

**Australian Competition
&
Consumer Commission**

Minutes

of the

PRE-DECISION CONFERENCE

in relation to

**Applications for authorisation A91354 - A91357
lodged by Homeworker Code Committee Incorporated**

held on

1 August 2013

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-determination conference but a record of the discussions sufficient to set out the matters raised by the persons participating in the conference, as required by section 90A(8) of the *Competition and Consumer Act 2010* (Cth). A copy of this document will be placed on the ACCC's public register.

**Pre-Decision Conference:
Applications for authorisation A91354 - A91357
lodged by Homeworker Code Committee Incorporated**

Thursday, 1 August 2013

Venues:

- ACCC Melbourne Office Level 38, The Tower, 360 Elizabeth Street, Melbourne
- ACCC Sydney Office Bathurst Room Level 19, 175 Pitt Street, Sydney
- ACCC Brisbane Office Conference Room Level 24, 400 George Street, Brisbane
- ACCC Canberra Office Meeting Room North Level 2, 23 Marcus Clarke Street, ACT

Attendees:

Australian Competition and Consumer Commission

Sarah Court, Commissioner

Michael Schaper, Commissioner

Richard Chadwick, General Manager, Adjudication Branch

Baethan Mullen, Director, Adjudication Branch

Tanya Hobbs, Assistant Director, Adjudication Branch

Hayley Parkes, Assistant Director, Adjudication Branch

Caroline Gill, Principal Lawyer

Linley Johnson, Economic Advisor

Technical Fabric Services Australia

Evangeline Agius, owner

Career Keys

Kevin Heisner, Head of Department, Clothing Production

Coman Textiles t/a HotelHome Australia

Gary Coman, owner

Thomas Coman, owner

Lee Beckett, Resources Manager

Council of Textile and Fashion Industries of Australia (TFIA)

Richard Evans, CEO

Creative Industries Skills Council (CISC)

Sam Nicolosi, Manager

Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education

Ken Lonnie, Manufacturing Division

Hedel Holdings t/a Beaulieu Pacific

Scott Barwick, General Manager

Homeworker Code Committee

Zoe Jenkins, employer representative on the Committee (NSW Business Chamber)

Vivienne Wiles, TCFUA representative on the Committee

Simon McRae, National Manager, Ethical Clothing Australia (ECA), the day to day arm of the Committee

Independent Consultant
Meriel Chamberlin

Merino Country
Kerrie Richards, owner
Malcolm Pain

National Retail Association
James McGrath, Advisor

Queensland Swimwear Company
Leigh Mason, Director

Skola Uniforms
Gloria Gavranic, owner
Martyn Smith, Product Manager

Technical Textiles & Nonwoven Association
Kerryn Caulfield, Executive Manager

Textile, Clothing and Footwear Union of Australia
Michele O'Neil, National Secretary
Oanh Tran, Industrial Officer
Elizabeth Macpherson, Organiser

Conference commenced: 9.35am AEDST

Commissioner Court welcomed attendees, outlined the purpose of the conference and procedures to be followed at the conference, declared the pre-decision conference open, and invited Technical Fabric Services Australia, the party that called the conference, to make an opening statement.

Ms Evangeline Agius (Owner, Technical Fabric Services Australia (**TFS**)) raised the following matters:

- the purpose of TFS calling the conference was to raise concerns about the effect of the Homeworker's Code of Practice (the **Code**) on TFS's business, given that TFS does not and could not use outworkers in its production processes.
- TFS is concerned that the requirement for companies such as TFS to gain accreditation in order to tender for government contracts will add unnecessarily to the cost of tenders, ultimately leading to increased costs for taxpayers.
- Ms Agius asked if Meriel Chamberlin could speak as a representative of TFS and other technical fabric manufacturers attending in Brisbane.

Commissioner Court called on Meriel Chamberlin.

Ms Meriel Chamberlin (Independent Consultant) made the following comments:

- the proposed code extends its operation to textile workers, and Ethical Clothing Australia accreditation is not relevant to the textile industry. In particular:
 - the industry does not use outworkers.

