within its supply chain who arranges for a homeworker to perform work must ensure that the homeworker receives the standard letter provided for in Schedule 6. The Code in its current form was somewhat more transparent in that it provided that the letter was in relation to union membership.

  Nevertheless, this is a blurred line between the role of the TCFUA as a committee member and its role as the union. Committee funds should not be used to promote the interests of the TCFUA in its capacity as a union.

- **Contributions and Funds**
  There is a great concern with the transparency of the contributions and funds with the proposed removal of some clauses. The licence fees used to be provided but this has now been removed to provide that accreditation fees are payable as determined by the Committee. The fee structure should be reinstated.

  The Amended Code also proposes to remove safeguards in relation to funding and the requirement to have further discussions if funding falls below $450 000. The Amended Code also seeks to remove the cap on the amount of any additional income to a maximum of $400 000 to be directed to the TCFUA for compliance activities. The NRA asks that both are safeguards that should not be removed and need to be reinstated.

- **Appointment of Alternate Auditor to the Union**
  The NRA would ask that the ACCC direct that a panel of alternate auditors be appointed. This would remove the conflict of interest that arises from the Union fulfilling two roles – that of union advocacy and auditing the supply chain.

Conclusion

- The amendments to this Code will have significant and detrimental consequences for signatories which could in turn impact not only manufacturing but the retail sector as well. Considering the dire economic situation of the retail industry currently (see attachment 1 and previously supplied to the ACCC), these are changes that should be reversed to avoid significant impacts upon business viability.

- We note the strong feelings expressed by all businesses during the ACCC Pre-Decision Conference on Friday 2 August and recommend that the ACCC take into account the deleterious impact the extended Code will have, in its current form, on both the manufacturing and retail sector.

If you have any queries, please do not hesitate to contact me on 07 3240 0100.

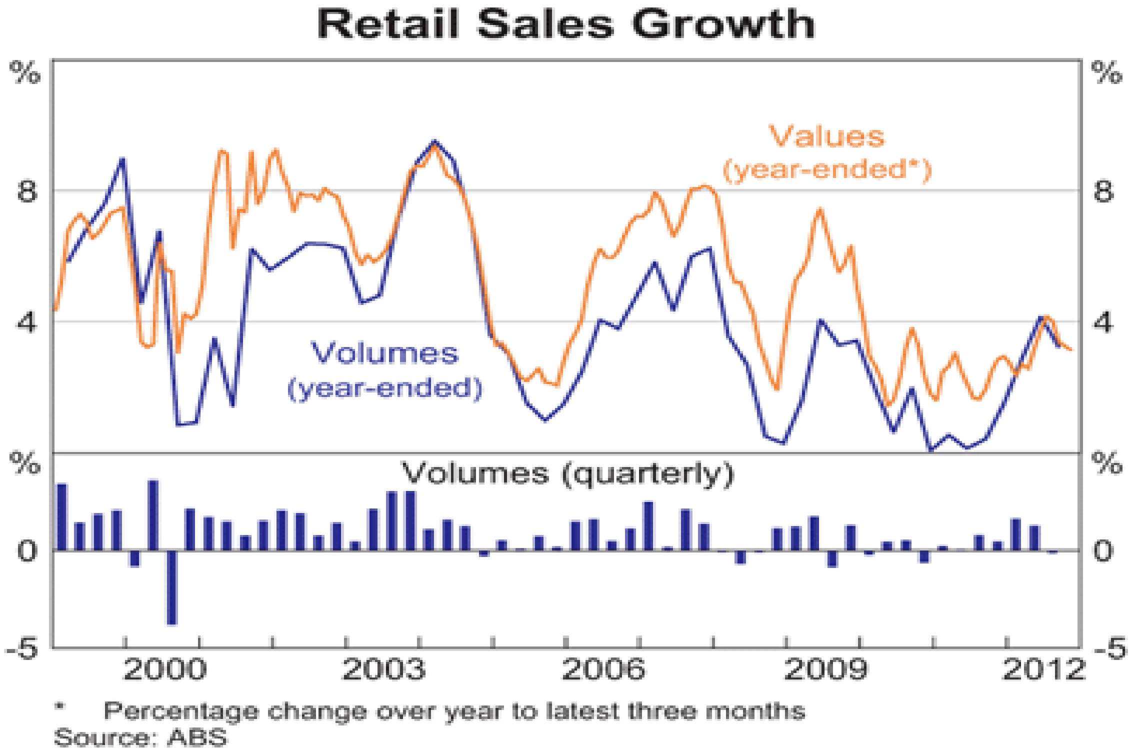
Yours sincerely

Trevor Evans
Chief Executive

ATTACHMENT 1
The State of the Retail Industry

With respect to the capacity of businesses to pay, NRA strongly submits that the retail sector has been operating sub-optimally for a number of consecutive years. Specifically, retail trade growth has been far lower since 2010 compared to the long term average.