- the industry uses large, expensive machines and is very protective of its intellectual property - therefore it does not outsource its production.
- the industry is struggling to get skilled workers and has no incentive to exploit its workers.
- with the current laws, the TCFUA knows exactly where the factories are and can visit them at any time, there is nothing hidden.
- the ECA accreditation process is costly, even though it is subsidised by government.
- almost every textile manufacturer in Australia is in a government supply chain, therefore the extension to this area will cover all manufacturers with no benefit as the industry does not use outworkers.

Commissioner Court sought clarification that the technical textile manufacturers' main concerns were that:

- the Code was to be extended to cover textiles as opposed to just clothing and footwear manufacturers.
- there is a requirement under the Commonwealth Procurement Rules to gain accreditation under the Code to tender for Commonwealth government contracts.

Ms Meriel Chamberlin confirmed this and added the following points:

- the Code should recognise equivalent voluntary codes such as WRAP and SE8000, because in Australia these codes require the certified businesses to be, at the least, Award compliant and are globally recognised and therefore more commercially valuable.
- the Code should also cross-recognise accreditation under other Codes such as the Oeko-tex standard (which certifies product and chemical safety) which are much more relevant to textiles manufacturers than a labour standards code.
- there are no up to date figures on the size or shape of the industry. The newer reports all cite very old reports for their figures. The most recent report was in 2011 by the Fairwork Ombudsman in Queensland who found only 171 businesses existed out of 700 businesses listed with the Board of Registration. The old statistics mean that it is difficult to work out what is needed in order to address any exploitation.
- The Code should not be extended beyond its current form until further research can be done on the industry. The ACCC's figures in the Draft Determination are out of date and irrelevant. The industry may only be a half or a quarter the size that it used to be.

Commissioner Court noted that the shape and nature of the industry was not something that the ACCC had considered in detail in the Draft Determination. The ACCC took the view that there was already a body of law and that the Code seeks to provide an efficient mechanism for manufacturers and retailers to ensure that their supply chain complies with those existing laws and assure customers of that compliance. The ACCC considered the public benefits and detriments of that.

Ms Meriel Chamberlin stated that it was unclear how effective the Code was in the industry. The Homeworker Code Committee (the **Code Committee**) had submitted that 11,048 people had been reached. However, given the estimate of 48,000 outworkers, this meant that many had not been reached. To have such a low take up after five years, the Code

should be considered a waste of money in comparison to the effects of, for example, properly resourcing the Fairwork Ombudsman which currently proposes to carry out a national education campaign.

Commissioner Court sought clarification that the submission was that only a small percentage of workers in the industry benefit and therefore this benefit does not outweigh the costs.

Ms Meriel Chamberlin confirmed that this was her submission and stated that the textile manufacturers were also concerned about the lack of industry consultation. Many accredited businesses did not know about the application of the code and submissions which had apparently been made by the Code Committee on their behalf.

Commissioner Court noted that again the concern appeared to be the extension of the Code to textiles manufacturers. Commissioner Court also noted that in the Draft Determination the ACCC concluded that while there was a revision in wording of the Code, in fact some textile manufacturers were included in the previous version of the Code.

Ms Meriel Chamberlin stated that to the extent that they were previously covered, this had not been applied during procurement tenders by government departments. However, following authorisation, it appeared that all textiles would be covered including non-clothing fabric products such as carpets. Ms Chamberlin questioned the utility of, for example, requiring all carpet manufacturers which provide carpets to government to be accredited and stated that this broad extension to irrelevant parts of the industry indicated and reflected the lack of consultation undertaken.

Ms Chamberlin also expressed concern that the industry considered that its participants had to spend an excessive amount of time responding to government regulatory proposals and repeatedly having to justify its existence.

Commissioner Court thanked Ms Chamberlin for her submissions and observed that she understood that Ms Chamberlin was speaking on behalf of many of the attendees in Queensland. Commissioner Court asked if there were any other attendees in Queensland who also wanted to speak.