Figure: Retail Sales Growth – RBA Chart Pack February 2012

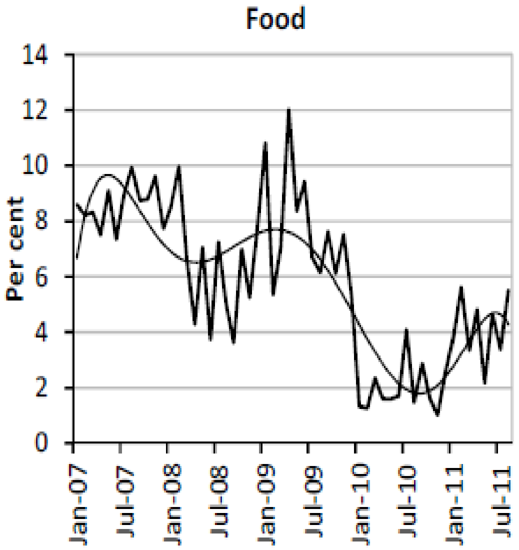


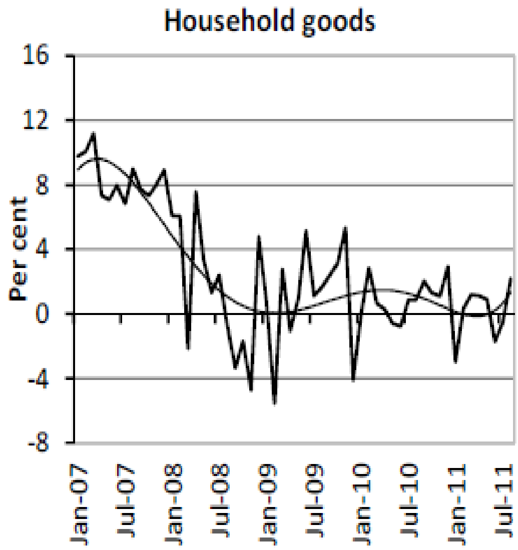
If adjustments are made to retail turnover figures to account for population growth and/or inflation, it becomes clear that retail turnover for any individual store with a given geographic footprint is more likely to have been flat in recent years. In other words, the typical retail store has not seen an increase in sales revenue and, all other things being equal, that would imply that there is no additional capacity to pay for increases in the costs of inputs such as labour.

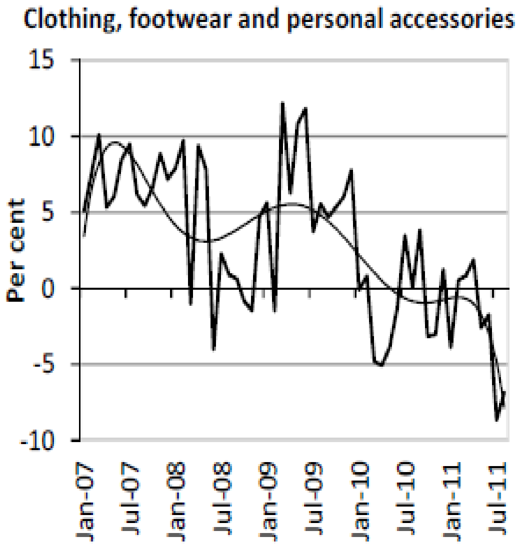
A common approach to analysing retail turnover involves understanding that retail trade data is comprised of two very different components – consumer spending on the "essentials" (the food categories), and consumer spending on the more discretionary, non-food categories (such as fashion, homewares and recreational goods). The food categories comprise a little over 50% of total trade, while the discretionary categories comprise a little under 50%. In other words, consumer spending on the "essentials" currently dominates the total retail trade figures.

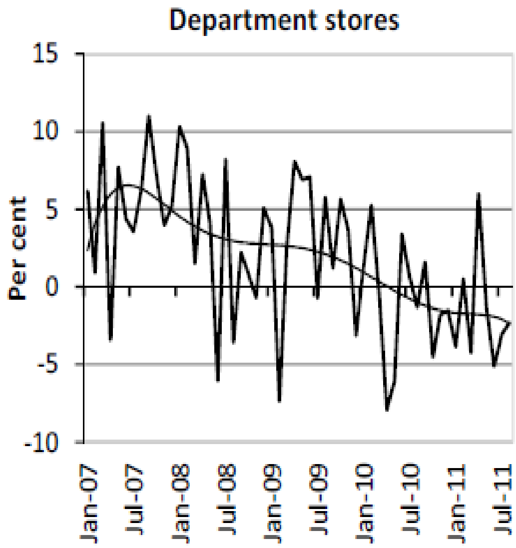
When retail trade data is analysed in this way, it becomes apparent that most of the recent (sub-optimal) growth in retail turnover has been coming from the food categories. Many other important retail categories have been experiencing flat or negative retail trade growth over recent years. Factoring in population growth and/or inflation at the level of these retail categories makes it clearer yet that the level of turnover has been flat at best for an individual, typical business operating in such categories.