Mr Sam Nicolosi (Manager, Creative Industries Skills Council (**CISC**)) submitted that:

- CISC is responsible for workforce skills and development. CISC had been involved in rolling out training in relation to the Code and the various laws and regulations with which it seeks to encourage compliance. Mr Nicolosi considered that the training under the existing Code was very good at educating students and professional development and was thus a positive way to address worker exploitation.
- CISC had concerns in relation to the extension of the Code to textile manufacturers and the potential increase in training needs required. For example, in Queensland, textile manufacturers include leather, jacquard, canvas, sail making, shade cloth etc. CISC has concerns about how far back in the supply chain the auditing would have to go – for example, would it extend to leather manufacturers who purchase skins from roo shooters.
- some forms of manufacturers only operate in a factory environment. The information and training provided by CISC, which is structured to deal with homeworker issues, is irrelevant to these manufacturers.

- as a result, CISC considers that the reworded Code is impossibly broad in scope, which means it is irrelevant for many textiles businesses and difficult to include in workforce development and training.
- CISC does consider that the embroidery industry should be included in any extension of the Code as it is work that can be and is done at home. Also, coverage of the clothing industry should continue.

Commissioner Court asked whether the main concerns were the extension of the Code to textiles manufacturers.

Mr Sam Nicolosi confirmed this was the case for CISC.

Commissioner Court asked if any other attendees in Brisbane had any further issues they wished to raise.

Ms Kerrie Richards (Owner, Merino Country) submitted that:

- Merino Country manufactures clothing etc, including for the Defence Department.
- when tendering for Federal Government contracts, there is nothing in the tender rules which says the product needs to be Australian made (other than Army uniforms).
- Australian companies compete against cheaper imports. Accreditation under the Code leads to costs for Australian manufacturers that are not incurred by competing providers, as well as increased red tape. That is, the contracts require Australian suppliers to be ECA accredited (Ethical Clothing Australia, a reference to the Code Committee's trading name). Ms Richards stated that this offends her as overseas manufacturers are not held to any sort of similar standard.
- there was no apparent limit on how far back textiles manufacturing accreditation would need to go – would it include the wool and cotton farmers, the accessory suppliers of zips and cottons, elastics etc?
- with the extra costs due to the Code, Ms Richards submitted that Australian companies will be unable to compete on price in Federal Government tenders.
- Merino Country also tenders for state and local government contracts and at every level needs to comply with existing legislation and allow the relevant government entity to come and inspect its records to check this compliance if necessary. As a result its records are completely transparent.
- Ethical Clothing Australia accreditation does not make that process easier and does not provide a return on investment by being accredited. Instead it exacerbates multiple overlaps in existing laws.
- Merino Country had a signed Defence supply contract in 2009, which, at that time, did not require ECA accreditation. Merino Country was forced to apply for accreditation in order to tender for a Defence contract last year and this will be the case if it tenders for other contracts.
- Merino Country does not have outworkers and is of the view that few suppliers to government contracts use outworkers.

Commissioner Court asked if this requirement in government contracts also extended to requiring Merino Country to require its suppliers to also make their books and records available.

Ms Kerrie Richards confirmed that this was the case, including the yarn makers, knitters and dye houses. Therefore, Merino Country considered that the transparency obligations in the Code are already covered under existing tender rules. In addition there is a lack of cross-recognition. As examples, Ms Richards submitted a recent state contract tender where there was no recognition given for ECA accreditation. Merino Country also has a current contract with a local council which requires Merino Country to recognise and adhere to International Labour Organisation principles but has no recognition of ECA accreditation.

Ms Richards also submitted that the audit process under the Code needs to be addressed:

- it is not as professional as WRAP and the Fairwork Ombudsman
- it should not be carried out by the Textile, Clothing and Footwear Union (the **TCFUA**) as the TCFUA has an existing right of access under legislation.
- in conducting the audit, ECA should recognise prior accreditation by the Fair Work Ombudsman but ECA has said that this is not relevant.
- ECA is not required to be transparent even though the accredited businesses are required to be transparent. For example, Merino Country did not receive any notification or consultation in relation to the new Code.

Ms Richards concluded that Merino Country had found it better value to be involved in the Australia made campaign and had been dissatisfied with its accreditation experience and therefore was no longer accredited. Finally, Merino Country considers that the Code should be voluntary, not mandatory.

Commissioner Court asked whether Merino Country regarded the Code to be mandatory because it was engaged in government tendering.

Ms Kerrie Richards stated that this was the case and that a very senior procurement officer in Defence had told Merino Country that the officer saw the ECA accreditation as an alternative way to fund the TCFUA. Ms Richards also stated that clothing companies do not want to speak out as they do not want to be targeted and made an example of by the TCFUA. In addition, Ms Richards submitted that there was no point in speaking out as no one ever listens to the people who do.

Ms Meriel Chamberlin said that the TCFUA has also been citing odd reasons why it will not accredit businesses, citing workplace health and safety reasons rather than labour conditions. Ms Chamberlin questioned how much evidence there was that non-compliance with existing laws may relate to health and safety rather than labour issues.

Commissioner Court noted that the ACCC has no power to change government procurement rules. The rules may be relevant to the ACCC's assessment of the authorisation application, but only in a broad sense.

No further attendees in Brisbane requested to speak. Therefore, Commissioner Court asked Mr Richard Evans, in Melbourne, if he wished to raise any issues.

Mr Richard Evans (CEO, Council of Textile and Fashion Industries of Australia (TFIA)) submitted that:

- everyone present wanted a sustainable industry and questioned why people do not buy Australian made apparel more often. In addition the TFIA endorsed the Prime Minister's statement regarding the effects of regulation on small business.
- the TFIA had had involvement in the Code since the first version and it considered that it had never been intended to be a mandatory code.
- the aim of the Code was to change behaviour in the sector, as is the case with most codes. The TFIA considered that the lack of reliable statistics regarding the sector meant that it was impossible to know whether this had occurred or not. However, the unpopularity of the Code means that it has probably not been effective in changing behaviour.
- however, the view of the TFIA is that there may still be some exploitation but employers in general do not engage in exploitation.
- the TFIA recognised that there were limits to what the ACCC can do regarding changing aspects of the Code. Nonetheless, the TFIA considered that the ACCC had recognised but given little weight to the submissions of businesses regarding costs and complaints regarding the audit process and impact on businesses.
- there is a substantial level of fear in the industry associated with the TCFUA and the Code and that therefore businesses are reluctant to discuss it.
- there is substantial over regulation of the industry with three main instruments and four regulators (the Fairwork Ombudsman, the Fairwork Commission, DEEWR and the union – TCFUA) just at the Federal level,
- there have been significant changes to the market since 2005. The Fairwork Act now allows unions into workplaces and so does the 2010 Award. Therefore, the TFIA seriously questions whether there is an additional need for the Code.
- the TFIA questions whether the Code is working. Regarding the submissions that allege significant exploitation, the TFIA would like to know how much actually exists but also considers that if it does exist there are already laws in place to deal with it.
- thirdly, if the Code was having significant behavioural effects then it would have substantial market penetration and there is little evidence of this. Therefore, to the extent that behaviour change is the Code's strategy there is little evidence of significant outcomes.
- the TFIA noted the substantial evidence from employers that the Code is not helping, that it is a hindrance and that it is costly to comply with. The TFIA considers that if there is going to be an industry code then it should not be compliance focused but education focused. The Code needs to invest substantially more in education if it wants to become sustainable.
- in the draft determination, the ACCC found that there was no cost differential between complying with the law and complying with the Code. The TFIA disagrees. There is a cost to complying with the Code in addition to the law.

- in relation to the auditor, the TFIA considers that the decision in 2005 to use the TCFUA as the auditor was a good idea. However, due to changes that have occurred since (e.g. to the Award), the TFIA disputes that the union should now be the auditor. Employers should have other methods of choosing independent auditors.
- there is also a significant conflict of interest which exists due to the use of the union as an auditor.
- if the Code is maintained, then employers should be able to have another method of independent auditing conducted.