The following graphs demonstrate recent retail sales growth in particular retail categories:









NRA submits that in particular the clothing, footwear and personal accessories category of which this Code affects is the sector of the industry hardest hit by these near recessionary times.

The current downturn in the retail sector will impact hardest on small retail businesses. Having regard to the Federal Government's statistics on the earnings of small business operators and the amount of time business owners spend in the workplace, it is clear that the smallest businesses in Australia have little capacity to pay additional costs and that business operators are already choosing to work longer hours rather than hire staff at existing wage levels.

NRA strongly submits that the growing exposure of the national retail sector to global competition and the increasing options for Australian consumers to compare foreign online markets on the basis of price. Before online shopping became such a mainstream activity, global factors were less relevant in the determination of retail sector wage levels because consumers and retail spending were predominantly limited to Australian "bricks and mortar" stores. In that age, any level of labour input costs could feasibly be passed onto consumers. The intensity of domestic competition would determine how businesses either passed on those costs, were driven to seek efficiency gains, or allowed costs to increase at the expense of investment returns. The employees being paid higher wages and the consumers paying the resulting higher prices were frequently the same people, and so the entire exercise was somewhat circular and the only obvious downside was the resulting inflationary impacts.

Previously, many industry sectors in Australia were relatively protected from global competition. Now, increasingly, certain industry sectors such as the national retail sector are exposed to international competition. In the general retail sector, Australia's exposure to international competition is growing rapidly.

Australian consumers are embracing online shopping and are often now choosing to purchase products from overseas markets on the basis of price differences in international markets. The proportion of households connected to the internet is increasing and there is a rapid uptake of online shopping. The value of online transactions is already conservatively estimated to be over 6% of total retail turnover in Australia, and the value is projected to continue growing at double digit levels of growth.

While the majority of online purchases are currently made from the online platforms of domestic retailers, that proportion is decreasing and is likely to continue to decrease as Australian consumers gain awareness of and confidence in foreign online options. If various policy settings such as the Goods & Services Tax Low Value Threshold are not changed by the Federal Government, it is projected that by 2015, the proportions of online sales going to domestic and foreign retailers will flip and the majority of online spending will go offshore. Furthermore, by 2015, the retail sector will have seen around 118,000 positions lost to the online sector, the majority of which would be lost to overseas.1

Those projections, along with most of the evidence currently available, implies that when Australian consumers choose where to direct their spending, a consideration of local jobs, workforce participation and local social inclusion are often not the determining factors.

Relative labour costs are not the only reason why international prices can be different to domestic Australian prices. Other factors such as leasing or tenancy costs, government tax and regulatory regimes and local distribution licensing can and do have an impact. However, labour costs are a significant cost input in the national retail sector and are therefore a critical area where international price differences can and do arise.

If an increase in manufacturing costs is imposed without any commensurate increase in productivity, efficiency or the value of the work performed, businesses can either choose to increase the prices they charge consumers, or they can absorb the cost increases by sacrificing the level of profitability.

If the businesses choose to increase their prices, but consumers have the option of purchasing cheaper products from overseas markets, then the businesses will sell fewer products, decrease the size of their operations and consequently shed staff.

Alternatively, if the businesses choose to sacrifice their level of profitability, there is then a question as to how large those cuts can be before those businesses lose viability, cease to operate, and consequently shed all of their staff. If the businesses already face low levels of profitability due to intense levels of local competition or subdued trading conditions (both of which currently exist in

[1] Ernst & Young report, *The threshold question: Economic impact of the low value threshold on the retail industry*, February 2012.

most retail categories), there is little room for sacrificing profitability in the first place and the loss of viability occurs more immediately.

Note that either option ultimately leads to job losses. Therefore, in the determination of labour costs, it is now becoming increasingly fraught to ignore the impact of international competition when proposing increases that are not linked to gains in productivity or efficiency.

In conclusion, therefore, as the willingness of Australian consumers to buy globally increases, there is increasingly a natural and unavoidable trade off between higher labour costs and associated costs and the number of jobs in the national retail sector. Actions that move to grow the gap between domestic and international wage levels will result in the loss of jobs for Australians, diminished workforce participation and diminished social inclusion.