Commissioner Court confirmed that the main issues that the TFIA wished to raise were:

- the costs of compliance with the Code and the fact that the ACCC should give increased weight to businesses' submissions in this respect.
- the question of whether in the current legal climate there is a real public benefit from the Code.
- the question of how effective the Code is, including the role of the union as auditor.

Commissioner Court requested that Mr Evans explain further the conflict of interest that the TFIA considered that the TCFUA is subject to in conducting the auditing.

Mr Richard Evans submitted that the TCFUA has a conflict between representing its members and independently assessing compliance by businesses which employ those members. That is, the TFIA noted the changes to the Fairwork Act and the Award which have given the TCFUA a much larger regulatory role. In the light of these changes, the TFIA questions where the TCFUA chooses to draw the line between doing the auditing under the Code and representing its members. The TFIA considers that an auditing role can be a helping role, with education as to where things need to be fixed up. However, this is not the role of a regulator, therefore there is a conflict of interest.

Commissioner Court asked Ms Kerry Caulfield, in Melbourne, if she wished to speak.

Ms Kerry Caulfield (Executive Manager, Technical Textiles & Nonwoven Association (TTNA)) submitted that:

- the members of her association use sophisticated factories and highly skilled staff. They supply to the automotive and aerospace industries in highly sophisticated supply chains. They supply geotextiles to mining companies and landfill liners.
- their customers have their own accreditation programs, for example Toyota, Boeing, ISO, geotextiles certifications for mines etc. In many cases that supply chain needs to be confidential.
- the employees of members of her association are engineers and chemists, none of whom are outworkers, and there is no evidence that they are particularly vulnerable to exploitation. Therefore, there is no reason for the Code to be extended to her members, it is another nuisance tax.

Commissioner Court asked whether the reason her members would have to seek accreditation would be because of government procurement.

Ms Kerry Caulfield confirmed that this was the case.

Ms Meriel Chamberlin submitted that that the technical textiles companies already meet many stringent accreditation standards. Ms Chamberlin submitted that the fact that the Code had been extended to technical textiles manufacturers was an example of unintended consequences caused by the lack of consultation.

No other attendees opposing the Code expressed a desire to speak. Therefore, Commissioner Court asked if the Homeworkers Code Committee representatives would like to make any submissions or comment on the issues raised.

Mr Simon McRae (National Manager, Ethical Clothing Australia (**ECA**), the day to day arm of the Code Committee) submitted that:

- the Code was set up on a collaborative basis with businesses and the TCFUA.
- accreditation and compliance work only really started occurring after government funding was received in 2008. The desire was to approach the problem of exploitation and have an ethical industry.
- ECA does not agree that there is no exploitation. In terms of evidence there is information accepted at a variety of Senate hearings, most recently in 2012 and included in subsequent Senate reports. As manager of ECA, he is aware of statistics regarding serious breaches in compliance with workplace laws. They have contacted about 6,000 homeworkers and conducted around 2,000 business visits in doing the auditing.
- in terms of the details of non-compliance by businesses, the auditing process is confidential. However, in ECA's experience nearly all the workplaces audited have had some breach of the Award and/or legislation.
- ECA monitors compliance with the law and then helps businesses remedy any non-compliance. When the TCFUA goes into a business there is a commitment that it will not prosecute any non-compliance.
- ECA considers that the Code is a risk management process for businesses.
- other attendees have argued that ECA should recognise compliance with alternative equivalent codes. However, there is no alternative code. WRAP and other certifications do not include outworkers. They also do not have the same extensive compliance checks. Overseas experience in places such as Bangladesh and the recent tragedy there indicates what happens if auditing does not work correctly.
- the TCFUA has long term relationships with workers. They work down a supply chain using their contacts and finding the issues and then help businesses to address them. Overseas experience indicates that if workers do not trust the auditors the auditors do not find out what is going on. Mr McRae noted that his experience in the U.K. was that the ECA accreditation was regarded as the best in the world.
- in relation to costs, the Code requires you to provide documentation that you should already have. The TFIA did not specify what other costs it considered resulted from the Code. In addition, any processes to check compliance with the law – such as alternatives to ECA proposed by other parties - would involve costs. However, the ultimate costs are higher if the compliance program does not identify the issues.

- ECA has had a 25% cut in funding and therefore it has had a strong focus on decreasing costs. It has streamlined processes, for example by putting much more information online, and it has been involved in helping to optimise the education program to meet the needs of businesses, including through online training. ECA spent one year looking at the whole process while revising the Code and trying to make it more efficient.
- Defence Material Organisation (which is responsible for a significant proportion of Commonwealth Government procurement) has said that it sees the process as very helpful. ECA has established a part of its website for DMO and other government departments to assist them to find out about accredited businesses.
- the Code was originally developed to help exploited workers. Therefore, while accreditation for government procurement has been important in increasing the number of applications for accreditation, the biggest source of applications for accreditation now appear to be from people who genuinely want to ensure that their supply chain is ethical and advertise that to their customers.

Mr McRae asked Vivienne Wiles to speak to the issue of the coverage of workers who are not outworkers under the Code.

Ms Vivienne Wiles (TCFUA representative on the Code Committee) submitted that:

- the Code was always intended to cover both workers and homeworkers. One of the earliest businesses to become accredited used no outworkers at all, although this has since changed. The TCF (textile, clothing and footwear) industry has been structured around outworkers for a very long time.
- there are degrees of regularity of working conditions within the supply chain. Sweatshops act as a sort of half and half environment between homework and factory work and many outworkers also work periodically in sweatshops. Therefore, the Code is designed to mirror the Award and legislation and create the transparency as to who is doing the work and under what conditions.

Commissioner Court asked the TCFUA representatives if they wished to speak regarding comments made by other attendees.

Ms Michele O'Neil (National Secretary, Textile, Clothing and Footwear Union of Australia) submitted that there appeared to be confusion and misinformation in businesses' submissions regarding the Code and the ACCC's role in assessing the authorisation application. In particular there is confusion over what is in the Code and what is in the procurement guidelines or the Award.

Ms O'Neil submitted that:

- regarding the issue of the extension of the Code to textiles, elements of the Code have always covered textiles.
- regarding the coverage of technical textiles, this industry includes workers doing embroidery who can and do work from home. It also includes knitted apparel which may be done from home on knitting machines and then panels sewn together on sewing machines.
- the union has always considered OH&S compliance to be a core aspect of compliance with labour standards – the ability for workers to work without their health being impaired at work is a fundamental protection.

- what has happened to cause some of the confusion is that the outworker provisions of the Clothing Trade Award became the basis of the outworker provisions of the TCF Award 2010, which standardised conditions across the textile, clothing and footwear industry.
- regarding the voluntary nature of the Code, accreditation is a condition of tendering for Commonwealth government procurement. However, no one has to be accredited and companies choose for a range of reasons whether to supply governments. The government has a range of stringent procurement requirements across a range of sectors. Companies which are considering supplying government have to consider those requirements but no business is required to supply to government if it perceives the requirements to be too onerous.
- by comparison, businesses in other industries which supply government often have to tender to join a pre-vetted panel, and it is not unusual that the government requires panel members to have various accreditations including ethical.
- similarly for companies participating in the supply chain of accredited businesses, businesses regularly impose a range of requirements upon their suppliers. If a supplier considers those requirements to be too onerous then it is not required to supply that customer.
- it is not correct to state that the Code imposes more costs on businesses due to the potential for more regular compliance audits by the union. The law already allows the union an unlimited right of entry. However, through the Code, the union undertakes a thorough compliance check during the auditing process. This means a business is less likely to have repeated audit visits because the union is able to rely on this compliance check. Therefore, an accredited business will normally have only one annual audit which is a potential advantage.
- the TCFUA considers that it is also an advantage to businesses in the TCF industry to have a simple, clear accreditation system with integrity which allows them to thoroughly demonstrate their ethical credentials. The TCFUA considers that this provides Australian TCF businesses with the chance to establish an industry which is internationally recognised for its adherence to labour rights.
- the TCFUA in other aspects of its role often represents Australian unions internationally, for example at Industriol. There is a frequent comparison of industry codes at these events and the system developed as part of the Code is seen as a global leader and is recognised for several of the aspects which people have been raising issues about. In assessing the rigour of a code there are seen to be a few key components:
 - multi-stakeholder engagement; and
 - union involvement in auditing rather than a private firm, which has an immediate conflict of interest in relation to assessing the compliance of the business which is paying it.
- the TCFUA has a variety of roles but this does not mean there is a conflict of interest. When doing compliance audits for ECA accreditation, the TCFUA clearly identifies to businesses what is involved and provides this information ahead of its audit. Due to its knowledge of the industry, relationships with very vulnerable workers and rights of entry the TCFUA is able to conduct thorough audits and reach supply chains which no other participant in the industry has the ability to do.

- the union heavily subsidises the costs of the auditing that it does, only a small amount of these costs are paid by the government grant and it also subsidised the Code before the government grant was received. The original intention of the Code was that the employer organisations which are a part of the Code and businesses on the Code Committee would also contribute in kind, which they have done. The Code Committee has also significantly decreased the costs for businesses and other participants.

Ms O'Neil asked Elizabeth McPherson to speak regarding the process of auditing under the Code.

Ms Elizabeth Macpherson (Qld Organiser, TCFUA) submitted that:

- when ECA is notified that a business is seeking accreditation, an ECA accreditation advisor will contact her. Ms Macpherson will then contact the company, to arrange a time for the audit. Ms Macpherson also provides the company with a comprehensive compliance checklist at this time.
- Ms Macpherson then undertakes the audit, as informally as possible. The audit may end there if no work is given out, unless there is follow-up - for example for OH&S issues. Or, if work is given out then Ms Macpherson will need to talk to suppliers.
- the business is asked to ensure that its suppliers understand why the TCFUA will be visiting and Ms Macpherson has a meeting with the suppliers. Questions come up at the meeting and the suppliers make a decision as to whether they want to keep working for the accredited business.
- the TCFUA will then meet with the workers of the suppliers that stay on and talk to them about their pay and conditions, payslips, superannuation etc. Outworkers are notified and they will also contact the union directly. Ms Macpherson will meet with outworkers with the assistance of language support to discuss their pay and conditions.
- there are a range of things that Ms Macpherson looks at as part of a compliance audit. These include pay accruals, work cover OH&S including lighting, chairs etc. Ms Macpherson estimated that around 98% of businesses visited had some level of non-compliance. All information about the audit is recorded in the IIS (the industry database established by ECA).
- using the database, it is possible to run reports on the level of non-compliance. However, the process of auditing is confidential and the TCFUA does not disclose what occurs. Instead it provides tools and assistance to the business to assist it to become compliant. If the business wants legal advice, then the TCFUA refers the business to the AIG or another relevant industry body.
- in reporting back to the business seeking accreditation, this can occur very quickly if it is only a small supply chain. There are many examples of this. If problems have arisen then the accredited business is informed in broad terms, but they are the only party to which the non-compliance is disclosed.
- if the TCFUA discovers something wrong with a business' compliance it will give the business time to get legal advice and work through the problem with the business. However, in the last 6 months ECA has tightened some of its guidelines so that it can deal with a lack of co-operation by some businesses in a supply chain.
- in Ms McPherson's experience, many businesses doing government work use outworkers and also are not compliant. The top-level business often is but lower level

businesses often are not. Of textile manufacturers that make in-house, Ms McPherson does often uncover exploitation and regular breaches of the law such as serious lack of ventilation.

Ms Michele O'Neil submitted that the TCFUA sits on the Homeworkers Code Committee, and took seriously its obligation to consult with workers, which is the union's role in sitting on the Committee. Other representatives on the Committee had roles in consulting with the other parts of the industry that they represent.

In relation to the ACCC's Draft Determination, Ms O'Neil submitted that the role the TCFUA plays in auditing businesses is collaborative even when a company is clearly in breach of the law and there are problems. The TCFUA provides advice regarding businesses' legal obligations and how to fix problems. This is a huge benefit to those businesses on a day to day basis. The TCFUA also resolves disputes every day using its compliance officers, as do the ECA accreditation advisers. Therefore there is no need for a formal dispute resolution process.

Commissioner Court invited those attendees which oppose the Code to make any final comments.

Mr Sam Nicolosi noted it is a principal of auditing that the audit (fact finding), compliance (correction of issues) and prosecution (enforcement) functions should be separated. Mr Nicolosi stated that he considered there is a conflict in the current process that the TCFUA combines all three functions.

Mr Nicolosi also noted that he had not been aware until now that there was any ability for a manufacturer to choose not to participate in the Code.

Ms Meriel Chamberlin submitted that:

- it was not clear that textiles had always been within the remit of the Code, and when asked previously the TCFUA had said that they were not.
- ECA accreditation covered Australian production only. A business was listed on the Oxfam website for issues with its offshore production despite having accreditation in Australia. This indicates that the accreditation is not transparent and is potentially confusing for consumers.
- In relation to efficiency benefits for manufacturers, these are not necessarily the case given the existing legislation that also achieves the same outcomes.

Ms Kerry Caulfield submitted that all of the presentations have blurred the line between textiles and clothing. Ms Caulfield submitted that the unintended consequences of such a broad Code should not become an administrative burden on the whole industry.

Mr Richard Evans noted that the ECA and TCFUA had said that they can not discuss specific breaches of the law because of confidentiality. Mr Evans stated that he considered that it would help the Code achieve behavioural change if non-identifying case studies could be done on serious breaches. Mr Evans noted the importance again of education to achieve outcomes.

Commissioner Court invited those attendees which support the Code to make any final comments.

Mr Simon McRae submitted:

- in relation to Ms Chamberlin's comments that many of the companies that ECA accredits have domestic and overseas production, that the licence conditions of accreditation only allow producers to use the trademark in relation to Australian made products.
- in relation to Mr Nicolosi's comments about the conflict of functions, that there is a commitment not to prosecute during the audit process and therefore no conflict in the TCFUA's role.
- in relation to Mr Evans' comments about the benefits of education, that the ECA agreed that education is important but because similar obligations to those in the Award and the Fairwork Act had existed in legislation in NSW and Victoria for many years and been largely ignored, the ECA did not consider that the only issue was a lack of awareness by businesses.

Ms Michele O'Neil agreed with Mr Evans' suggestion as to the usefulness of non-identifying case studies as an educational tool.

Ms O'Neil also noted that it was true that many Australian businesses had international supply chains. However, the Code Committee was unable to provide assurances about the production standards of off-shore supply chains as there are no resources available to check these. Therefore, the Code confines itself to certifying Australian production.

Ms O'Neil also agreed that it was wrong that the Commonwealth government did not impose similar conditions upon overseas suppliers as it did upon Australian suppliers. However, the TCFUA did not consider that the solution is to lower the Australia suppliers' standard; but to raise the standard applied to overseas suppliers.

Commissioner Court provided the following information in closing the conference:

- parties may provide further submissions by 5 August 2013 on the issues raised, or any other issues, for consideration by the ACCC. Parties can seek an extension of time for these submissions if necessary.
- the ACCC has taken into account all submissions received to date, and will continue to do so.
- Commissioner Court outlined the statutory process in relation to the ACCC making a final determination following the pre-determination conference.
- Commissioner Court noted that ACCC staff will prepare a summary of the day's proceedings for the public register.

Commissioner Court then closed the conference.

Conference closed: 12.00 pm AEDST